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Attorneys for Plaintiff LANCE HILD, in a Representative capacity only, and on behalf of other members of the public similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

LANCE HILD, in a Representative capacity
only, and on behalf of other members of the
public similarly situated

Plaintiff,

v.

WESTSIDE BUILDING MATERIAL
CORPORATION, a California Corporation,
and DOES 1-10, inclusive

Defendant

CASE NO. 37-2021-00041781-CU-OE-CTL

**DECLARATION OF RYAN T. KUHN IN
SUPPORT OF PLAINTIFF'S UNOPPOSED
MOTION RE: PAGA SETTLEMENT
APPROVAL**

Date: August 5, 2022

Time: 10:30 a.m.

Dept.: C-70

Judge: Hon. Carolyn Caietti

1 I, Ryan T. Kuhn, declare as follows:

- 2 1. I am an attorney licensed to practice law before all the courts of the State of California, and am
3 employed with the law firm of SULLIVAN & YAECKEL LAW GROUP, APC, attorneys of
4 record for Plaintiff LANCE HILD, in a Representative capacity only, and on behalf of other
5 members of the public similarly situated in this matter.
- 6 2. I make this declaration in support of Plaintiff's Unopposed Motion Re: PAGA Settlement
7 Approval. I am personally familiar with the facts set forth in this declaration and, if called to
8 testify, could and would do so.
- 9 3. As this is a "PAGA" action only, the Limitations Period begins on July 8, 2020. There are
10 approximately **4,160** pay periods and **144** PAGA Members at issue.
- 11 4. Following the exchange of informal discovery, analysis of numerous sets of time and wage
12 data, mediation before Mike Roberts, and assistance of Mr. Roberts subsequent to the May 9,
13 2022 Mediation, the Parties reached a proposed settlement that includes a payment of penalties
14 to the LWDA.
- 15 5. On **May 31, 2022**, Plaintiff's counsel gave notice of the instant Settlement to the LWDA.
16 Attached hereto as **Exhibit A** is a true and correct copy of the Settlement Agreement. Attached
17 hereto as **Exhibit B** is a true and correct copy of the "auto-generated" E-Mail received from
18 the LWDA.
- 19 6. On **June 13, 2022** counsel uploaded copies of the entire *ex parte* application, including the
20 Notice, this supporting Memorandum, Declaration, Proposed Order & Judgment, and the
21 **signed** Settlement Agreement to the LWDA's electronic filing portal. Attached hereto as
22 **Exhibit C** is a true and correct copy of the "auto-generated" E-Mail received from the LWDA.
- 23 7. On **July 14, 2022**, Plaintiff's Counsel uploaded the instant Motion, and provided notice of the
24 hearing date, to the LWDA's electronic filing portal. To date, Plaintiff's counsel has not
25 received any opposition from the LWDA. Attached hereto as **Exhibit D** is a true and correct
26 copy of the "auto-generated" E-Mail received from the LWDA.
- 27 8. The Total Value of the proposed Settlement is **\$80,000.00** which is broken down as follows:

28 * **\$3,000.00** Settlement Administrator Fees;

Declaration of Ryan T. Kuhn

- * **\$26,666.67** Attorneys' Fees (1/3 of total settlement value);
- * **\$5,000.00** Costs of Litigation.
- * Sub-Total of **\$45,333.33**. 75% (**\$34,000.00**) shall be assigned/paid to the LWDA as penalties.
- * The remaining 25% (**\$11,333.33**) in cash will be disbursed among all employees based on work weeks employed during the PAGA period.

Given the above, the average payment to each individual employee will be approximately **\$78.70**.

9. There are no restrictions for any of the **144** employees to file individual actions, as the settlement agreement only covers PAGA claims.
10. The instant request is based on the fact that **(1)** the PAGA period "cutoff date" is contingent on Court approval, any delay diminishes the amounts received by the impacted employees; **(2)** Notice to certain ex-employees may be adversely impacted by further delay (*i.e.* ex-employees may change their mailing address without filing a proper "forwarding address")
11. An expedient approval of this settlement will provide a direct benefit to the impacted employees at issue. The "fixes" provide a guarantee of future Labor Code compliance, and an immediate monetary benefit. It also allows Defendants (who admirably "stepped up" to address these issues) the opportunity to move on, and focus on future business.
12. Plaintiff alleges that he - and other employees - received "late" Meal Periods, including those documented within Defendant's Time Records. Plaintiff also challenged whether Defendant maintained lawful meal and rest periods. Plaintiff alleged he- and other employees -were not properly compensated due to Defendant's failure to maintain accurate time records. Finally, Plaintiff also challenged whether Defendant maintained lawful meal and rest period policies.
13. The catalyst of this litigation concerned allegations that Mr. Hild was denied legally compliant meal and rest periods, and was not paid for all Overtime hours worked.
14. Investigations completed by Plaintiff's counsel revealed that Defendant's timekeeping policies and employee records were not in compliance with California law. However, these investigations also revealed that the "rate of violation" by Defendant was significantly less than

- 1 100%. On many of those occasions, it appears that Defendant did, in fact, comply with the
2 law.
- 3 15. Based on the above, the maximum liability in a case of this type would be in the range of
4 **\$200,000.00 to \$300,000.00.**
- 5 16. Moreover, Plaintiff's counsel is aware of the Court's discretion to mitigate penalties pursuant
6 to California Labor Code section 2699(e)(2). To confirm, Plaintiff's counsel experienced the
7 mitigation of "PAGA" penalties in *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504.
8 In *Carrington*, Judge Bacal significantly mitigated PAGA penalties (\$5 per violation), due to
9 the efforts made by the employer to comply with the law.
- 10 17. Plaintiff's counsel agrees with Her Honor, and with the provision of the Labor Code, that
11 penalties *should* be mitigated where violations are minimal (or rare), or where the employer
12 makes significant efforts to comply with the Labor Code.
- 13 18. As the above factors exist in this case, it is the opinion of Plaintiff's counsel that the settlement
14 is fair, adequate, and reasonable. Specifically, Plaintiff's counsel's understanding is that
15 Defendant has agreed to make changes to its policies, and amend them to the extent they do
16 not comply with California law.
- 17 19. Plaintiffs' counsel, William B. Sullivan has approximately 28 years of experience in "class
18 action" litigation, both as plaintiff and defense counsel. Plaintiff's counsel, Eric K. Yaeckel,
19 has over 10 years of experience prosecuting class and representative action claims under the
20 California Labor Code. Plaintiff's counsel, Eric K. Yaeckel and William B. Sullivan, are the
21 attorneys of record in a matter that was recently heard (and favorably decided) before the
22 California Supreme Court titled *Donohue v. AMN Servs., LLC* (2021) 11 Cal.5th 58. The
23 *Donohue* matter was a certified class and PAGA action.
- 24 20. Plaintiff's counsel were lead counsel on approximately 60 employment "wage and hour"
25 claims with class action, or representative action allegations. Based on said experience, it is
26 the opinion of Plaintiff's counsel that this settlement represents a fair and adequate payment.
- 27 21. Defendant, and its counsel, deserve credit for their willingness to consider - and address - the
28 allegations. Specifically, Defense Counsel (who have extensive experience and knowledge in

1 “Wage and Hour” litigation) agreed to produce a substantial amount of documents and
2 information necessary to evaluate the parameters of settlement. Following the a full day
3 Mediation and arms-length negotiations, the parties have reached a proposed settlement that
4 includes a payment of penalties under PAGA.

5 22. The parties contend the settlement agreement amount is fair, adequate, and reasonable. The
6 release only applies to the PAGA claims for penalties, based upon the allegations in Plaintiff’s
7 operative Complaint.

8 23. To date, Plaintiff has not received a response from the LWDA regarding the proposed
9 settlement. If the LWDA contacts Plaintiff’s counsel at any time prior to the August 5, 2022
10 hearing, Plaintiff’s counsel will provide an updated declaration to the Court.

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12 I declare under penalty of perjury under the laws of the State of California that the foregoing
13 is true and correct. Executed this 14th day of July, 2022 at San Diego, California.

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17 Ryan T. Kuhn
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EXHIBIT A

SETTLEMENT AGREEMENT OF PAGA CLAIM

1. **PARTIES**: The parties to this Settlement Agreement of PAGA Claim (“Agreement”) are Plaintiff Lance Hild (“Plaintiff”) on behalf of himself and all “aggrieved employees” pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code section 2698 *et seq.*, on the one hand, and Defendant Westside Building Material Corporation (the “Company”), on the other hand. Plaintiff and the Company are collectively referred to as the “Parties.” The “PAGA Class” consists of all individuals who were employed by the Company in the State of California as non-exempt employees between July 8, 2020 and the date of the Court order granting approval of this Settlement (the “PAGA Period”).

2. **PROCEDURAL HISTORY**: On July 20, 2021, Plaintiff submitted a letter (the “PAGA Letter”) to the Labor and Workforce Development Agency (“LWDA”) regarding his intention to pursue PAGA penalties against the Company. On September 30, 2021, Plaintiff filed a complaint in San Diego Superior Court alleging a cause of action for recovery of civil penalties under PAGA (the “Complaint”). The Parties have agreed to settle all claims outside of litigation.

3. **INVESTIGATION**: The Parties have conducted investigation of the facts and law relating to this dispute. Such investigation has included, *inter alia*, the production and analysis of Plaintiff’s timekeeping and pay records and the exchange of formal written discovery requests and responses regarding, among other things, the Company’s wage and hour, timekeeping, and pay practices. Plaintiff alleged that the Company: (1) failed to provide the PAGA Class compliant meal and rest periods; (2) failed to pay the PAGA Class at least minimum wage for all hours worked; (3) failed to properly calculate and pay overtime compensation; (4) failed to furnish accurate wage statements; (5) failed to reimburse necessary business expenses; and (6) failed to properly and timely pay final wages upon termination.

The Company denies each of these claims. Based upon a thorough review of the law and facts of this case, the Company contends that there is no basis for penalties to be assessed against it because all amounts properly owed to the PAGA Class were timely paid, the Company complied with its obligations under applicable law to provide meal and rest periods, the Company reimbursed the PAGA Class for any necessary business expenses, the Company provided

AGREEMENT OF SETTLEMENT AND GENERAL RELEASE

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compliant wage statements, and the Company timely paid all final wages. Moreover, the Company took effective steps to address any perceived or alleged wage and hour violations. Nevertheless, given the risks inherent in litigation and in the spirit of compromise, the Parties agree that a compromise of all claims is in their best interests.

4. BENEFITS OF SETTLEMENT TO PAGA CLASS MEMBERS: Plaintiff recognizes the expense and length of continued proceedings necessary to continue the litigation against the Company through trial and through any possible appeals. Plaintiff has also taken into account the uncertainty and risk of further litigation, the difficulties and delays inherent in such litigation, the relatively small size of the PAGA Class, the Company's efforts to improve its wage and hour policies and procedures following notification of Plaintiff's claims, and the Company's defenses to Plaintiff's claims for recovery of civil penalties under PAGA. Plaintiff is also aware of the burdens of proof necessary to establish liability for the claims asserted in this dispute, the Company's defenses thereto, and the difficulties in establishing damages for Plaintiff. The Parties have engaged in arms-length settlement discussions regarding all claims and Plaintiff has determined that the settlement set forth in the Agreement is fair, adequate and reasonable, and is in the best interests of the PAGA Class.

5. DEFENDANTS' DENIAL OF WRONGDOING: The Company denies each of the claims asserted by Plaintiff. The Company continues to assert defenses thereto and expressly deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged by Plaintiff. Neither this Agreement nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement is, may be construed as, or may be used as an admission, concession, or indication by or against the Company of any fault, wrongdoing, or liability whatsoever.

6. EFFECTIVE DATE: This Agreement shall become effective on the date in which this Settlement is finally approved as provided herein and the Court's Final Judgment ("Final Judgement") becomes final ("Effective Date"). The "Effective Date" of the release of the Released Claims and for purposes of funding the settlement, is once the Court has (1) approved the settlement terms and (2) issues a Judgment in the action. The parties agree that there is no right to

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opt-out or object to a PAGA Settlement. It is therefore the parties intention that the Settlement shall be final at the time of Court Approval and Entry of Judgment. Funding shall be due based on this date and there shall be no further waiting periods given that there is no right to appeal.

7. **SETTLEMENT AND RELEASE:** In exchange for Plaintiff and the PAGA Class's release of claims, the Company agrees to pay the sum of \$80,000 (the "PAGA Settlement Amount"). As of the Effective Date, and subject to the Company's payment of the PAGA Settlement Amount, the PAGA Class Members, including Plaintiff, release the Company, all of its affiliate entities (including all Peckham family-related businesses, PGS Westside I, Inc. and PGS Westside II, Inc.), any of its parent companies (including Gypsum Management & Supply, Inc.), and each of their past or present officers, directors, members, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and its and their respective successors and predecessors in interest, subsidiaries, affiliates, any individual entity that could be alleged to be jointly liable with the Company, joint employers, joint obligors, clients, parents, and attorneys and each of their respective company-sponsored employee benefit plans and all of their respective officers, directors, employees, administrators, fiduciaries, trustees, and agents (the "Released Parties"), from the "Released Claims."

For purposes of this Settlement, the "Released Claims" are defined as: all claims for the recovery of civil penalties which arose during the PAGA Period and which are referenced or otherwise arising from the facts alleged in the PAGA Letter and the Complaint. The Released Claims specifically include the following: (1) that the Company did not pay Plaintiff and the PAGA Class all wages, including minimum wages and overtime wages in violation of California Labor Code sections 510, 1194, and 1197; (2) that the Company did not allow Plaintiff and the PAGA Class to take meal periods as required by law or pay Plaintiff and the PAGA Class as required by law when such meal periods were not provided in violation of California Labor Code sections 226.7 and 512; (3) that the Company did not allow Plaintiff and the PAGA Class to take rest periods as required by law or pay Plaintiff and the PAGA Class as required by law when such rest periods were not provided in violation of California Labor Code sections 226.7 and 1198; (4) that the

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Company failed to provide accurate and compliant wage statements to Plaintiff and the PAGA Class in violation of California Labor Code sections 226; (5) that the Company failed to timely pay final wages at discharge in violation of California Labor Code sections 201, 202, and 203, and then failed to pay waiting time penalties pursuant to section 203 of the California Labor Code; (6) that the Company violated the California Labor Code section 2802 in failing to indemnify Plaintiff and the PAGA Class for business expenses; (7) that the Company owe penalties pursuant to the PAGA, premised on the alleged violations articulated above; and (8) that the Company owe penalties, interest attorneys' fees, or other damages arising out of the Company's alleged failure to pay wages and penalties released herein. Plaintiff and the PAGA Class specifically release any and all claims to recover PAGA penalties against the Company under Labor Code section 2698 *et seq.*

8. ALLOCATION OF SETTLEMENT AMOUNT: Plaintiff shall seek an enhancement payment as the PAGA representative not to exceed \$5,000.00 to be deducted from the PAGA Settlement Amount ("Enhancement Payment"). Plaintiff's counsel intends to move the Court for an award of attorneys' fees in the amount of \$26,666.67 and costs in the amount of \$5,000 to be deducted from the Settlement Amount, to compensate Plaintiff's counsel for their representation of the PAGA Class in this matter (the "Fee Award"). The portion of the Settlement Amount remaining after the deduction of the Enhancement Payment and the Fee Award shall be referred to as the "Net Settlement Amount." The Parties agree that seventy-five percent (75%) of the Net Settlement Amount shall be paid to the LWDA (the "LWDA Payment") and twenty-five percent (25%) of the Net Settlement Amount shall be paid to the PAGA Class Members, including Plaintiff (the "PAGA Payment"). The PAGA Payment shall be allocated pro rata based on the number of workweeks of the entire PAGA Period worked by each eligible PAGA Class Member relative to the total workweeks in the PAGA Period. For purposes of this Settlement only, the Parties agree that PAGA Class Members employed by the Company during the PAGA Period are "aggrieved employees" under PAGA. If the Court does not approve any portion of the Enhancement Payment and/or Fee Award as requested and described above, then the difference not awarded shall be added to the Net Settlement Amount and distributed among the PAGA Class

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Members.

9. **TIMING OF PAYMENT OF SETTLEMENT AMOUNT:** Within 21 days of the Effective Date, the Company (through an independent administrator agreed upon by the Parties and paid for using a portion of the PAGA Settlement Amount) shall mail to each PAGA Class member his or her share of the PAGA Payment and submit to the LWDA the LWDA Payment.

10. **LWDA NOTICE:** The LWDA will be given notice of this Agreement pursuant to California Labor Code § 2699(1)(2). Plaintiff will serve a copy of this Settlement Agreement to the LWDA on the same day the Agreement is filed with the Court. Plaintiff will also submit a copy of the Court's Final Judgment to the LWDA within ten (10) days after entry of the Final Judgment, pursuant to California Labor Code § 2699(1)(3).

11. **AMENDMENT OR MODIFICATION:** This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest.

11. **ENTIRE AGREEMENT:** This Agreement and any attached exhibits constitute the entire agreement among these Parties relating to the resolution of Plaintiff's claims for the recovery of civil penalties pursuant to PAGA, and no oral or written representations, warranties, or inducements have been made to any party concerning this Agreement or its exhibits other than the representations, warranties, and covenants contained and memorialized in such documents.

12. **BINDING ON SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

13. **COUNTERPARTS:** This Agreement may be executed in one or more counterparts, including by DocuSign, e-mail, and facsimile. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Agreement shall exchange among themselves original signed counterparts.

14. **THIS SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE:** The Parties believe this Agreement is a fair, adequate, and reasonable settlement of this PAGA Action

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and have arrived at this Agreement in arms-length negotiations, taking into account all relevant factors, present and potential.

15. JURISDICTION OF THE COURT: The Court shall retain jurisdiction with respect to interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the settlement embodied in this Agreement and all orders and judgments entered in connection therewith pursuant to Civil Code section 664.6

16. COOPERATION AND DRAFTING: Each of the parties has cooperated in the drafting and preparation of this Agreement. Hence, in any construction made to this Agreement, the same shall not be construed against any of the parties.

17. INVALIDITY OF ANY PROVISION: Before declaring any provision of this Agreement invalid, the Court shall first try to construe the provision as valid to the extent possible under the law so as to render all provisions of this Agreement valid and enforceable.

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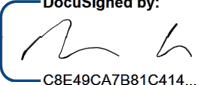
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Page 7 of 7

18. **PAGES:** This Settlement consists of seven (7) pages and is made and entered into on the dates indicated below.

Dated: 5/26/2022, 2022

DocuSigned by:

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Lance Hild

WESTSIDE BUILDING MATERIAL
CORPORATION

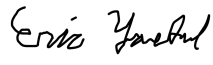
Dated: _____, 2022

By: _____
William Peckham, President

APPROVED AS TO FORM:

SULLIVAN & YAECKEL LAW GROUP, APC

Dated: May 27, 2022

By: 

Eric K. Yaeckel, Esq.
Katherine Dishongh, Esq.
Attorneys for Lance Hild

PETTIT KOHN INGRASSIA LUTZ & DOLIN PC

Dated: May 27, 2022

By: 

Jennifer N. Lutz, Esq.
Christine Y. Dixon, Esq.
Attorneys for Westside Building Material
Corporation

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18. **PAGES:** This Settlement consists of seven (7) pages and is made and entered into on the dates indicated below.

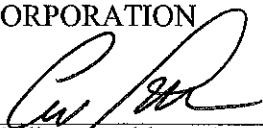
Dated: _____, 2022

Lance Hild

WESTSIDE BUILDING MATERIAL
CORPORATION

Dated: 5/25, 2022

By:



William Peckham, President

APPROVED AS TO FORM:

SULLIVAN & YAECKEL LAW GROUP, APC

Dated: _____, 2022

By:

Eric K. Yaeckel, Esq.
Katherine Dishongh, Esq.
Attorneys for Lance Hild

PETTIT KOHN INGRASSIA LUTZ & DOLIN PC

Dated: _____, 2022

By:

Jennifer N. Lutz, Esq.
Christine Y. Dixon, Esq.
Attorneys for Westside Building Material
Corporation

EXHIBIT B

Leo Fletes Jr.

From: DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
Sent: Tuesday, May 31, 2022 1:58 PM
To: Leo Fletes Jr.
Subject: Thank you for your Proposed Settlement Submission

05/31/2022 01:57:14 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT C

Leo Fletes Jr.

From: DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
Sent: Monday, June 13, 2022 10:27 AM
To: Leo Fletes Jr.
Subject: Thank you for your Other Response or Document Submission

06/13/2022 10:26:12 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Other Response or Document Submission If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT D