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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

HERMILO FIGUEROA CELIS,
individually and on behalf of all others
similarly situated,
Plaintiff,

v.

EARL ADAMS TILE-COPING AND
PLASTERING, INC., a California
corporation; and DOES 1 through 50,
inclusive,
Defendants.

CASE NO.: HG21112823

Case Assigned for All Purposes to
Judge Tara Desautels

**FIRST AMENDED JOINT STIPULATION OF
CLASS ACTION SETTLEMENT**

Action filed: September 15, 2021

1 It is stipulated and agreed by and among the undersigned Parties, subject to the approval of
2 the Court pursuant to section 382 of the California Code of Civil Procedure and Rule 3.769 of the
3 California Rules of Court, that the Settlement of this Action shall be effectuated upon and subject to
4 the following terms and conditions. Capitalized terms used herein shall have the meanings set forth
5 in Article I or as defined elsewhere in this First Amended Joint Stipulation of Class Action Settlement
6 (“Settlement” or “Agreement”).

7 This Settlement is made by and between Plaintiff Hermilo Figueroa Celis (“Plaintiff”) and
8 the Class Members, on the one hand, and Defendant Earl Adams Tile-Coping & Plastering, Inc.
9 (“Defendant”). Plaintiff and Defendant are collectively referred to in this Settlement as “the Parties.”

10 The Parties agree that the Action shall be, and is, ended, settled, resolved, and concluded by
11 agreement of Defendant to pay the settlement amount of One Million Three Hundred Fifty Thousand
12 Dollars and Zero Cents (\$1,350,000.00) as provided in Section IV(D)(8)(a) below (“Gross
13 Settlement Amount”) pursuant to the terms and conditions of this Settlement and for the
14 consideration set forth herein, including but not limited to, a release of claims by Plaintiff and the
15 Class Members as set forth herein.

16 **I. DEFINITIONS**

17 Unless otherwise defined herein, the following terms used in this Settlement shall have the
18 meanings ascribed to them as set forth below:

19 A. “Action” means the action filed on September 15, 2021, in the Alameda County
20 Superior Court, titled “*HERMILO FIGUEROA CELIS, individually and on behalf of all others*
21 *similarly situated, v. EARL ADAMS TILE-COPING & PLASTERING, INC., and DOES 1 through*
22 *100, inclusive*,” Case No. HG21112823.

23 B. “Class” means all current and former non-exempt employees employed by
24 Defendant in California at any time during the Class Period (defined below).

25 C. “Class Counsel” means the attorneys for the Class and the Class Members, as follows:
26 Justin Daily
27 Reed Aljian
28 Simon Kwak
Shelly D. Song
DAILY ALJIAN LLP

100 Bayview Circle, Suite 5500
Newport Beach, CA 92660
Telephone: 949.861.2524
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D. "Class Member(s)" means all members of the Class.

E. "Class Notice" means the Notice of Proposed Class Action Settlement in a form substantially similar to the notice attached hereto as **Exhibit A**, subject to Court approval.

F. "Class Period" means March 21, 2017 through October 6, 2022.

G. "Class Released Claims" means any and all claims alleged or that could have been alleged based on the facts alleged in the operative Complaint, attached hereto as **Exhibit B**, during the Class Period, including (1) failure to pay wages, including minimum and overtime wages; (2) failure to provide meal periods or compensation in lieu thereof; (3) failure to provide rest periods or compensation in lieu thereof; (4) failure to reimburse business expenses; (5) failure to provide accurate itemized wage statements (6) failure to timely pay wages upon separation of employment; and (7) violation of California Business and Professions Code §§17200, *et seq.*, but excluding claims for civil penalties under PAGA as asserted in Plaintiff's Notice to the LWDA, which is dated September 15, 2021 and attached hereto as **Exhibit C**.

H. "Court" means the Alameda County Superior Court, where the Action is pending.

I. "Effective Date" means the later of the following: (1) the date the Final Approval Order is signed if no objections are filed to the Settlement; (2) if objections are filed and overruled, and no appeal is taken of the Final Approval Order, sixty-five (65) days after the Final Approval Order is signed; or (3) if an appeal is taken from the Court's overruling of objections to the Settlement, ten (10) days after the appeal is withdrawn or after an appellate decision affirming the final approval decision becomes final.

J. "Defendant" means Defendant Earl Adams Tile-Coping & Plastering, Inc.

K. "Defense Counsel" means counsel for Defendant, who are:

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L. “Disposition” means the method by which the Court approves the terms of the Settlement and retains jurisdiction over its enforcement, implementation, construction, administration, and interpretation.

M. “Enhancement Award” means an amount of up to Seven Thousand and Five Hundred Dollars (\$7,500.00) for Plaintiff Hermilo Figueroa Celis, subject to Court approval.

N. “Final Approval Order” means the final formal court order signed by the Court following the Final Fairness and Approval Hearing in accordance with the terms herein, approving this Settlement.

O. “Gross Settlement Amount” means One Million, Three Hundred and Fifty Thousand Dollars and Zero Cents (\$1,350,000.00) to be paid by Defendant pursuant to the terms of this Settlement to settle this Action. All claims of Participating Class Members and PAGA Group Members, Settlement Administration Costs, attorney’s fees and costs, Enhancement Award and employer’s share of payroll taxes, pursuant to Section IV(D)(8)(a) below, shall be paid out of the Gross Settlement Amount. Defendant shall not be responsible for anything more than the Gross Settlement Amount except pursuant to Section IV(D)(5) below, provided Defendant timely pays the Gross Settlement Amount in full. No part of the Gross Settlement amount shall revert to Defendant.

P. “Individual Settlement Payments” means the amounts of money from the Net Settlement Amount and PAGA Group Payment that shall be paid to Participating Class Members and PAGA Group Members. Individual Settlement Payments will include each Participating Class Member’s proportional share of the Net Settlement Amount (which shall be determined by the calculations provided in this Settlement) and each PAGA Group Member’s proportional share of the PAGA Group Payment.

Q. “LWDA Payment” means 75% of the Fifty-Four Thousand Dollars and Zero Cents (\$54,000.00) allocated to the settlement of PAGA claims, or Forty-Thousand, Five Hundred Dollars and Zero Cents (\$40,500.00), which will be paid to the Labor and Workforce Development Agency

1 (“LWDA”) pursuant to Section IV(D)(8)(e) of this Settlement, subject to Court approval.

2 R. “Net Settlement Amount” means the Gross Settlement Amount less Court-approved
3 Settlement Administration Costs, attorney’s fees and costs, Enhancement Award, LWDA Payment,
4 employer’s share of payroll taxes, and PAGA Group Payment, pursuant to Section IV(D)(8)(a)-(f)
5 below.

6 S. “Non-Participating Class Member(s)” means those Class Members who submit to the
7 Settlement Administrator a valid and timely written request to be excluded from the Class pursuant
8 to Section IV(D)(2) below.

9 T. “PAGA Group Members” means all current and former non-exempt employees
10 employed by Defendant in California at any time during the PAGA Period (defined below).

11 U. “PAGA Group Payment” means 25% of the Fifty-Four Thousand Dollars and Zero
12 Cents (\$54,000.00) allocated to the settlement of PAGA claims, or Thirteen Thousand, Five Hundred
13 Dollars (\$13,500.00), which will be paid to the PAGA Group Members, subject to Court approval.

14 V. “PAGA Period” means March 21, 2020, through October 6, 2022.

15 W. “PAGA Released Claims” means any and all claims for civil penalties pursuant to the
16 Private Attorneys General Act of 2004 (“PAGA”), that are based on the facts and claims alleged in
17 Plaintiff’s Notice to the LWDA, dated September 15, 2021 and attached hereto as **Exhibit C**, arising
18 during the PAGA Period only.

19 X. “Participating Class Member(s)” is defined as a Class Member who does not timely
20 exclude himself or herself from the Settlement and will therefore receive his or her share of the Net
21 Settlement Amount proceeds automatically without the need to return a claim form. Each
22 Participating Class Member will be paid his/her Individual Settlement Payment.

23 Y. “Plaintiff” means Hermilo Figueroa Celis.

24 Z. “Preliminary Approval Date” means the date the Court preliminarily approves the
25 Settlement.

26 AA. “Released Parties” means Defendant and each of its former and present directors,
27 officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns,
28 subsidiaries and affiliates.

1 BB. "Qualifying Workweeks" means the number of weeks that Class Members worked
2 for Defendant in hourly, non-exempt positions during the relevant period. With respect to the Class
3 Released Claims and the Individual Settlement Payments to Participating Class Members, the
4 relevant period is the Class Period. With respect to the PAGA Released Claims and the Individual
5 Settlement Payments to PAGA Group Members, the relevant period is the PAGA Period.

6 CC. "Request for Exclusion" means a written request made by a Class Member to "opt-
7 out" or exclude oneself from the Class. In order to be considered valid, any Request for Exclusion
8 must: (1) contain the name, address, last four digits of Social Security Number, and telephone
9 number of the Class Member requesting to "opt out" or be excluded from the Class; (2) state the
10 Class Member's intent to opt out or be excluded from the Settlement, (3) be returned by mail to the
11 Settlement Administrator at the specified address; and (4) be postmarked within forty-five (45) days
12 of the date of mailing of the Class Notice (or fifteen (15) days after the Settlement Administrator re-
13 mails the Notice to the Class Member, whichever is later). In addition, the Request for Exclusion
14 shall be signed and dated by the Class Member. A PAGA Group Member who submits a timely and
15 valid Request for Exclusion will nonetheless be subject to the release of the PAGA Released Claims,
16 and be entitled to a share of the PAGA Group Payment.

17 DD. "Settlement" or "Agreement" means this Joint Stipulation of Class Action Settlement,
18 including the attached Exhibit(s).

19 EE. "Settlement Administration Costs" means an amount of up to Eleven Thousand
20 Dollars and Zero Cents (\$11,000.00), subject to Court approval, for all costs incurred by the
21 Settlement Administrator in administration of the Settlement, including, but not limited to, mailing
22 of the Class Notice to the Class, calculation of Individual Settlement Payments, generation of
23 Individual Settlement Payment checks and related tax reporting forms, administration of unclaimed
24 checks, and distribution of checks to Class Counsel for attorneys' fees and costs, to Plaintiff for his
25 Enhancement Award, to the LWDA for the LWDA Payment and to the appropriate taxing authorities
26 for employer's share of payroll taxes. The Settlement Administration Costs shall be paid from the
27 Gross Settlement Amount.

28 FF. "Settlement Administrator" means Phoenix Class Action Administration Solutions,

1 which the Parties have agreed will be responsible for the administration of the Individual Settlement
2 Payments to be made by Defendant from the Gross Settlement Amount and related matters under
3 this Settlement.

4 **II. RECITALS**

5 On September 15, 2021, Plaintiff commenced this Action by filing a Complaint alleging
6 causes of action against Defendant for (1) Failure to Pay Wages, Including Minimum and Overtime
7 Wages, (2) Failure to Provide Meal Breaks, (3) Failure to Provide Rest Breaks, (4) Failure to
8 Reimburse Business Expenses, (5) Knowing and Intentional Failure to Provide Accurate Itemized
9 Wage Statements, (6) Failure to Pay Wages at Termination, and (7) Violations of the Unfair
10 Competition Law. On November 22, 2021, Plaintiff filed a First Amended Complaint alleging causes
11 of action against Defendant for (1) Failure to Pay Wages, Including Minimum and Overtime Wages,
12 (2) Failure to Provide Meal Breaks, (3) Failure to Provide Rest Breaks, (4) Failure to Reimburse
13 Business Expenses, (5) Knowing and Intentional Failure to Provide Accurate Itemized Wage
14 Statements, (6) Failure to Pay Wages at Termination, (7) Violations of the Unfair Competition Law
15 and (8) Enforcement of the Private Attorneys General Act of 2004. The First Amended Complaint is
16 the operative complaint in the Action (the “Operative Complaint”) and attached hereto as **Exhibit B**.
17 Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the
18 laws identified in the Operative Complaint and denies any and all liability for the causes of action
19 alleged.

20 Pursuant to Labor Code section 2699.3, subd. (a), Plaintiff gave timely written notice to
21 Defendant and the LWDA by sending a PAGA Notice attached hereto as **Exhibit C**.

22 On October 6, 2022, the Parties participated in an all day mediation presided over by mediator
23 Chris Barnes. While the Parties did not agree on a settlement on the day of mediation, they continued
24 to engage in negotiations through the mediator in the weeks following the mediation, which
25 ultimately led to this Agreement to settle the Action.

26 Prior to mediation and negotiating the Settlement, Plaintiff obtained, through formal and
27 informal discovery, documents and information regarding Defendant’s policies, practices and
28 procedures governing employee timekeeping, meal and rest periods and pay practices, a random

1 sampling of employee time and pay records, and data points relevant to the Class claims. Plaintiff's
2 investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker*
3 *Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168
4 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

5 The Court has not granted class certification.

6 The Parties, Class Counsel and Defense Counsel represent that they are not aware of any
7 other pending matter or action asserting claims that will be extinguished or affected by the
8 Settlement.

9 **III. CONTINGENT NATURE OF THE AGREEMENT**

10 Because the Parties have stipulated to the certification of the Class with respect to all causes
11 of action alleged in the Action for settlement purposes only, this Settlement requires preliminary and
12 final approval by the Court. Accordingly, the Parties enter into this Settlement on a conditional basis.
13 This Settlement is contingent upon the approval and certification by the Court. If the Effective Date
14 does not occur, the fact that the Parties were willing to stipulate for the purposes of this Settlement
15 shall have no bearing on, nor be admissible in connection with, the issue of certification of the Class
16 with respect to all causes of action alleged in the Action. Defendant does not consent to certification
17 of the Class for any purpose other than to effectuate settlement of the Action. If the Effective Date
18 does not occur, or if disposition of this Action is not effectuated, any certification of the Class as to
19 Defendant will be vacated and Plaintiff, Defendant, and the Class will be returned to their respective
20 positions in the Action as if the Settlement had not been entered into. In the event that the Effective
21 Date does not occur: (a) any Court orders preliminarily or finally approving certification of any class
22 contemplated by this Settlement shall be null, void, and vacated, and shall not be used or cited
23 thereafter by any person or entity; and (b) the fact of the settlement reflected in this Settlement, the
24 fact that Defendant did not oppose the certification of a Class under this Settlement, or that the Court
25 preliminarily approved the certification of the Class, shall not be used or cited thereafter by any
26 person or entity, including in any manner whatsoever, including without limitation any contested
27 proceeding relating to the certification of any class. If the Effective Date does not occur, this
28 Settlement shall be deemed null and void, shall be of no force or effect whatsoever, and shall not be

1 referred to or used for any purpose whatsoever. Defendant expressly reserves the right to challenge
2 the propriety of class certification in the Action for any purpose, if the Effective Date does not occur.

3 The Parties and their respective counsel shall take all steps that may be requested by the Court
4 relating to the approval and implementation of this Settlement and shall otherwise use their respective
5 best efforts to obtain Court approval and implement this Settlement. If the Court does not grant the
6 Motion for Preliminary Approval and/or the Motion for Final Approval, the Parties agree to meet
7 and confer in good faith to address the Court's concerns. If the Parties are unable to agree upon a
8 resolution, the Parties agree to seek guidance from the Court to resolve the dispute.

9 **IV. PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT**

10 The procedure for obtaining Court approval of and implementing this Settlement shall be as
11 follows:

12 **A. Motion for Conditional Class Certification and Preliminary Approval**

13 Plaintiff will bring a motion before the Court for an order conditionally certifying the Class
14 to include all claims pled in the Action based on the preliminary approval of this Settlement. The
15 date that the Court grants preliminary approval of this Agreement will be the "Preliminary Approval
16 Date."

17 **B. The Settlement Administrator**

18 The Parties have chosen Phoenix Class Action Administration Solutions to administer this
19 Settlement and to act as the Settlement Administrator, including but not limited to distributing and
20 responding to inquiries about the Class Notice, determining the validity of exclusions/opt-outs,
21 calculating the Net Settlement Amount and the Individual Settlement Payments, issuing the
22 Individual Settlement Payment checks and distributing them to Participating Class Members and
23 PAGA Group Members, and issuing the payment to Class Counsel for attorneys' fees and costs, the
24 Enhancement Award check to Plaintiff, the LWDA Payment to the LWDA, and the employer payroll
25 taxes to the appropriate taxing authorities. The Settlement Administrator shall expressly agree to all
26 of the terms and conditions of this Settlement.

27 All costs of administering the Settlement, including but not limited to all costs and fees
28 associated with preparing, issuing and mailing any and all notices to Class Members, Participating

1 Class Members, and/or PAGA Group Member, all costs and fees associated with computing,
2 processing, reviewing, and mailing the Individual Settlement Payments, all costs and fees associated
3 with preparing any tax returns and any other filings required by any governmental taxing authority
4 or agency, all costs and fees associated with preparing any other checks, notices, reports, or filings
5 to be prepared in the course of administering disbursements from the Net Settlement Amount, and
6 any other costs and fees incurred and/or charged by the Settlement Administrator in connection with
7 the execution of its duties under this Settlement, i.e. the Settlement Administration Costs, shall be
8 paid to the Settlement Administrator from the Gross Settlement Amount.

9 **C. Notice to Class Members**

10 No later than ten (10) business days after the Preliminary Approval Date, Defendant will
11 provide the Settlement Administrator with a “Class List” based on its business records, identifying
12 the names of the Class Members, their last known home addresses, Social Security numbers or, as
13 applicable, other taxpayer identification number, their dates of employment, and weeks worked
14 during the Class Period, i.e., each Class Members’ respective Qualifying Workweeks.

15 Within ten (10) business days of receiving the Class List from Defendant, the Settlement
16 Administrator will send Class Members, by first-class mail, at their last known address, the Court
17 approved Class Notice, including notice of this settlement and of the opportunity to opt out of the
18 Class or object to the Settlement. The Class Notice will include a calculation of the Class Member’s
19 estimated share of the Net Settlement Amount and PAGA Group Payment. Class Members will have
20 forty-five (45) days from the date of mailing in which to postmark Requests for Exclusion or written
21 objections. Prior to the initial mailing, the Settlement Administrator will check all Class Member
22 addresses against the National Change of Address database and shall update any addresses before
23 mailing. The Settlement Administrator will skip trace and re-mail all returned, undelivered mail
24 within five (5) days of receiving notice that a notice was undeliverable. If a Class Member’s notice
25 is re-mailed, the Class Member shall have fifteen (15) days from the re-mailing, or forty-five (45)
26 days from the date of the initial mailing, whichever is later, in which to postmark a Request for
27 Exclusion or written objection. Class Members shall not be required to submit claim forms in order
28 to receive their Individual Settlement Payments.

1 If the Class Notice is returned with a forwarding address, the Settlement Administrator shall
2 re-mail the Class Notice to the forwarding address. With respect to those Class Members whose
3 Class Notice is returned to the Settlement Administrator as undeliverable, the Settlement
4 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or
5 mass search on LexisNexis databases based on set criteria and, if another address is identified, shall
6 mail the Class Notice to the newly identified address. It is the intent of the Parties that reasonable
7 means be used to locate Class Members and that the Settlement Administrator be given discretion to
8 take steps in order to facilitate notice of this Settlement and delivery of the Individual Settlement
9 Payments to the Class and Participating Class Members.

10 If the Class Notice is re-mailed, the Settlement Administrator will note for its own records
11 and notify Class Counsel and Defense Counsel of the date of each such re-mailing as part of a weekly
12 status report provided to the Parties.

13 In the event a Class Member's Class Notice remains undeliverable sixty (60) days after the
14 Class Notice was initially mailed, the Settlement Administrator will not mail the Class Member's
15 Individual Settlement Payment. The Settlement Administrator will hold the Class Member's
16 Individual Settlement Payment during the check cashing period on behalf of the Class Member. If
17 at the conclusion of the check cashing period the Class Member's Class Notice and Individual
18 Settlement Payment remain undeliverable and/or unclaimed and uncashed, the Settlement
19 Administrator will distribute the funds from unclaimed/uncashed checks in accordance with the
20 procedures set forth in Section IV(D)(8)(i) below.

21 No later than twenty-one (21) court days prior to the Final Fairness and Approval Hearing,
22 the Settlement Administrator shall provide Defense Counsel and Class Counsel with a declaration
23 attesting to completion of the notice process, including any attempts to obtain valid mailing addresses
24 for and re-sending of any returned Class Notices, as well as the number of valid Requests for
25 Exclusion and written objections that the Settlement Administrator received.

26 **D. Responses to Notice**

27 **1. Class Member Disputes**

28 If any Class Member disagrees with Defendant's records as to his or her Qualifying

1 Workweeks during the Class Period as reflected in the Class Notice, the Class Member shall set forth
2 the Qualifying Workweeks he/she claims to have worked during the Class Period in writing and
3 submit it to the Settlement Administrator along with any supporting documentation. The written
4 dispute shall be signed and dated by the Class Member and also include the Class Member's name
5 (including former names used during his or her employment with Defendant, if any), address, last
6 four digits of Social Security Number, and telephone number. The written dispute must be
7 postmarked by no later than forty-five (45) days after the Settlement Administrator initially mailed
8 the Class Notice to the Class Member (or fifteen (15) days after the Settlement Administrator re-
9 mails the Class Notice to the Class Member, whichever is later). The Class Notice will also provide
10 a method for the Class Member to challenge the employment data on which his or her Individual
11 Settlement Payment is based. The Settlement Administrator shall contact the Parties regarding the
12 dispute and the Parties will work in good faith to resolve it. If the Parties are unable to resolve the
13 dispute, the Settlement Administrator will be the final arbiter of the Qualifying Workweeks for each
14 Class Member during the Class Period based on the information provided to it.

15 **2. Requests for Exclusion from the Class**

16 Class Members may submit a request to be excluded from the Settlement. In order for any
17 Class Member to validly exclude himself or herself from the Class and this Settlement (*i.e.*, to validly
18 opt out), the Class Member or his or her authorized representative must send a signed Request for
19 Exclusion to the Settlement Administrator with the name (including former names used during his
20 or her employment with Defendant, if any), address, last four digits of Social Security Number, and
21 telephone number of the Class Member requesting to "opt out" or be excluded from the Class, stating
22 the Class Member's intent to opt out or be excluded from the Settlement, and be postmarked by no
23 later than forty-five (45) days after the date the Settlement Administrator initially mailed the Class
24 Notice to the Class Member (or fifteen (15) days after the Settlement Administrator re-mails the
25 Class Notice to the Class Member, whichever is later). In addition, the Request for Exclusion shall
26 be signed and dated by the Class Member. The date of the initial mailing of the Class Notice and the
27 date the signed Request for Exclusion, if any, was postmarked shall be conclusively determined
28 according to the records of the Settlement Administrator. Any Class Member who timely and validly

1 submits a Request for Exclusion will not be entitled to any Individual Settlement Payment, will not
2 be bound by the terms and conditions of this Settlement, and will not have any right to object to,
3 appeal, or comment on the Settlement.

4 Any Class Member who does not timely submit a valid Request for Exclusion shall be
5 deemed a Class Member whose rights and claims with respect to the issues raised in the Action are
6 determined by the Court's Final Approval Order, and by the other rulings in the Action.

7 **3. Objections to Settlement**

8 Class Members may submit objections to the Settlement. In order for any Class Member to
9 object to this Settlement, or any term of it, the person making the objection must not submit a Request
10 for Exclusion (*i.e.*, must not opt out), and should send to the Settlement Administrator, postmarked
11 no later than forty-five (45) days after the Class Notice was initially mailed to the Class Member (or
12 fifteen (15) days after the Settlement Administrator re-mails the Class Notice to the Class Member,
13 whichever is later), a written objection that specifies the ground(s) for the objection, signed and dated
14 by the objecting Class Member or his or her authorized representative, along with any supporting
15 papers. The written objection shall also include the Class Member's name (including former names
16 used during his or her employment with Defendant, if any), address, last four digits of Social Security
17 Number, and telephone number. The date of the initial mailing of the Class Notice and the date the
18 signed written objection was postmarked shall be conclusively determined according to the records
19 of the Settlement Administrator. The Settlement Administrator shall send any written objections it
20 receives to Class Counsel and Defense Counsel within three (3) business days of receipt. The Court
21 retains final authority with respect to the consideration and admissibility of any Class Member
22 objections.

23 If an Objection or dispute of the amount due to a Class Member and a Request for Exclusion
24 are received from the same Class Member, the Settlement Administrator shall attempt to resolve the
25 matter by contacting the Class Member by any reasonable means to determine the Class Member's
26 choice. If the Settlement Administrator fails to determine what the Class Member intends, the
27 Request for Exclusion shall be null and void, and the Class Member will be counted as part of the
28 Class.

1 **4. Encouragement of Class Members**

2 The Parties to this Settlement and the counsel representing such Parties shall not, directly or
3 indirectly, through any person, encourage or solicit any Class Member to exclude him or herself from
4 this Settlement (opt out), or to object to it. However, Class Counsel may respond to inquiries from
5 Class Members. Class Counsel shall not represent any Class Members who wish to object or for the
6 purpose of submitting objections to the Settlement to avoid potential conflicts of interest.

7 **5. Right of Defendant to Reject Settlement**

8 If the number of Class Members who timely submit valid Requests for Exclusion exceeds
9 five percent (5%) or more of the total Class Members, Defendant, at its sole discretion, shall have
10 the right but not the obligation to revoke the Settlement. Defendant shall exercise its revocation
11 rights, if at all, within fourteen (14) days after the deadline for submission of Requests for Exclusion
12 by providing written notice to Class Counsel. If Defendant exercises its revocation rights, the Parties
13 will have no further obligations under the Settlement, including any obligation by Defendant to pay
14 the Gross Settlement Amount, or any amounts that otherwise would have been owed under this
15 Agreement.

16 **6. Plaintiff's Right to Adjust Gross Settlement Amount**

17 Defendant has estimated the number of Class Members as 526. If the number of Class
18 Members increases by more than five percent (5%), the Gross Settlement Amount will increase by
19 the percentage over five percent (5%). For example, if the actual number of Class Members is
20 determined to be eleven percent (11%) higher than 526, the Gross Settlement Amount shall increase
21 by six percent (6%).

22 **7. Final Fairness and Approval Hearing**

23 On the date set forth in the Order for Preliminary Approval and Class Notice, a Final Fairness
24 and Approval Hearing shall be held before the Court in order to (1) review this Settlement and
25 determine whether the Court should give it final approval, and (2) consider any objections made and
26 all responses by the Parties to such objections. At the Final Fairness and Approval Hearing, the
27 Parties shall ask the Court to give final approval to this Settlement and shall submit to the Court a
28 Proposed Final Approval Order.

1 **8. Notice to Class of Final Judgment**

2 Notice of final judgment will be given to the Class by posting the Final Approval Order on
3 the Settlement Administrator's website.

4 **9. Settlement Payment Procedures**

5 a. Settlement Amount

6 In exchange for the releases set forth in this Settlement, Defendant agrees to pay the Gross
7 Settlement Amount in the amount of One Million Three Hundred Fifty Thousand Dollars and Zero
8 Cents (\$1,350,000.00). The Gross Settlement Amount includes all claims of the Participating Class
9 Members and PAGA Group Members, Settlement Administration costs, Class Counsel's attorney's
10 fees and costs, LWDA Payment, Enhancement Award and employer's share of payroll taxes.

11 Within thirty (30) calendar days after the date the Court grants preliminary approval,
12 Defendant will pay one third of the Gross Settlement Amount, or \$450,000.00 ("First Installment"),
13 pursuant to the Settlement Administrator's electronic transfer instructions. Within sixty (60) days
14 after the date the First Installment was due, Defendant will pay one third of the Gross Settlement
15 Amount, or \$450,000 ("Second Installment") in the same manner as the First Installment. Within
16 ninety (90) days after the date the Second Installment was due, Defendant will pay one third of the
17 Gross Settlement Amount, or \$450,000 ("Third Installment") in the same manner as the First and
18 Second Installments. The Settlement Administrator will use these funds to fund payment of the
19 Individual Settlement Payments to Participating Class Members and PAGA Group Members, Class
20 Counsel's attorneys' fees and costs, LWDA Payment, the Enhancement Award, and employer and
21 employee tax withholdings applicable to the Net Settlement Amount allocated to wages. Within five
22 (5) business days after Defendant pays the Third Installment and only after the Court has granted
23 final approval of the Settlement, the Settlement Administrator will first pay Class Members'
24 Individual Settlement Payments, Enhancement Award and employer and employee tax withholdings
25 applicable to the Net Settlement Amount allocated to wages and pay the remaining amount of Class
26 Counsel's attorney's fees and costs, the LWDA Payment, and Settlement Administration Costs.

27 Defendant's failure to make a timely installment payment shall be considered a default. In
28 the event Defendant fails to make a timely installment payment as set forth in this Section

1 IV(D)(8)(a), the Settlement Administrator will provide notice to Class Counsel and Defendant's
2 counsel within five (5) business days of the missed payment. Thereafter, Defendant will have five
3 (5) business days to cure the default and tender the installment payment to the Settlement
4 Administrator. To the extent Defendant fails to cure a default within the times set forth in this
5 paragraph, Plaintiff will be entitled to enter judgment against Defendant, on an *ex parte* basis, for the
6 balance of the unpaid Gross Settlement Amount and all other sums due under this Settlement.

7 b. Payment of Attorneys' Fees and Costs

8 Class Counsel shall submit an application for an award of attorneys' fees of up to one-third
9 of the Gross Settlement Amount, which is Four Hundred and Fifty Thousand Dollars and Zero Cents
10 (\$450,000.00). Class Counsel shall submit an application for an award of costs not to exceed Fifteen
11 Thousand Dollars and Zero Cents (\$15,000.00). Such application for attorneys' fees and costs shall
12 be heard by the Court at the Final Fairness and Approval Hearing. Defendant shall not object to or
13 oppose the amounts sought under any such application.

14 Any fees and costs awarded by the Court shall be paid from the Gross Settlement Amount
15 and shall not constitute payment to any Class Member(s). The attorneys' fees and costs for Class
16 Counsel approved by the Court shall encompass all work performed, costs, and expenses related to
17 the investigation, prosecution, and settlement of the Action incurred through the Effective Date. To
18 the extent that the Court approves less than the amount of attorney's fees and/or costs that Class
19 Counsel requests, the difference between the requested and awarded amounts will be reallocated to
20 the Net Settlement Amount. Under no circumstances will Defendant be required to pay more in Class
21 Counsel's attorneys' fees and costs, unless Class Counsel is required to enforce the terms of this
22 Settlement due to a default by Defendant, including, but not limited to, failure to timely make the
23 payments as set forth in Section IV(D)(8)(a), above. The Court's ruling on the request for Class
24 Counsel's attorneys' fees and costs shall not affect the enforceability of this Agreement or the terms
25 contained herein.

26 c. Payment of Settlement Administration Costs

27 The Settlement Administration Costs shall be paid out of the Gross Settlement Amount and
28 shall not constitute payment to any Participating Class Member(s). The amount shall not exceed

1 \$11,000.00. Defendant will not be required to pay more in Settlement Administration Costs, except
2 in the event that the Settlement Administrator incurs additional unanticipated costs directly caused
3 by Defendant. Any such additional costs will be paid by Defendant separately from the Gross
4 Settlement Amount. The Court's ruling on Settlement Administration Costs shall not affect the
5 enforceability of this Agreement or the terms contained herein.

6 d. Payment of Enhancement Award to Named Plaintiff

7 Subject to Court approval, Plaintiff shall receive an Enhancement Award of up to Seven
8 Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00), the request for which Defendant will
9 not object to or oppose. The Enhancement Award shall be paid out of the Gross Settlement Amount
10 and shall not constitute payment to any Participating Class Member(s). To the extent that the Court
11 approves less than the amount of Enhancement Award that Class Counsel requests, the difference
12 between the requested and awarded amounts will be reallocated to the Net Settlement Amount. Under
13 no circumstances will Defendant be required to pay more in the Enhancement Award. The Court's
14 ruling on the Enhancement Award shall not affect the enforceability of this Agreement or the terms
15 contained herein.

16 Because it is the intent of the Parties that the Enhancement Award represents payment to
17 Plaintiff for his service to the Class Members, and not wages, the Settlement Administrator will not
18 withhold any taxes from the Enhancement Award. The Enhancement Award will be reported on a
19 Form 1099, which the Settlement Administrator will provide to Plaintiff and to the pertinent taxing
20 authorities as required by law.

21 e. Payment to the Labor and Workforce Development Agency

22 In consideration of claims made under the California Private Attorneys General Act
23 ("PAGA"), Cal. Labor Code §§ 2698 et seq., Class Counsel will request that the Court approve an
24 allocation of Fifty-Four Thousand Dollars and Zero Cents (\$54,000.00) of the Gross Settlement
25 Amount to these claims. Seventy-five percent (75%) of this allocation (\$40,500.00) will be paid to
26 the California Labor and Workforce Development Agency ("LWDA Payment") and twenty-five
27 percent (25%) (\$13,500.00) will be paid to the PAGA Group Members as described below.
28 Defendant will not oppose this request. The LWDA will be paid out of the Gross Settlement Amount.

1 Under no circumstances will Defendant be required to pay more in the LWDA Payment. The Court's
2 ruling on the LWDA Payment shall not affect the enforceability of this Agreement or the terms
3 contained herein. The Court's adjustment, if any, of the amount allocated to Plaintiff's PAGA claim
4 will not invalidate this Settlement.

5 f. Payment of Individual Settlement Payments to Participating Class Members

6 The Parties agree that the entire Net Settlement Amount shall be used to fund Individual
7 Settlement Payments that will be paid to all Participating Class Members, i.e., to Class Members who
8 have not requested to be excluded from the Settlement.

9 The Parties agree that the Net Settlement Amount shall be divided between all Participating
10 Class Members based on their respective number of individual Qualifying Workweeks in proportion
11 to the total number of Qualifying Workweeks for all Participating Class Members during the Class
12 Period. For purposes of the Class Notice, the estimated minimum amount each Class Member will
13 receive based on their individual Qualifying Workweeks will be calculated by dividing the Net
14 Settlement Amount by the total number of Qualifying Workweeks for all Class Members during the
15 Class Period and then allocated on a pro rata basis. Each Class Member's estimated individual
16 payment amount calculated based on the formula in the preceding sentence will be included in his or
17 her Class Notice as part of his or her total estimated Individual Settlement Payment.

18 After final approval by the Court, the Settlement Administrator will recalculate the amounts
19 payable to Participating Class Members by removing the number of Qualifying Workweeks
20 represented by all Non-Participating Class Members, i.e., Class Members who requested to be
21 excluded from the Settlement.

22 g. Payment of Individual Settlement Payments to PAGA Group Members

23 The Parties agree that the PAGA Group Payment (25% of the \$54,000 allocated to the
24 settlement of PAGA claims) shall be used to fund Individual Settlement Payments that will be paid
25 to all PAGA Group Members. Unlike the Net Settlement Amount, PAGA Group Members shall not
26 have the ability to request exclusion or opt-out from the release of the PAGA Released Claims (*see*
27 *section VI(B), Releases by the PAGA Group Members.*).
28

1 The PAGA Group Payment shall be divided between all PAGA Group Members based on
2 their respective number of individual Qualifying Workweeks in proportion to the total number of
3 Qualifying Workweeks for all PAGA Group Members during the PAGA Period. For purposes of the
4 Class Notice, the estimated minimum amount each PAGA Group Member will receive based on their
5 individual Qualifying Workweeks will be calculated by dividing the PAGA Group Payment by the
6 total number of Qualifying Workweeks for all PAGA Group Members during the PAGA Period and
7 then allocated on a pro rata basis. Each PAGA Group Member's estimated share of the PAGA Group
8 Payment calculated based on the formula in the preceding sentence will be included in his or her
9 Class Notice as part of his or her total estimated Individual Settlement Payment.

10 For individuals who are both Participating Class Members and PAGA Group Members, each
11 PAGA Group Member's respective share of the PAGA Group Payment shall be added to their
12 respective share of the Net Settlement Amount.

13 h. Tax Allocation and Handling of Individual Settlement Payments

14 Each Individual Settlement Payment, exclusive of any portion allocated from the PAGA
15 Group Payment, will represent wages and penalties allocated using the following formula: 20%
16 allocated to wages; 65% allocated to penalties, and 15% allocated to interest. The amounts paid as
17 wages shall be subject to all tax withholdings customarily made from an employee's wages and all
18 other authorized and required withholdings and shall be reported by W-2 forms. The portion of each
19 Individual Settlement Payment available to a PAGA Group Member as his or her share of the PAGA
20 Group Payment will be allocated 100% to penalties.

21 The employer-side taxes (including employer's portion of FICA, FUTA, SUTA, and all other
22 applicable payroll taxes) will be paid from the Gross Settlement Amount. The amounts paid as
23 penalties and interest shall be subject to all authorized and required withholdings other than the tax
24 withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms.

25 i. Timeline for Payment of Individual Settlement Payments

26 No later than ten (10) business days after the Preliminary Approval Date, Defendant will
27 provide the Settlement Administrator with a list of the Qualifying Workweeks for each Class Member
28 and PAGA Group Member. Based on that information, the Settlement Administrator shall calculate:

1 (a) the Net Settlement Amount, (b) the estimated Individual Settlement Payment for each Class
2 Member and PAGA Group Member based on the formula specified above, (c) the amount of the
3 Individual Settlement Payments to be allocated to wages, interest, and penalties based on the formula
4 specified above, (d) the employer's share of the payroll taxes applicable to the Net Settlement
5 Amount allocated to wages; and (e) the employee tax withholding amount based on the allocation of
6 each Individual Settlement Payment to wages.

7 No later than five (5) business days after receiving the Third Installment from Defendant and
8 only after the Court has granted final approval of the Settlement, the Settlement Administrator shall
9 prepare and mail the checks for the Individual Settlement Payments to Participating Class Members
10 and PAGA Group Members. Individual Settlement Payments paid from the Net Settlement Amount
11 allocated to wages will be reduced by applicable employee and employer-side tax withholdings, and
12 the Settlement Administrator will issue a Form W-2 for the wage portion of the Individual Settlement
13 Payments. The Settlement Administrator will issue a Form 1099 to the extent required by law for
14 the interest and penalty portions of the Individual Settlement Payments. Participating Class Members
15 and PAGA Group Members shall have 180 days from the date of their Individual Settlement Payment
16 checks to cash their settlement checks. Any checks that are not cashed upon the expiration of that
17 180-day time period will be void, and the Settlement Administrator will transfer the amount
18 represented by the check to Bay Area Legal Aid, the *cy pres* recipient designated by the Parties.

19 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
20 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or
21 a mass search on LexisNexis databases based on set criteria and, if another address is identified, shall
22 mail the check to the newly identified address. If the Settlement Administrator is unable to obtain a
23 valid mailing address through this process, the Settlement Administrator will also transfer the amount
24 represented by the check to Bay Area Legal Aid, the *cy pres* recipient designated by the Parties.

25 j. No Credit Toward Benefit Plans

26 The Individual Settlement Payments made to Participating Class Members and PAGA Group
27 Members under this Settlement, as well as any other payments made pursuant to this Settlement, will
28 not be utilized to calculate any additional benefits under any benefit plans to which any Class

Members may be eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans.

k. Tax Liability

The Parties and counsel for the Parties make no representation as to the tax treatment or legal effect of the payments called for hereunder. Plaintiff, Participating Class Members, and PAGA Group Members are not relying on any statement, representation, or calculation by the Parties, counsel for the Parties, or the Settlement Administrator in this regard. Plaintiff, Participating Class Members, and PAGA Group Members, and Plaintiff's Counsel understand and agree that they will be solely responsible for the payment of their own portion of any taxes and penalties assessed on the payments that they receive.

V. LIMITATIONS ON USE OF THIS SETTLEMENT

A. No Admission

Defendant disputes the allegations in the Action and disputes that, but for this Settlement, a Class should have been certified in the Action. This Settlement is entered into solely for the purpose of compromising highly disputed claims. Neither the acceptance nor the performance by Defendant of the terms contained in this Agreement nor any of the related negotiations or proceedings is or shall be claimed to be, construed as, or deemed a precedent or an admission by Defendant of the truth of any allegations in the Action and/or any version of the Operative Complaint.

B. Non-Evidentiary Use

Whether or not the Effective Date occurs, neither this Settlement nor any of its terms will be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendant or any other of the Released Parties, including but not limited to, evidence of a presumption, concession, indication, or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further proceeding in the Action, except for the purposes of effectuating the Settlement pursuant to the terms herein or for Defendant to

1 establish that a Class Member has resolved any of his/her claims released through this Settlement.
2 Moreover, this Agreement may be used by Defendant and/or the Released Parties to prove or defend
3 against any claim released herein arising during the release period by any Participating Class Member
4 in any judicial, quasi-judicial, administrative, or governmental proceeding.

5 **C. Nullification**

6 The Parties have agreed to the certification of the Class encompassing all claims alleged in
7 the Action for the sole purpose of effectuating this Settlement. If (a) the Court should for any reason
8 fail to certify this Class for settlement, or (b) the Court should for any reason fail to approve this
9 Settlement, or (c) the Court should for any reason fail to enter the Final Approval Order, or (d) the
10 Final Approval Order is reversed, or declared or rendered void, or (e) the Court should for any reason
11 fail to dispose of the action in its entirety, then (i) this Settlement shall be considered null and void;
12 (ii) neither this Settlement nor any of the related negotiations or proceedings shall be of any force or
13 effect; (iii) all Parties to this Settlement shall stand in the same position, without prejudice, as if the
14 Settlement had been neither entered into nor filed with the Court; and (iv) the fact that the Parties
15 were willing to stipulate to class certification of all causes of action pled in the Action as part of the
16 Settlement will have no bearing on, and will not be admissible in connection with, the issue of
17 whether the Class should be certified by the Court in a non-settlement context in this Action or any
18 other action, and in any of those events, Defendant expressly reserves the right to oppose certification
19 of the Class.

20 **VI. RELEASES**

21 Effective on the date when Defendant fully funds the entire Gross Settlement Amount,
22 Plaintiff, Class Members, and PAGA Group Members will release claims against all Released Parties
23 as follows:

24 **A. Plaintiff's Release**

25 Plaintiff releases and discharges Released Parties from all claims, transactions, or occurrences
26 including, but not limited to: (a) all claims that were, or reasonably could have been, alleged based
27 on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably
28 could have been, alleged based on facts contained in Plaintiff's PAGA Notice or ascertained during

1 the Action (“Plaintiff’s Release”). Plaintiff’s Release does not extend to any claims or actions to
2 enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability
3 benefits, social security benefits, workers’ compensation benefits that arose at any time, or based on
4 occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law
5 different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but
6 agrees, nonetheless, that Plaintiff’s Release shall be and remain effective in all respects,
7 notwithstanding such different or additional facts or Plaintiff’s discovery of them.

8 **B. Plaintiff’s Waiver of Rights Under California Civil Code Section 1542**

9 For purposes of Plaintiff’s Release, Plaintiff expressly waives and relinquishes the provisions,
10 rights and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

14 **C. Releases by Class Members**

15 Upon the Effective Date, Participating Class Members who do not opt out of the Settlement will
16 conditionally agree that upon the date that Defendant pays all monetary sums due under this
17 Settlement in accordance with the terms herein, including the timely payment of the Gross Settlement
18 Amount, Participating Class Members will release Released Parties from the Class Released Claims.
19 The Class Released Claims are limited in time to the Class Period, covering Plaintiff and the
20 Participating Class Members who worked for Defendant in the State of California.

21 **D. Releases by PAGA Group Members**

22 Upon the Effective Date, Plaintiff, on behalf of himself and the State of California, and PAGA
23 Group Members will conditionally agree that once Defendant pays all monetary sums due under this
24 Settlement in accordance with the terms herein, including the timely payment of the Gross Settlement
25 Amount, Plaintiff, on behalf of himself and the State of California, and PAGA Group Members will
26 release the Released Parties from the PAGA Released Claims. PAGA Group Members will not have
27 an opportunity to opt-out from the release of the PAGA Released Claims, and will be entitled to a
28 share of the PAGA Group Payment, whether or not they submit a timely and valid opt-out of the

1 Settlement with respect to the release of the Class Released Claims and settlement payment for the
2 release.

3 **E. Release Effective Date**

4 The release will be deemed effective as to the Participating Class Members and PAGA Group
5 Members upon Defendant's payment of the entire Gross Settlement Amount.

6 **F. No Additional Attorneys' Fees or Costs**

7 Except for the attorneys' fees and costs set forth in this Settlement, the Parties agree to bear
8 their own attorneys' fees and costs related to this Action.

9 **VII. MISCELLANEOUS PROVISIONS**

10 **A. Amendments or Modification**

11 The terms and provisions of this Settlement may be amended or modified only by an express
12 written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel.

13 **B. Assignment**

14 None of the rights, commitments, or obligations recognized under this Settlement may be
15 assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express written
16 consent of each other Party and their respective counsel. The representations, warranties, covenants,
17 and agreements contained in this Settlement are for the sole benefit of the Parties under this
18 Settlement, and shall not be construed to confer any right or to avail any remedy to any other person.

19 **C. Governing Law**

20 This Settlement shall be governed, construed, and interpreted, and the rights of the Parties
21 shall be determined, in accordance with the laws of the State of California, irrespective of the State
22 of California's choice of law principles.

23 **D. Entire Agreement**

24 This Settlement, including the Exhibit referred to herein, which form an integral part hereof,
25 contains the entire understanding of the Parties hereto with respect of the subject matter contained
26 herein. In case of any conflict between text contained in Articles I through VII of this Settlement
27 and text contained in the Exhibit to this Settlement, the former (*i.e.*, Articles I through VII) shall be
28 controlling, unless the Exhibit is changed by or in response to a Court order. There are no restrictions,

1 promises, representations, warranties, covenants, or undertakings governing the subject matter of this
2 Settlement other than those expressly set forth or referred to herein. This Settlement supersedes all
3 prior agreements and understandings among the Parties hereto with respect to the settlement of the
4 Action, including correspondence between Class Counsel and Defense Counsel and drafts of prior
5 agreements or proposals.

6 **E. Waiver of Compliance**

7 Any failure of any Party, Defense Counsel, or Class Counsel hereto to comply with any
8 obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the
9 extent permitted under applicable law, by the Party or Parties and their respective counsel hereto
10 entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to
11 insist upon strict compliance with any representation, warranty, covenant, agreement, or condition
12 shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

13 **F. Counterparts and Fax/PDF Signatures**

14 This Settlement, and any amendments hereto, may be executed in any number of counterparts
15 and any Party and/or their respective counsel hereto may execute any such counterpart, each of which
16 when executed and delivered shall be deemed to be an original and all of which counterparts taken
17 together shall constitute one instrument. A fax or PDF signature on this Settlement shall be as valid
18 as an original signature.

19 **G. Meet and Confer Regarding Disputes**

20 Should any dispute arise among the Parties or their respective counsel regarding the
21 implementation or interpretation of this Settlement, Class Counsel and Defense Counsel shall meet
22 and confer in good faith to attempt to resolve such disputes prior to submitting such disputes to the
23 Court.

24 **H. Agreement Binding on Successors**

25 This Agreement will be binding upon, and inure to the benefit of, the successors in interest
26 of each of the Parties.
27
28

1 **I. Cooperation in Drafting**

2 The Parties have cooperated in the negotiation and preparation of this Settlement. This
3 Settlement will not be construed against any Party on the basis that the Party, or the Party's counsel,
4 was the drafter or participated in the drafting of this Settlement.

5 **J. Fair Settlement**

6 Plaintiff, Defendant, Class Counsel, and Defense Counsel believe that this Settlement reflects
7 a fair, reasonable, and adequate settlement of the Action and have arrived at this Settlement through
8 arm's-length negotiations, taking into account all relevant factors, current and potential, and is
9 consistent with public policy, and fully complies with applicable provisions of law.

10 **K. Headings**

11 The descriptive heading of any section or paragraph of this Settlement is inserted for
12 convenience of reference only and does not constitute a part of this Settlement and shall not be
13 considered in interpreting this Settlement.

14 **L. Notice**

15 All notices, demands, or other communications given under this Settlement must be in writing
16 and addressed as follows:

17 *To Plaintiff and the Class:*
18 DAILY ALJIAN LLP
19 Justin E. D. Daily
20 Reed Aljian
21 Simon Kwak
22 Shelly D. Song
23 100 Bayview Circle, Suite 5500
24 Newport Beach, CA 92660

25 And

26 *To Defendant:*
27 Julie A. Marquis
28 FREEMAN MATHIS & GARY, LLP
29 1010 B Street, Suite 400
30 San Rafael, CA 94901
31 Telephone: 415.394.9500

32 Craig A. Tomlins
33 Dane M. Willis
34 FREEMAN MATHIS & GARY, LLP
35 1013 Galleria Blvd., Suite 250
36 Roseville, CA 95678
37 Telephone: 916.472.3300

1 **M. Enforcement of Settlement and Continuing Court Jurisdiction**

2 To the extent consistent with class action procedure, this Settlement shall be enforceable by
3 the Court pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court
4 3.769(h). The disposition entered by the Court will not adjudicate the merits of the Action or the
5 liability of the Parties resulting from the allegations of the Action. Its sole purpose is to adopt the
6 terms of the Settlement and to retain jurisdiction over its enforcement. To that end, the Court shall
7 retain continuing jurisdiction over this Action and over all Parties and Class Members, to the fullest
8 extent to enforce and effectuate the terms and intent of this Settlement.

9 **N. Mutual Full Cooperation**

10 The Parties agree fully to cooperate with each other to accomplish the terms of this
11 Settlement, including but not limited to execution of such documents, and to take such other action
12 as may reasonably be necessary to implement the terms of this Settlement. The Parties to this
13 Settlement shall use their best efforts, including all efforts contemplated by this Settlement, to
14 effectuate this Settlement and the terms set forth herein. In the event the Parties are unable to reach
15 agreement on the form or content of any document needed to implement the Settlement, or on any
16 supplemental provisions that may become necessary to effectuate the terms of the Settlement, the
17 Parties agree to seek the assistance of the Court.

18 **O. Authorization to Act**

19 Class Counsel warrants and represents that they are authorized by Plaintiff, and Defense
20 Counsel warrants that they are authorized by Defendant, to take all appropriate action required to
21 effectuate the terms of this Settlement, except for signing the documents, including but not limited
22 to this Settlement, that are required to be signed by the Parties.

23 **P. No Reliance on Representations**

24 The Parties have made such investigation of the facts and the law pertaining to the matters
25 described herein and to this Settlement as they deem necessary, and have not relied, and do not rely,
26 on any statement, promise, or representation of fact or law, made by any of the other parties, or any
27 of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted
28

1 rights, or with regard to the advisability of making and executing this Settlement, or with respect to
2 any other matters. No representations, warranties, or inducements have been made to any party
3 concerning this Settlement.

4 **Q. Financial Condition Information**

5 To the extent the Court may require the Parties to submit information regarding Defendant's
6 financial condition for purposes of preliminary and/or final approval of the Agreement, Defendant
7 agrees to cooperate with Class Counsel in providing the necessary information to the Court.

8 **R. Review of Noticed Motions and/or Other Pleadings**

9 Class Counsel agrees that prior to any filing concerning the terms herein, including but not
10 limited to the Motion for Preliminary Approval and the Motion for Final Approval, it shall use best
11 efforts to e-mail a draft of said motion and/or pleading to Defense Counsel at least 3 calendar days
12 prior to its filing.

13 **S. No Admission of Liability, Class Certification or Representative Manageability**
14 **for Other Purposes**

15 This Agreement represents a compromise and settlement of highly disputed claims. Nothing
16 in this Agreement is intended or should be construed as an admission by Defendant that any of the
17 allegations in the Operative Complaint have merit or that Defendant has any liability for any claims
18 asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses
19 in the Action have merit. The Parties agree that class certification and representative treatment is for
20 purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final
21 Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any
22 reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiff
23 reserves the right to move for class certification on any grounds available and to contest Defendant's
24 defenses. The Settlement, this Agreement and the Parties' willingness to settle the Action will have
25 no bearing on, and will not be admissible in connection with, any litigation (except for proceedings
26 to enforce or effectuate the Settlement and this Agreement.)

27 **T. Confidentiality Prior to Preliminary Approval**

28 Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree that, until the

1 Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose,
2 disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize,
3 any of the terms of the Agreement directly or indirectly, specifically or generally, to any person,
4 corporation, association, government agency, or other entity except: (1) to the Parties' attorneys,
5 accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2)
6 counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing
7 authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena
8 issued by a state or federal government agency. Each Party agrees to immediately notify each other
9 Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class
10 Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any
11 conversation or other communication, before the filing of the Motion for Preliminary Approval, with
12 any third party regarding this Agreement or the matters giving rise to this Agreement except to
13 respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict
14 Class Counsel's communications with Class Members in accordance with Class Counsel's ethical
15 obligations owed to Class Members.

16 **U. No Tax Advice**

17 Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are providing any advice
18 regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the
19 meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or
20 otherwise.

21 **V. Confidentiality**

22 To the extent permitted by law, all agreements made, and orders entered during the Action
23 and in this Agreement relating to the confidentiality of information shall survive the execution of this
24 Agreement.

25 **W. Use and Return of Class Data**

26 Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and
27 summaries of the Class Data provided to Class Counsel by Defendant in connection with the
28 mediation, other settlement negotiations, or in connection with the Settlement, may be used only with

respect to this Settlement, and no other purposes, and may not be used in any way that violates any existing contractual agreement, statute or rule of court. One year after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destruction, of Class Data.

X. Calendar Days

Unless otherwise noted, all references to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

Y. Stay of Litigation

The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement, unless the Settlement fails to obtain preliminary and/or final approval from the Court. The Parties further agree that upon the signing of this Agreement that pursuant to CCP §583.330 to extend the date to bring a case to trial under CCP §583.310 for the entire period of this settlement process.

EXECUTION BY PARTIES

The Parties hereby execute this Settlement.

Dated: marzo 21, 2024

HERMILO FIGUEROA CELIS

By: 
Plaintiff

Dated: _____

EARL ADAMS TILE-COPING &
PLASTERING, INC.

By: _____
(Signature)

(Printed Name)

(Title)

1 respect to this Settlement, and no other purposes, and may not be used in any way that violates any
2 existing contractual agreement, statute or rule of court. One year after the date when the Court
3 discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all
4 Settlement funds, Plaintiff shall destroy all paper and electronic versions of Class Data received from
5 Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes
6 a written request to Class Counsel for the return, rather than the destruction, of Class Data.

7 **X. Calendar Days**

8 Unless otherwise noted, all references to "days" in this Agreement shall be to calendar days.
9 In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal
10 holiday, such date or deadline shall be on the first business day thereafter.

11 **Y. Stay of Litigation**

12 The Parties agree that upon the execution of this Agreement the litigation shall be stayed,
13 except to effectuate the terms of this Agreement, unless the Settlement fails to obtain preliminary
14 and/or final approval from the Court. The Parties further agree that upon the signing of this
15 Agreement that pursuant to CCP §583.330 to extend the date to bring a case to trial under CCP
16 §583.310 for the entire period of this settlement process.

17 **EXECUTION BY PARTIES**

18 The Parties hereby execute this Settlement.

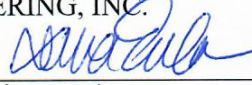
19 Dated: _____
20

HERMILO FIGUEROA CELIS

21 By: _____
22 Plaintiff

23 Dated: March 22, 2024

EARL ADAMS TILE-COPING &
PLASTERING, INC.

24 By: 
25 (Signature)

26 Debra Eula
(Printed Name)

27 CFO
28 (Title)

1 Approved as to Form:

2 Dated: March 22, 2024

DAILY ALJIAN LLP

3
4 By: /s/ Justin E. D. Daily

5 Justin E. D. Daily
6 Reed Aljian
7 Simon Kwak
8 Shelly D. Song

Attorneys for Plaintiff Hermilo Figueroa Celis

9 Dated:

FREEMAN MATHIS & GARY, LLP

10
11 By: _____

12 Julie A. Marquis
13 Craig A. Tomlins
14 Dane M. Willis

Attorneys for Defendant Earl Adams Tile-Coping
& Plastering, Inc.

1 Approved as to Form:

2 Dated: _____

DAILY ALJIAN LLP

4 By: _____

5 Justin E. D. Daily
6 Reed Aljian
7 Simon Kwak
8 Shelly D. Song

Attorneys for Plaintiff Hermilo Figueroa Celis

9 Dated: March 22, 2024
10 _____

FREEMAN MATHIS & GARY, LLP

11 By: _____

12 Julie A. Marquis
13 Craig A. Tomlins
14 Dane M. Willis

Attorneys for Defendant Earl Adams Tile-Coping
& Plastering, Inc.

EXHIBIT A

Celis v. Earl Adams Tile-Coping & Plastering, Inc.
(Alameda County Superior Court Case No. HG21112823)

NOTICE OF PENDENCY AND SETTLEMENT OF CLASS ACTION

YOU HAVE BEEN IDENTIFIED AS HAVING WORKED FOR EARL ADAMS TILE-COPING & PLASTERING, INC. (“EARL ADAMS”) AS A NON-EXEMPT EMPLOYEE IN THE STATE OF CALIFORNIA SOMETIME BETWEEN MARCH 21, 2017, THROUGH OCTOBER 6, 2022.

YOU ARE NOT BEING SUED, AND THIS LAWSUIT IS NOT AGAINST YOU. EARL ADAMS HAS AGREED TO A CLASS ACTION SETTLEMENT IN THE LAWSUIT REFERENCED ABOVE. PLEASE READ THIS CAREFULLY AS YOUR RIGHTS MAY BE AFFECTED.

TO: ALL PERSONS WHO WORKED FOR EARL ADAMS TILE-COPING & PLASTERING, INC., in the State of California as a non-exempt employee between March 21, 2017, through October 6, 2022 (“Class Members”). A Court has granted Preliminary Approval to a proposed settlement of a class action lawsuit involving Earl Adams (the “Class Action”). If the Court grants Final Approval, there will be money available to you.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS CLASS ACTION	
PARTICIPATE IN THE SETTLEMENT – <u>NO ACTION REQUIRED</u>	Stay in this Class Action. Receive a payment. Give up certain rights. By doing nothing, you become part of the Class and will collect a settlement share as detailed below. But, you will give up certain rights to sue Earl Adams separately for the legal claims raised in this Class Action.
OBJECT TO THE SETTLEMENT	Stay in this Class Action. May give up certain rights. If you object to the settlement, you will remain a member of the Class, and if the Court approves the settlement, you will be bound by the terms of the settlement in the same way as Class Members who do not object.
ASK TO BE EXCLUDED	Get out of this Class Action. Get a smaller or no payment from it. Keep rights. If you ask to be excluded from the settlement, you won’t receive any payment from the settlement award, with the exception of those Class Members entitled to a PAGA Payment Share, as explained below. But, you will keep any rights you may have to sue Earl Adams separately for the legal claims raised or that could have been raised in this Class Action, with the exception of any PAGA Released Claims, as described below.

A. DESCRIPTION OF THE CLASS ACTION:

On September 15, 2021, Hermilo Figueroa Celis (“Plaintiff”) filed a class action lawsuit in the Superior Court of the State of California for the County of Alameda, entitled *Celis v. Earl Adams Tile-Coping & Plastering, Inc.*, Case No. HG21112823. The operative Complaint alleges claims on behalf of a proposed class for damages and penalties for: (1) Failure to Pay Wages; (2) Failure to Provide Meal Periods; (3) Failure to Provide Rest Periods; (4) Failure to Provide Accurate Itemized Wage Statements; (5) Failure to Pay Wages Upon Separation of Employment; (6) Failure to Reimburse Business Expenses; (7) Violation of Business and Professions Code Sections 17200-17208; and (8) Recovery of Civil Penalties for Violation of Labor Code § 2698 *et seq.* (“PAGA”).

Earl Adams strongly denies violating any laws or failing to pay any wages, as well as the allegations in the Class Action, and contends it complied with all applicable laws. The Court has not ruled on the merits of the claims or defenses. Both sides recognize, however, the risks, expenses and business disruption of continued litigation and therefore, the parties and their counsel have agreed to resolve their differences by entering into a settlement of the Class Action, which the Court has now preliminarily approved (the “Settlement”). At this time, the Court has determined only that there is sufficient evidence to suggest that the proposed Settlement might be fair, adequate, and reasonable; any final determination of those issues will be made at the Final Fairness and Approval hearing. The Court has also appointed the attorneys for Plaintiff as “Class Counsel” to represent Class Members affected by the Settlement. They are:

DAILY ALJIAN LLP

Justin E. D. Daily

Reed Aljian

Simon Kwak

Shelly D. Song

100 Bayview Circle, Suite 5500

Newport Beach, CA 92660

Telephone: (949) 861-2524

Facsimile: (949) 269-6364

The Court-appointed Settlement Administrator is:

[INSERT ADDRESS]

[INSERT TELEPHONE NO.]

B. SUMMARY OF PROPOSED SETTLEMENT TERMS

Subject to the court’s Final Approval, a summary of the terms of the Settlement include:

1. **Class Settlement Amount:** Earl Adams will pay a Gross Settlement Amount of \$1,350,000.00, which will be used to pay: (1) the Settlement Shares of each Class Member who does not opt-out of the Settlement (*see* Para. 2, below); (2) settlement administration costs in an amount not to exceed \$11,000.00 (if finally approved by the Court); (3) the costs incurred by Class Counsel in an amount not to exceed \$15,000.00 (if finally approved by the Court); (4) an enhancement award to the named Plaintiff to compensate him for the time, work, and risks undertaken in bringing this Class Action in an amount not to exceed \$7,500.00 (if finally approved by the Court); (5) Class Counsel’s reasonable attorneys’ fees not to exceed \$450,000.00 (if finally approved by the Court); (6) payment to the California Labor and Workforce Development Agency (“LWDA”) in the amount of \$40,500.00 (if finally approved by the Court); (7) the PAGA Payment Shares to the Class Members who worked during the PAGA Period (*see* Para. 3, below) in the total amount of \$13,500.00 (if finally approved by the Court); and (8) the employer’s share of payroll taxes for the amount of the Settlement Shares designated as wages, which is estimated to be approximately \$31,443.75 (if finally approved by the Court).

2. **Settlement Shares:** Each Settlement Class Member's share of the Settlement will be calculated based upon the total compensable workweeks the Class Member worked as an hourly employee for Earl Adams in the State of California at any time from March 21, 2017, through October 6, 2022 (the "Class Period") in comparison to the total number of workweeks worked by all Class Members during the Class Period. All Settlement Shares will be paid from the Net Settlement Amount ("NSA"), which will be determined by deducting from the Gross Settlement Amount the combined total of any Court awarded attorneys' fees and costs, settlement administration costs, incentive award to the named Plaintiff, payment to the LWDA, the amount allocated for the PAGA Payment Shares, and employer-side payroll taxes due on the wage portion of Class Members' Settlement Shares. The wage portion of each share of the Settlement will be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings. An IRS Form W-2 will be issued for the wage portion of any settlement payment and an IRS Form 1099 will be issued for the interest and penalties portions of any settlement payment. Nothing in this Notice or the Settlement is intended to constitute tax advice. You should consult your tax advisor for any tax issues pertaining to this Settlement.

3. **PAGA Payment Shares:** Of the Gross Settlement Amount, \$13,500.00 is allocated to pay Class Members employed during the time period of March 21, 2020, through October 6, 2022 (the "PAGA Period"), based upon the total compensable workweeks the Class Member worked as an hourly employee for Earl Adams in the State of California at any time during the PAGA Period in comparison to the total number of workweeks worked by Class Members during the PAGA Period. The PAGA Payment Share is in addition to the Settlement Share. The PAGA Payment Share is allocated as penalties and will be included in IRS Form 1099.

4. **Your Estimated Share of the Settlement:** You do not need to do anything in order to receive your payment. The amount you will receive is estimated to be \$____, based on ____ workweeks that you worked as an hourly employee during the Class Period, and an additional \$____, based on ____ workweeks that you worked as an hourly employee during the PAGA Period. If you believe your total weeks worked during either the Class Period or PAGA Period shown above are not correct, you may send a letter to the Settlement Administrator indicating what you believe is correct. You should also send any documents or other information that supports your belief that the information set forth above is incorrect. Your written letter should include your name (and any former names used with Earl Adams), address, last four digits of your Social Security number, and phone number, and be signed and dated by you.

The Settlement Administrator will work with the parties to resolve any dispute based upon Earl Adams' records and any information you provide. If the parties are unable to resolve the dispute, the Settlement Administrator will make the final decision regarding the number of workweeks. Any such dispute must be mailed to the Settlement Administrator no later than [DATE].

5. **Updated Contact Information:**

If your address has changed since receiving this Notice or your address changes at any time before you receive your settlement check, you should update your mailing address by calling or mailing a letter to the Settlement Administrator with your updated mailing address.

6. **Timing of Payments:**

Earl Adams will fund the Settlement in three installment payments of \$450,000.00 each. The first installment will be funded within 30 days of the date the Court grants preliminary approval of the Settlement. The second installment will be funded within 60 days after the date the first installment was due. The third installment will be funded within 90 days after the date the second installment was due. Within five business days after Earl Adams funds the third installment and only after the Court has granted final approval of the Settlement, it is anticipated that your share of the Settlement will be mailed to you by approximately October 15, 2024. If you do not request for exclusion from the Settlement, then your settlement check will automatically be mailed to you at the same address where you received this Notice, or to a different address if you provide updated contact

information to the Settlement Administrator. If you submit a timely and valid request for exclusion from the Settlement but worked as an hourly employee during the PAGA Period, you will not receive a Settlement Share but will nonetheless receive a PAGA Payment Share.

C. RELEASE OF LIABILITY

If the Settlement is finally approved by the Court, each Settlement Class Member, including you, if you do not request exclusion from the Settlement, will be deemed to have released Earl Adams (the “Released Parties”) from any and all claims alleged or that could have been alleged based on the facts alleged in the operative Complaint during the Class Period, including (1) failure to pay wages, including minimum and overtime wages; (2) failure to provide meal periods or compensation in lieu thereof; (3) failure to provide rest periods or compensation in lieu thereof; (4) failure to reimburse business expenses; (5) failure to provide accurate itemized wage statements (6) failure to timely pay wages upon separation of employment; and (7) violation of California Business and Professions Code §§17200, *et seq.* (“Class Released Claims”), from March 21, 2017, through October 6, 2022.

Additionally, Class Members employed during the PAGA Period will be deemed to have released the Released Parties from any and all claims for civil penalties pursuant to the Private Attorneys General Act of 2004 (“PAGA”), that are based on the facts alleged in Plaintiff’s Notice to the LWDA, arising during the period of March 21, 2020, through October 6, 2022 (“PAGA Released Claims”).

D. TO REQUEST EXCLUSION FROM THE SETTLEMENT

If you want to be excluded from the Settlement (also referred to as “opting out”), you must send a written request to the Settlement Administrator (“Request for Exclusion”), postmarked no later than [DATE].

Your Request for Exclusion must state your intent to opt-out or request to be excluded from the Settlement along with your name (and any former names used with Earl Adams), address, last four digits of your Social Security number, phone number, signature and date of the signature.

If you submit a timely and valid Request for Exclusion, you will no longer be a member of the Class, and **you will not** receive any money from the Settlement, or be able to object to the terms of the Settlement. However, if you do timely submit a Request for Exclusion you will not be bound by the terms of the Settlement and may pursue any claims you may have against Earl Adams at your own expense.

Class Members employed during the PAGA Period will not have an opportunity to request exclusion from the release of the PAGA Released Claims, and will be entitled to a PAGA Payment Share, whether or not they submit a timely and valid opt-out to the Class Released Claims.

DO NOT SEND A REQUEST FOR EXCLUSION IF YOU WANT TO RECEIVE YOUR SHARE UNDER THE SETTLEMENT!

E. TO OBJECT TO THE SETTLEMENT

If you would like to object to the Settlement, you must not submit a Request for Exclusion. In order to object, you may submit a written objection to the Settlement Administrator, postmarked no later than [DATE].

The objection must include a written statement of the grounds for objection, be signed by you or your authorized representative, and include all supporting papers. The objection should include your name (and any former names used with Earl Adams), address, last four digits of your Social Security number, phone number, and be signed and dated by you or your authorized representative’s signature.

You may appear in person at the Final Fairness and Approval Hearing to present any oral objections even if you do not submit a timely Notice of Objection.

F. FINAL APPROVAL HEARING ON PROPOSED SETTLEMENT

The Final Fairness and Approval hearing on the fairness and adequacy of the proposed Settlement will be held on Wednesday, July 24, 2024, at 2:30 p.m., in Department 23 of the Superior Court of the State of California, County of Alameda, 1221 Oak Street, Oakland, CA 94612. The Settlement Administrator will notify any Class Member who objected to the Settlement if the Final Approval hearing is postponed to some other date. It is not necessary for you to appear at this hearing. However, a Class Member who wishes to make an oral objection at the hearing may do so even if the Class Member did not submit a written objection. If you intend to appear at the hearing, please check the Court website at www.alameda.courts.ca.gov for current social distancing procedures for attendance at hearings.

G. ADDITIONAL INFORMATION ABOUT THE PROPOSED SETTLEMENT

This Notice only summarizes the Class Action, the Settlement, and related matters. For more information, please refer to the formal First Amended Joint Stipulation of Class Action Settlement (the “Settlement Agreement”) attached as Exhibit 1 to the Supplemental Declaration of Justin E. D. Daily in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, which was filed with the Court on March 22, 2024.

The Settlement Agreement, the pleadings and other records in this litigation may be examined online on the Alameda County Superior Court’s website, known as “eCourt Public Portal,” at <https://eportal.alameda.courts.ca.gov>.

After arriving at the website, click the “Search” tab at the top of the page, then select the Document Downloads link, enter the case number and click “Submit.” Images of every document filed in the case may be viewed at a minimal charge. You may also view images of every document filed in the case free of charge by using one of the computer terminal kiosks available at each court location that has a facility for civil filings.

Alternatively, a copy of the Settlement Agreement can be obtained from Class Counsel. You may also contact Class Counsel or the Settlement Administrator with any questions about this Notice or the Class Action at the telephone numbers provided in Section A of this Notice.

PLEASE DO NOT CALL OR WRITE TO THE JUDGE OR THE COURT, OR ANY OF EARL ADAMS’ MANAGERS, SUPERVISORS, OR ATTORNEYS WITH QUESTIONS.

EXHIBIT B

DAILY ALJIAN LLP

Justin E. D. Daily (State Bar No. 209772)

jd@dallp.com

Reed Aljian (State Bar No. 211010)

ra@dallp.com

Simon Kwak (State Bar No. 297362)

sk@dallp.com

Joshua D. Klein (State Bar No. 322099)

jklein@dallp.com

100 Bayview Circle, Suite 5500

Newport Beach, CA 92660

Telephone: 949.861.2524

Facsimile: 949.269.6364

Attorneys for Plaintiff Hermilo Figueroa Celis
on behalf of himself and all others similarly situated

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

HERMILO FIGUEROA CELIS,
individually, and on behalf of all others
similarly situated,

Plaintiff,

v.

EARL ADAMS TILE-COPING &
PLASTERING, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendant(s).

CASE NO.: HG21112823

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

[Amended as a matter of right pursuant to Labor
Code (s)2699.3(a)(2)(C)]

Assigned for All Purposes to:
Hon. Judge Brad Seligman
Department: 23

1. **Failure to Pay Wages, Including Minimum and Overtime Wages;**
2. **Failure to Provide Meal Breaks;**
3. **Failure to Provide Rest Breaks;**
4. **Failure to Reimburse Business Expenses;**
5. **Knowing and Intentional Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226(a));**
6. **Failure to Pay Wages at Termination (Lab. Code §§ 201-203);**
7. **Violations of the Unfair Competition Law (Bus. & Prof. Code §§ 17200-17208); and**
8. **Enforcement of the Private Attorneys General Act of 2004 (Lab. Code §§ 2698, et seq.).**

JURY TRIAL DEMANDED

1 Plaintiff HERMILO FIGUEROA CELIS ("Plaintiff"), on behalf of himself and all others
2 similarly situated, hereby brings this First Amended Class and Representative Action Complaint
3 ("FAC") against Defendants, EARL ADAMS TILE-COPING & PLASTERING, INC. ("Earl
4 Adams"), a California corporation, and DOES 1 through 100, inclusive (collectively referred to
5 herein as "Defendants") and alleges as follows:

6 **INTRODUCTION**

7 1. This proposed class action, pursuant to California Code of Civil Procedure section
8 382, is brought on behalf of all persons currently or formerly employed as non-exempt employees
9 in California by Defendants. The non-exempt employees currently or were formerly employed by
10 Defendants within the State of California are hereinafter referred to individually as "Class
11 Members" and collectively as the "Class" or "Classes," and includes those who worked for
12 Defendants at any time from March 21, 2017, through the date of class certification, or as
13 applicable, through the final disposition of this action ("Relevant Liability Period"). The applicable
14 statutes of limitation were tolled between April 6, 2020, and October 1, 2020, pursuant to the
15 California Rules of Court, Appendix I, Emergency Rule 9.

16 2. Plaintiff also brings this representative action pursuant to Labor Code sections 2698,
17 *et seq.* (the "PAGA"), against Defendants, on behalf of himself individually and other similarly-
18 aggrieved employees who are and were employed by Defendants as non-exempt employees
19 throughout California during the PAGA Period. The "PAGA Period" is defined as March 21, 2020,
20 through date of entry of judgment. The applicable statutes of limitation were tolled between April
21 6, 2020, and October 1, 2020, pursuant to the California Rules of Court, Appendix I, Emergency
22 Rule 9.

23 3. The proposed class action on behalf of Plaintiff and proposed Class Members seek,
24 *inter alia*, compensation for failure to pay for all hours worked and payment of all unpaid wages,
25 including minimum and overtime wages, failure to provide meal breaks, failure to provide rest
26 breaks, failure to reimburse business expenses, itemized wage statement penalties, waiting time
27 penalties, injunctive relief and other remedies under California's Unfair Competition Law, interest,
28

1 and reasonable attorneys' fees and costs. Plaintiff's action is brought under, *inter alia*, the Industrial
2 Welfare Commission Wage Orders and applicable California Code of Regulations, Business &
3 Professions Code sections 17200 *et seq.*, Civil Code section 3289, and Labor Code sections 201-
4 204, 204b, 218, 218.5, 218.6, 221, 226, 226.7, 510, 512, 1174, 1182.12, 1194, 1194.2, 1197, 1198,
5 1199, and 2802.

6 4. Under California Business and Professions Code ("Cal. Bus. & Prof. Code")
7 sections 17200 *et seq.*, and pursuant to the class action procedures provided for in this statute,
8 Plaintiff, on behalf of himself and the proposed Class, also seeks restitution of all benefits
9 Defendants have received from, including but not limited to, its failure to pay compensation due
10 for all hours worked, its unlawful deduction of wages, its failure to maintain proper records of hours
11 worked, and its failure to issue accurate itemized wage statements.

12 **JURISDICTION AND VENUE**

13 5. This Court has jurisdiction over all causes of action asserted herein pursuant to the
14 California Constitution, Article VI, section 10, which grants the Superior Court original jurisdiction
15 in all cases except those given to other trial courts. Plaintiff seeks damages in this case in an amount
16 exceeding the jurisdictional minimum of this Court. The Court also has jurisdiction over certain
17 causes of action pursuant to Cal. Bus. & Prof. Code sections 17203 and 17204, which provide for
18 exclusive jurisdiction for enforcement of this statute in any court of competent jurisdiction.

19 6. This Court has jurisdiction over Defendants because they are an individual residing
20 in the State of California, a corporation or association organized under the laws of the State of
21 California, an association authorized to do business in California and registered with the California
22 Secretary of State, or does sufficient business in California, has sufficient minimum contacts with
23 California or otherwise intentionally avails itself of the laws and markets of California, through the
24 promotion, sale, marketing and distribution of its products in California, to render the exercise of
25 jurisdiction by the California courts permissible.

26 7. Venue in Alameda County is proper under Cal. Bus. & Prof. Code section 17203
27 and California Code of Civil Procedure section 395.5 because Defendants have their principal place
28

1 of business in this county, a substantial part of Defendants' unlawful conduct occurred in this
2 County, Defendants had and has on-going projects in this County, Defendants conduct substantial
3 business in this County, and Defendants' liability arose in this County. The relief requested is
4 within the jurisdiction of this Court.

5 **PARTIES**

6 8. Plaintiff HERMILO FIGUEROA CELIS is an individual who resides in Alameda
7 County, California and was employed by Defendants in California from on or around June 19,
8 2019, through on or around April 1, 2021.

9 9. Plaintiff was, at all relevant times herein, employed by Defendants as a non-exempt
10 employee as defined by all applicable Industrial Welfare Commission Wage Orders ("Wage
11 Order(s)"). Plaintiff's final hourly rate at the time of his termination was \$31.25 per hour. However,
12 Plaintiff and similarly-situated employees were paid based on an assumption that they worked
13 exactly eight hours per day, even though the true hours worked were typically 12-14 hours per day.
14 Plaintiff and similarly-situated employees spent the majority of their employment doing routine,
15 non-discretionary tasks related to pool construction, including unloading, plastering, and cutting
16 tile, which occupy more than 50% of the work time.

17 10. During his tenure with Defendants, Plaintiff was not paid for all hours worked, was
18 not paid all overtime wages, did not receive all lawful meal and rest breaks, incurred unreimbursed
19 business expenditures, received inaccurate itemized wage statements, and witnessed other
20 employees who, like himself, were subjected to Defendants' unlawful pattern, practice, and policy
21 in violation of California law.

22 11. Plaintiff is informed, believes and thereon alleges that, at all relevant times,
23 Defendant Earl Adams was and is a California corporation with its principal place of business
24 located at 3675 Old Santa Rita Rd., Pleasanton, CA 94588. Earl Adams was and is in the business
25 of building and remodeling swimming pools. As part of its business, EARL ADAMS employs
26 hourly non-exempt employees. EARL ADAMS regularly conducts business within the State of
27 California and derives substantial revenues from goods consumed or services rendered in
28

1 California. EARL ADAMS is, and at all relevant times was, an employer subject to California state
2 wage and hour laws. Plaintiff is informed, believes, and thereon alleges that the practices and
3 policies that are complained of by way of this FAC were also present at EARL ADAMS throughout
4 the entire Relevant Liability Period.

5 12. Plaintiff is unaware of the true names and capacities of those Defendants identified
6 as DOES 1 through 100. Therefore, Plaintiff identifies those Defendants fictitiously. Plaintiff is
7 informed, believes and thereon alleges that at all relevant times each DOE Defendant was a parent,
8 sister, or related corporate entity of Defendants, or an owner, employee or agent of Defendants, and
9 each related entity, and was acting with the knowledge and authorization of each of the other
10 Defendants. Plaintiff will seek to amend this FAC to allege the true names and capacities of each
11 DOE Defendant when their names have been ascertained and identified. Plaintiff is informed,
12 believes and thereon alleges that each of the Defendants sued as DOES 1 through 100 participated
13 in, received the benefit of, or was in some way responsible for one or more of the wrongful acts
14 and omissions and some portion of the damages alleged herein.

15 13. Plaintiff is informed, believes and thereon alleges that Defendants, each and all of
16 them, at all times material hereto, were the joint employers, parent companies, successor
17 companies, predecessors in interest, affiliates, agents, employees, servants, joint ventures,
18 directors, fiduciaries, representatives, and/or co-conspirators of each of the remaining Defendants.
19 The Defendants, unless otherwise alleged, at all times material hereto, performed all acts and
20 omissions alleged herein within the course and scope of said relationship, and are a proximate cause
21 of Plaintiff's damages as herein alleged.

22 14. Plaintiff is informed, believes and thereon alleges, that there exists a unity of interest
23 in ownership between Defendants and DOES 1 through 100, inclusive, such that any individuality
24 and separateness between the individual and the corporation does not exist, as Defendants, and
25 DOES 1 through 100, inclusive, are alter egos, in that: (1) Defendants are and at all times mentioned
26 herein were mere shells, instrumentalities and conduits through which DOES 1 through 100,
27 inclusive, carried out their business in the business name, exercising complete control and
28

1 dominance over such business; (2) that Defendants were conceived, intended and used by DOES 1
2 through 100, inclusive, as devices to avoid individual liability and in place of Defendants, and
3 DOES 1 through 100, inclusive, and were without the financial solvency and responsibility required
4 by law; and (3) that all of the assets of the Defendants have been transferred to DOES 1 through
5 100, inclusive, or some other individual or entity which he or she owns or controls, with the intent
6 to hinder, delay or defraud creditors of Defendants, leaving Defendants with no assets. Further,
7 Plaintiff is informed, believes and thereon alleges, that there exists a principle-agency relationship
8 between and among Defendants.

9 15. At all relevant times herein, Defendants were agents of each other and acting within
10 the course and scope of their agency.

11 **JOINT EMPLOYER**

12 16. Plaintiff is informed, believes and thereon alleges that, at all times mentioned herein,
13 that Earl Adams, DOES 1 through 100, and each of them, were acting as the agent and/or employee
14 of each remaining defendant, and were acting within the course and scope of said principal-agency
15 and/or employment relationship, and directed, authorized and/or ratified the conduct set forth in
16 detail herein. Plaintiff is further informed, believes and thereon alleges that each of the fictitiously
17 named Defendants is responsible in some manner for the occurrences herein alleged herein and that
18 Plaintiff and the Class Members' damages, as alleged herein, were proximately caused by such
19 Defendants, and each of them.

20 17. Plaintiff is informed, believes and thereon alleges that Defendant and DOES 1
21 through 100, inclusive, were, at all times pertinent hereto, joint employers of the named Plaintiff,
22 and other members of the Class, as they exercised joint control over and/or right to assign, place
23 and/or supervise the Class members' work or working conditions, maintained joint authority to hire
24 and fire employees, supervised and controlled employee work schedules and employment
25 conditions, determined rate and method of payment, and/or jointly maintained employment records.

1 18. Plaintiff is informed, believes and thereon alleges that at all times relative hereto,
2 Plaintiff and the Class Members performed work that simultaneously benefitted Defendant and
3 Does 1 through 100, inclusive.

4 19. Plaintiff is informed, believes and thereon alleges that at all times pertinent hereto,
5 there existed an arrangement between Defendant and DOES 1 through 100, inclusive, to share the
6 employees' services, and each Defendant acted, either directly or indirectly, in the interest of their
7 fellow Defendants in relation to the employment of Plaintiff and the Class Members.

8 **CLASS ACTION ALLEGATIONS AND FACTUAL BACKGROUND**

9 20. Plaintiff brings this action individually and as a class action on behalf of a proposed
10 Class defined as follows:

11 All current and former non-exempt employees who worked for
12 Defendants in the State of California at any time from March 21,
13 2017, through the date of class certification, or as applicable, through
14 the final disposition of this action ("Class").

15 21. The Class is comprised of the following Sub-Class:

16 (a) Waiting Time Sub-Class: Those members of the Class no longer employed
17 by Defendants, who separated their employment with Defendants at any time between March 21,
18 2018, and the date of class certification and were not paid all earned wages and compensation
19 immediately upon their termination or within 72 hours of their resignation.

20 22. Plaintiff reserves the right pursuant to California Rules of Court Rule 3.764 and
21 3.765, to amend or modify the respective definitions of the Class and/or Sub-Classes to provide
22 greater specificity and/or further division into subclasses or limitation to particular issues.

23 23. This action is brought, and may properly be maintained, as a class action pursuant
24 to California Code of Civil Procedure section 382 because there is a well-defined community of
25 interest in the litigation, and the proposed class is easily ascertainable. This action presents
26 questions of common interest and satisfies the numerosity, commonality, typicality, adequacy,
27 predominance, and superiority requirements of this provision.
28

1 24. Plaintiff and Class Representative, HERMILO FIGUEROA CELIS, was employed
2 by Defendants from on or around June 19, 2019, through on or around April 1, 2021, as a member
3 of the Class.

4 25. Plaintiff is informed, believes and thereon alleges that during the Relevant Liability
5 Period, Defendants have consistently maintained and enforced against Plaintiff and the Class
6 Members the following unlawful practices and policies, including but not limited to: (a) willfully
7 refusing to pay Plaintiff and the Class Members all of their earned wages and compensation,
8 including minimum and overtime wages as required by both the Labor Code and all applicable
9 Wage Orders, by, *inter alia*, failing to compensate Plaintiff and the Class Members for their true
10 total hours worked; (b) willfully refusing to provide Plaintiff and the Class Members all entitled
11 meal breaks, or premium compensation in lieu thereof; (c) willfully refusing to provide Plaintiff
12 and the Class Members all entitled rest breaks, or premium compensation in lieu thereof; (d)
13 willfully refusing to provide Plaintiff and the Class Members full reimbursement for all necessary
14 business expenditures; (e) willfully failing to furnish to Plaintiff and the Class Members accurate
15 Labor Code section 226 compliant wage statements; and (f) willfully failing to timely pay Plaintiff
16 and the Class Members all of their earned wages, compensation and benefits immediately at the
17 termination of their employment or within seventy-two (72) hours of their resignation.

18 26. Plaintiff is informed, believes and thereon alleges, and based thereon alleges, that
19 Defendants currently employ, and during the Relevant Liability Period have employed, over 100
20 employees in the State of California in non-exempt positions.

21 27. At all relevant times herein, the named Plaintiff and the Class Members were
22 employed by Defendants and were paid, on information and belief, on an hourly and/or piece-rate
23 basis.

24 28. Defendants' non-exempt employees spend the majority of their time doing routine,
25 non-discretionary tasks. These duties occupy more than 50% of the work time.

26 29. Plaintiff is informed, believes, and thereon alleges that Defendants' actions as
27 described throughout this FAC were willful.

30. Plaintiff is informed, believes, and thereon alleges that Defendants willfully failed to pay the legal wages when each such employee quit or was discharged.

31. Plaintiff, on behalf of himself and all other Class Members, brings this action pursuant to, *inter alia*, Labor Code sections 201-204, 204b, 218, 218.5, 218.6, 221, 226, 226.7, 510, 512, 1174, 1182.12, 1194, 1194.2, 1197, 1198, 1199, and 2802, and all applicable Wage Orders, including but not limited to, seeking unpaid wages, recovery of unlawfully deducted wages, penalties, injunctive, and other equitable relief, and reasonable attorneys' fees and costs.

32. Plaintiff, on behalf of himself and all Class Members, pursuant to Cal. Bus. & Prof. Code sections 17200-17208, also seeks injunctive relief and restitution for the unfair, unlawful, or fraudulent practices alleged in this FAC.

33. Plaintiff, on behalf of himself and all Class Members, seeks to enforce important rights affecting the public interest as defined under Code of Civil Procedure section 1021.5.

34. Defendants have made it difficult to account with precision for the unlawfully withheld wages owed to Defendants' non-exempt employees, including Plaintiff, during the liability period, because they did not implement and preserve a record-keeping method to record all the unlawful deductions by its employees as required for non-exempt employees by Labor Code sections 226, 1174(d), and section 7 of the California Wage Orders. Defendants have failed to comply with Labor Code section 226(a) by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked by Plaintiff and the Class Members. Plaintiff and Class Members are therefore entitled to penalties not to exceed \$4,000 for each employee pursuant to Labor Code section 226(b).

35. Defendants have failed to comply with section(s) 2 and/or 4 of the California IWC Wage Orders by failing to maintain time records showing when the employee begins and ends each work period pursuant to Labor Code section 226.7, and total daily hours worked by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked by the Class Members.

///

NUMEROSITY

36. The Class is so numerous that the individual joinder of all of its members is impracticable. While the exact number and identities of Class Members are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is informed, believes and thereon alleges that the Class includes more than 100 persons.

37. A class action is the only available method for the fair and efficient adjudication of this controversy. The members of the Class are so numerous that joinder of all members is impractical, if not impossible. The identity of Class Members can be determined upon analysis of, *inter alia*, employee and payroll records maintained by Defendants.

COMMONALITY

38. Common questions of fact and law exist as to all members of the Class that predominate over any questions affecting only individual Class Members. These common legal and factual questions, which do not vary from Class Member to Class Member and which may be determined without reference to the individual circumstances of any Class Member include, but are not limited to, the following:

(a) whether Defendants, in violation of the applicable Labor Codes and Wage Orders, failed to pay Plaintiff and Class Members the applicable minimum wage for all hours worked and in a timely manner;

(b) whether Defendants, in violation of the applicable Labor Codes and Wage Orders, failed to pay Plaintiff and Class Members the applicable overtime wage for such hours worked and in a timely manner;

(c) whether Defendants, in violation of the applicable Labor Codes and Wage Orders, failed to provide Plaintiff and Class Members meal and rest breaks, or premium compensation in lieu thereof;

(d) whether Defendants, in violation of the applicable Labor Codes and Wage Orders, failed to provide Plaintiff and Class Members reimbursement for all necessary business expenditures incurred in connection with their employment with Defendants;

1 (e) whether Defendants, in violation of the applicable Labor Codes, Wage
2 Orders, and California common law, failed to pay Plaintiff and Class Members for all of their hours
3 worked, including but not limited to, failing to pay for the true hours worked by Plaintiff and Class
4 Members;

5 (f) whether Plaintiff and formerly-employed Class Members are entitled to
6 “waiting time” penalties pursuant to Labor Code section 203;

7 (g) whether Defendants, in violation of Labor Code sections 201-204 and 204b,
8 failed to timely pay Plaintiff and Class Members all wages due during their employment and upon
9 termination or resignation;

10 (h) whether Defendants, in violation of Labor Code sections 226 and 1174,
11 systematically failed to keep and provide accurate records of all of the hours worked by Plaintiff
12 and Class Members and their applicable hourly rates;

13 (i) whether members of the Class are entitled to restitution under Cal. Bus. &
14 Prof. Code sections 17200 *et seq.*;

15 (j) what were and are the policies, programs, practices, procedures and
16 protocols of Defendants regarding Class Members’ actual work and tasks, and their job duties
17 irrespective of job titles;

18 (k) the proper measure of damages sustained and the proper measure of
19 restitution recoverable by the Class Members;

20 (l) what amounts Plaintiff and Class Members are entitled to receive in interest
21 on unpaid compensation due and owing to them; and

22 (m) additional common questions of law and fact may develop as the litigation
23 progresses.

24 **TYPICALITY**

25 39. Plaintiff is informed, believes, and thereon alleges that Plaintiff’s claims are typical
26 of the claims of the Class because: they sustained injuries and damages arising out of and caused
27 by Defendants’ unlawful policies and practices (as further detailed herein); they arise out of the
28

1 same course of conduct by Defendants; are based upon the same legal theories as the claims of the
2 Class; and the legal issues raised under the California state laws as a result of Defendants' conduct
3 apply equally to Plaintiff and the Class Members.

4 **ADEQUACY OF REPRESENTATION**

5 40. Plaintiff is an adequate representative of the Class, in that his claims are typical of
6 those of the Class. Plaintiff has no conflicts of interest with his fellow members of the Class and
7 will be able to fairly and adequately protect the interests of all members of the Class. Plaintiff has
8 the same interests in the litigation of this case as the Class Members; and is committed to vigorous
9 prosecution of this case and have retained competent counsel experienced in class action and wage
10 and hour litigation of this nature. Plaintiff is not subject to any individual defenses unique from
11 those conceivably applicable to the Class as a whole and anticipate no management difficulties in
12 this litigation.

13 **PREDOMINANCE**

14 41. Defendants have engaged in a common course of wage and hour abuse toward
15 Plaintiff and Class Members. The common issues arising from this conduct that affect Plaintiff
16 and Class Members predominate over any individual issues. Adjudication of these common issues
17 in a single action has important and desirable advantages of judicial economy.

18 **SUPERIORITY OF CLASS ACTION**

19 42. A class action is superior to other available methods for the fair and efficient
20 adjudication of this controversy because individual litigation of the claims of all Class Members is
21 impracticable. Even if every Class Member could afford individual litigation, the court system
22 could not. It would be unduly burdensome to the courts in which individual litigation of numerous
23 cases would proceed. Individualized litigation would also present the potential for varying,
24 inconsistent, or contradictory judgments and would magnify the delay and expense to all parties
25 and to the court system resulting from multiple trials of the same complex factual issues. Moreover,
26 individual actions by Class Members may establish inconsistent standards of conduct for
27 Defendants. By contrast, the conduct of this action as a class action, with respect to some or all of
28

1 the issues presented herein, presents fewer management difficulties, conserves the resources of the
2 parties and the court system, and protects the rights of each Class Member.

3 43. Defendants have acted or refused to act in respects generally applicable to the Class,
4 thereby making appropriate relief with regard to the members of the Class as a whole, as requested
5 herein.

6 **CAUSES OF ACTION**

7 **FIRST CAUSE OF ACTION**

8 **(FAILURE TO PAY ALL EARNED WAGES, INCLUDING MINIMUM AND**
9 **OVERTIME WAGES)**

10 **(Against All Defendants)**

11 44. Plaintiff incorporates all previous paragraphs of this FAC as though fully set forth
12 herein.

13 45. Pursuant to Labor Code section 218, Plaintiff may bring a civil action for unpaid
14 wages due directly against the employer.

15 46. At all times herein relevant, the applicable Wage Orders and applicable California
16 Code of Regulations have applied and continue to apply to Plaintiff and the Class Members'
17 employment with Defendants. The applicable Wage Orders and applicable California Code of
18 Regulations state that "every employer shall pay to each employee wages . . . for all hours worked."

19 47. "Hours worked" is defined by section 2 of the applicable Wage Orders as "the time
20 during which an employee is subject to the control of an employer, and includes all the time the
21 employee is suffered or permitted to work, whether or not required to do so."

22 48. At all times pertinent hereto, Labor Code section 1194 provided: "Notwithstanding
23 any agreement to work for a lesser wage, any employee receiving less than the legal minimum
24 wage...applicable to the employee is entitled to recover in a civil action the unpaid balance of the
25 full amount of this minimum wage...including interest thereon, reasonable attorney's fees, and
26 costs of suit."

1 49. At all times pertinent hereto, Labor Code section 1194.2 provides for the recovery
2 of prejudgment interest in any action brought to recover the nonpayment of wages, at the rate
3 specified in Civil Code section 3289.

4 50. At all times pertinent hereto, Labor Code section 1197 provides that the payment of
5 a lower wage than the minimum wage fixed by under applicable state or local law is unlawful.

6 51. At all times pertinent hereto, Labor Code section 1198 prohibits employers from
7 requiring its employees to work longer hours or under conditions of labor prohibited by an order of
8 the Industrial Welfare Commission is unlawful.

9 52. At all times pertinent hereto, Labor Code section 510 and the applicable Wage
10 Orders require the payment of wages at a rate of one-half times the regular rate of pay for work in
11 excess of eight (8) hours in one workday and/or forty (40) hours in one workweek, and the payment
12 of wages at a rate of two times the regular rate of pay for work in excess of twelve (12) hours in
13 one workweek.

14 53. Plaintiff is informed, believes, and thereon alleges that throughout the Relevant
15 Liability Period, Defendants unlawfully failed to pay Plaintiff and the Class for all of their hours
16 worked as a result of Defendants' labor policies and practices. Plaintiff and Class Members
17 typically worked shifts of 12-14 hours per day, 5 days per week. However, Defendants, as a matter
18 of uniform policy and practice, consistently reported Plaintiff and Class Members as only working
19 shifts of *exactly* 8 hours per day, rounded the times that they worked, shaved the hours that
20 employees worked, and/or automatically deducted the time spent in meal periods. The remaining
21 (on average) 4-6 hours per day worked by Plaintiff and Class Members therefore was not
22 compensated, resulting in lost wages to Plaintiff and Class Members.

23 54. Plaintiff is informed, believes, and thereon alleges that as a result of Defendants'
24 labor policies and practices, Defendants not only failed to compensate Plaintiff and Class Members
25 for their true hours worked, but further failed to provide all applicable overtime compensation and
26 pay all wages at the lawful rates of compensation.

56. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff and the Class Members have sustained damages, including loss of earnings, in an amount to be established at trial, plus prejudgment interest pursuant to statute.

57. Pursuant to Labor Code sections 218, 218.5, 218.6, 1194 and 1194.2, Plaintiff and Class Members are entitled to, and seek to, recover unpaid minimum wage and/or regular rate compensation, and other unpaid wages, plus interest, penalties, attorneys' fees, and costs. The specific amounts are to be determined at trial.

14 58. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief
15 as described herein and below.

(FAILURE TO PROVIDE MEAL PERIODS)

(Against All Defendants)

19 59. Plaintiff incorporates all previous paragraphs of this FAC as though fully set forth
20 herein.

60. At all times pertinent hereto, the applicable Wage Orders and Labor Code § 512 require an employer to provide a duty-free, uninterrupted, thirty-minute meal period prior to the start of the sixth hour of work, and a second, duty-free, uninterrupted, thirty-minute meal period prior to the start of the eleventh hour of work.

25 61. At all times pertinent hereto, the applicable Wage Orders and Labor Code section
26 226.7 requires an employer to pay an additional one (1) hour of compensation at the employee's

1 regular rate of pay for each workday in which an employer fails to meet its obligations with respect
2 to providing meal periods.

3 62. Plaintiff is informed, believes, and thereon alleges that Plaintiff and the Class
4 routinely worked shifts in excess of six (6) hours, and routinely worked shifts in excess of twelve
5 (12) hours. Despite working these hours, Defendants maintained a policy or practice of prioritizing
6 work demands over allowing employees to take compliant meal periods. Plaintiff and Class
7 Members were unable to take all compliant meal periods, including a meal period starting before
8 the end of the fifth hour of work, or a second meal period starting before the end of the tenth hour
9 of work, because the meal periods were missed, late, and/or interrupted. Plaintiff and Class
10 Members were frequently required to take their meal periods while driving between various work
11 locations. Defendants, however, failed to pay Plaintiff and Class Members meal period premiums
12 for non-compliant or missed meal periods.

13 63. Plaintiff is informed, believes and thereon alleges that Defendants failed to meet its
14 obligations to Plaintiff and the Class under the applicable Wage Orders and all relevant provisions
15 of the Labor Code with respect to providing meal periods, or premium compensation in lieu thereof,
16 to Plaintiff and the Class.

17 64. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief
18 as described herein and below.

19 **THIRD CAUSE OF ACTION**

20 **(FAILURE TO PROVIDE REST PERIODS)**

21 **(Against All Defendants)**

22 65. Plaintiff incorporates all previous paragraphs of this FAC as though fully set forth
23 herein.

24 66. At all times pertinent hereto, the applicable Wage Orders requires an employer to
25 provide a duty-free, uninterrupted, ten-minute rest period for every four hours worked by an
26 employee, or greater fraction thereof.

68. Plaintiff is informed, believes, and thereon alleges that Plaintiff and the Class routinely worked shifts in excess of three and a half (3½) hours, and often work shifts in excess of twelve (12) hours. Despite working these hours, Defendants maintained a policy or practice of prioritizing work demands over allowing employees to take compliant rest periods. Plaintiff and Class Members were unable to take all compliant rest periods because they were missed, late, and/or interrupted. Defendants, however, failed to pay Plaintiff and Class Members rest period premiums for non-compliant or missed rest periods.

69. Plaintiff is informed, believes, and thereon alleges that Defendants failed to meet its obligations to Plaintiff and the Class under the applicable Wage Orders and all relevant provisions of the Labor Code with respect to providing rest periods, or premium compensation in lieu thereof, to Plaintiff and the Class.

16 70. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief
17 as described herein and below.

(FAILURE TO REIMBURSE BUSINESS EXPENDITURES)

21 71. Plaintiff incorporates all previous paragraphs of this FAC as though fully set forth
22 herein.

72. At all times pertinent hereto, Labor Code § 2802 requires employers to indemnify employees for all necessary expenditures incurred by employees in the discharge of their duties.

73. Plaintiff is informed, believes and thereon alleges that Plaintiff and the Class incurred multiple business expenditures which Defendants failed to reimburse, including (1) use of

1 personal vehicles, such as for loading and unloading materials, and (2) personal cell phone usage
2 to communicate with supervisors.

3 74. Defendants' failure to reimburse Plaintiff and the Class for necessary business
4 expenditures amounted to an unlawful deduction of wages in violation of Labor Code section 221.

5 75. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief
6 as described herein and below.

7 **FIFTH CAUSE OF ACTION**

8 **(FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS)**

9 **(Against All Defendants)**

10 76. Plaintiff incorporates by reference in this cause of action each allegation of all
11 preceding paragraphs, as though fully set forth herein.

12 77. Section 226(a) of the Labor Code requires Defendants to provide accurate, itemized
13 wage statements listing, in part, the employee's "(1) gross wages earned, (2) total hours worked by
14 the employee... (5) net wages earned..." and "... (8) the name and address of the legal entity that
15 is the employer..." (Lab. Code § 226(a).)

16 78. Plaintiff is informed, believes, and thereon alleges that Defendants have knowingly
17 and intentionally failed to comply with Labor Code section 226(a) on each and every wage
18 statement that should have been provided to Plaintiff and the Class Members.

19 79. As a result of the aforementioned violations of the Labor Code and the applicable
20 Wage Orders, wage statements issued to Plaintiff and Class Members failed to list the gross wages,
21 net wages, and total hours worked in violation of Labor Code section 226(a)(1), (2), and (5).

22 80. Wage statements provided to Plaintiff and Class Members fail to list the name of
23 the legal entity that is the employer. Instead of providing its legal name, Defendants provided only
24 the name "EARL ADAMS TILE & COPING INC," in contravention of the plain requirements of
25 Labor Code section 226(a)(8) to provide the name "of the legal entity that is the employer..." (*Ibid.*)

26 81. Labor Code section 226(e) provides that an employee suffering injury as a result of
27 a knowing and intentional failure by an employer to comply with Labor Code section 226(a) is
28

1 entitled to recover the greater of his or his actual damages or a penalty of \$50 for the initial pay
2 period in which a violation occurs and \$100 per employee for each violation in a subsequent pay
3 period (up to a maximum of \$4,000), in addition to attorneys' fees and costs.

4 82. Section 1174 of the Labor Code requires Defendants to maintain and preserve, in a
5 centralized location, among other items, records showing the names and addresses of all employees
6 employed, payroll records showing the hours worked daily by, and the wages paid to, their
7 employees. Plaintiff is informed, believes, and thereon alleges that Defendants have knowingly
8 and intentionally failed to comply with Labor Code section 1174. Defendants' failure to comply
9 with Labor Code section 1174 is unlawful pursuant to Labor Code section 1175.

10 83. Section 7 of the Industrial Wage Commission ("IWC") Wage Orders requires
11 Defendants to maintain time records showing, among other things, when the employee begins and
12 ends each work period, and total daily hours worked in an itemized wage statement, and must show
13 all deductions and reimbursements from payment of wages, and accurately report total hours
14 worked by Plaintiff and the Class Members. Plaintiff is informed, believes, and thereon alleges
15 that Defendants have knowingly and intentionally failed to comply with these Wage Orders.

16 84. Defendants knowingly and intentionally failed to provide timely, accurate, itemized
17 wage statements to Plaintiff and the Class Members in accordance with Labor Code section 226.
18 The statements provided to Plaintiff and the Class Members have not accurately reflected actual
19 gross wages earned, and the total hours worked by employees. Plaintiff and the Class are therefore
20 entitled to the damages and penalties provided for under Labor Code section 226(e).

21 85. WHEREFORE, Plaintiff and the Class request relief as described herein and below.

22 **SIXTH CAUSE OF ACTION**

23 **(WAITING TIME PENALTIES)**

24 **(Against All Defendants)**

25 86. Plaintiff incorporates by reference in this cause of action each allegation of all
26 preceding paragraphs, as though fully set forth herein.

1 87. Sections 201 and 202 of the Labor Code require Defendants to pay their employees
2 all wages due within 72 hours of termination of employment. Section 203 of the Labor Code
3 provides that if an employer willfully fails to timely pay such wages the employer must, as a
4 penalty, continue to pay the subject employees' wages until the back wages are paid in full or an
5 action is commenced. The penalty cannot exceed 30 days of wages.

6 88. Plaintiff and the Class Members are entitled to compensation for all forms of wages
7 earned, including, but not limited to, wages earned but not paid, but to date have not received such
8 compensation, therefore entitling Plaintiff and formerly-employed Class Members to Labor Code
9 section 203 penalties.

10 89. At all times pertinent hereto, California law, including, but not limited to, Labor
11 Code section 1194, provided that for any action brought for the nonpayment of wages, fringe
12 benefits, or health and welfare or pension fund contributions, the court shall award reasonable
13 attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees
14 and costs upon the initiation of the action.

15 90. At all times pertinent hereto, Labor Code section 1194.2 provided that in any action
16 brought for the nonpayment of wages, the court shall award interest on all due and unpaid wages
17 at the rate of interest specified in Civil Code section 3289(b), which shall accrue from the date that
18 the wages were due and payable.

19 91. More than 30 days have passed since affected Class Members have left Defendants'
20 employ, and on information and belief, they have not received payment pursuant to Labor Code
21 section 203. As a consequence of Defendants' willful conduct in not paying all earned wages,
22 Plaintiff and certain Class Members are entitled to 30 days' wages as a penalty under Labor Code
23 section 203 for failure to pay legal wages.

24 92. Plaintiff and certain Class Members are also entitled to an additional 30 days' wages
25 as a penalty under Labor Code section 203 for willful failure to pay one hour's wages in lieu thereof
26 for denied rest and meal periods, together with interest thereon and attorneys' fees and costs.

1 93. WHEREFORE, Plaintiff and each Class he seeks to represent request relief as
2 described herein and below.

3 **SEVENTH CAUSE OF ACTION**
4 **(UNFAIR BUSINESS PRACTICES)**
5 **(Bus. & Prof. Code sections 17200-17208)**
6 **(Against All Defendants)**

7 94. Plaintiff incorporates in this cause of action each and every allegation of all
8 preceding paragraphs, as though fully set forth herein.

9 95. Plaintiff brings this action on behalf of himself and each and all members of the
10 general public, including the Class Members, pursuant to Cal. Bus. & Prof. Code sections 17200 *et*
11 *seq.* Defendants' conduct alleged below constitutes false, fraudulent, unlawful, unfair, and
12 deceptive business practices, in violation of Cal. Bus. & Prof. Code sections 17200 *et seq.*
13 Defendant engaged in unfair competition in violation of the Unfair Competition Law ("UCL") by
14 violating, *inter alia*, each of the following laws: each of these violations constitutes an independent
15 and separate violation of the UCL:

- 16 (i) Failure to pay for all hours worked, including minimum and overtime wages;
17 (ii) Failure to provide meal periods;
18 (iii) Failure to provide rest periods;
19 (iv) Violations of Labor code section 2802 (failure to reimburse business
20 expenditures);
21 (v) Violations of Labor Code sections 201 and 202 (failure to pay accrued wages
22 at termination or resignation);
23 (vi) Violations of Labor Code sections 204 and 204b (failure to timely pay wages
24 during employment);
25 (vii) Violations of Labor Code section 226 (failure to provide accurate itemized
26 wage statements); and
27 (viii) Violations of all applicable Wage Orders.

1 96. Plaintiff further brings this cause of action on behalf of the proposed Class, seeking
2 statutory relief to stop the misconduct of Defendants, as complained herein, and to compel
3 restitution and disgorgement of all profits obtained by Defendants through the unfair and unlawful
4 business practices described herein.

5 97. Defendants' course of conduct, acts, and practices in violation of the California laws
6 mentioned in the above paragraph constitute a separate and independent violation of the UCL.
7 Defendants' conduct described herein violates the policy or spirit of such laws or otherwise
8 significantly threatens or harms competition. The harm to Plaintiff and the Class Members in being
9 wrongfully denied lawfully earned wages outweighs the utility, if any, of Defendants' policies or
10 practices and, therefore, Defendants' actions described herein constitute an unfair business practice
11 or act within the meaning of the UCL.

12 98. The conduct of Defendants, as alleged herein, constitutes unlawful practices as set
13 forth in Cal. Bus. & Prof. Code sections 17200, *et seq.* Specifically, Defendants conduct business
14 activities while failing to comply with California wage-and-hour laws and the California common
15 law and statutory law as described herein.

16 99. Section 17200 of the Cal. Bus. & Prof. Code prohibits unfair competition by
17 prohibiting unlawful, unfair, or fraudulent business practices or acts.

18 100. Defendants' failure to adopt policies in accordance with and/or adhere to these laws,
19 all of which are binding upon and burdensome to Defendants' competitors, engenders an unfair
20 competitive advantage for Defendants, thereby constituting an unfair business practice, as set forth
21 in Cal. Bus. & Prof. Code sections 17200, *et seq.*

22 101. Defendants' unlawful and unfair business practices as herein alleged has damaged
23 Plaintiff and the Class Members of the proposed Class by wrongfully denying to them earned
24 wages, overtime pay, and meal and rest breaks and therefore was substantially injurious to Plaintiff
25 and the Class.

26 102. Under the circumstances alleged, it would be inequitable and result in a miscarriage
27 of justice for Defendants to continue to retain the property of Plaintiff and the members of the Class,
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1 entitling Plaintiff and the proposed Class to restitution of the unfair benefits obtained and
2 disgorgement of Defendants' ill-gotten gains.

3 103. Pursuant to Cal. Bus. and Prof. Code section 17203, as a direct and proximate result
4 of the unfair business practices of Defendants, Plaintiff, individually, and on behalf of all
5 employees similarly situated, is entitled to equitable and injunctive relief, against such unlawful
6 practices in order to prevent future damage, for which there is no adequate remedy at law, and to
7 avoid a multiplicity of lawsuits. Plaintiff and the Class Members' remedy includes full restitution
8 of all wages which have been unlawfully withheld from Plaintiff and the Class Members as a result
9 of the business acts and practices described herein, and an order enjoining Defendants to cease and
10 desist from engaging in the practices described herein.

11 104. Plaintiff, on behalf of himself and the Class Members, seeks restitution in the
12 amount of the respective unpaid wages earned and due.

13 105. Plaintiff and Class Members also request any other such legal and equitable relief
14 from Defendants' unlawful and willful conduct as the Court deems just and proper, including
15 injunction prohibiting Defendants from engaging in the unfair, unlawful, and/or fraudulent
16 practices alleged in this FAC.

17 106. Defendants are also liable to pay attorneys' fees and other applicable costs pursuant
18 to California Code of Civil Procedure section 1021.5 and other applicable law. The Plaintiff, on
19 behalf of himself and Class Members, also seeks recovery of attorneys' fees and costs of this action
20 to be paid by Defendants as provided by the UCL and Labor Code sections 218, 218.5 and 1194.

21 107. As a result of Defendants' unlawful and unfair business practices, Plaintiff and
22 members of the proposed Class are entitled to and seek restitution and disgorgement, and other
23 appropriate relief available under Cal. Bus. & Prof. Code sections 17200 et. seq.

24 108. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief
25 as described herein and below.

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EIGHTH CAUSE OF ACTION

(ENFORCEMENT OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

(Lab. Code §§ 2698, *et seq.*)

(Against all Defendants)

109. Plaintiff incorporates in this cause of action each and every allegation of all preceding paragraphs, as though fully set forth herein.

110. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action under PAGA only after giving the LWDA and the employer notice of the Labor Code sections alleged to have been violated, and after receiving notice from the LWDA of its intention not to investigate or after 65 days have passed without notice from the LWDA.

111. On September 15, 2021, Plaintiff gave written notice of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violations, as required by Labor Code section 2699.3. This written notice was provided via certified mail to Defendants and to the LWDA by electronically filing the notice via the Department of Industrial Relations' website. More than 65 days has passed since Plaintiff submitted his PAGA notice to the LWDA without notice from the LWDA. Accordingly, Plaintiff has exhausted his administrative remedies and may amend his Complaint to add a PAGA cause of action.

112. Pursuant to Labor Code section 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to the procedures specified in Labor Code section 2699.3.

113. For all provisions of the Labor Code except those for which a civil penalty is specifically provided, Labor Code section 2699(f) imposes upon Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and

1 two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent
2 pay period in which Defendants violated these provisions of the Labor Code.

3 114. The provisions of the Labor Code upon which Plaintiff seeks remedies available
4 under PAGA and which Defendants violated, during the PAGA Period include, but are not limited
5 to, the following:

6 (a) Violation of Labor Code sections 201-204, 210, 218, 221, 510, 558, 1182.12,
7 1194, 1194.2, 1197, 1197.1, 1198, and 1199 for failure to timely pay all earned wages (including
8 minimum, regular, and overtime wages) owed to Plaintiff and other aggrieved employees during
9 employment and upon separation of employment as herein alleged;

10 (b) Violations of Labor Code sections 226.7 and 512, and the applicable Wage
11 Order, by failing to provide a duty-free, uninterrupted, thirty-minute meal period prior to the start
12 of the sixth hour of work, and a second duty-free, uninterrupted, thirty-minute meal period prior to
13 the start of the eleventh hour of work, or premium compensation in lieu thereof, to Plaintiff and
14 other aggrieved employees during employment as herein alleged;

15 (c) Violations of Labor Code section 226.7 and Wage Order 16, by failing to
16 provide a duty-free, uninterrupted, ten-minute rest period for every four hours works, or greater
17 fraction thereof, or premium compensation in lieu thereof, to Plaintiff and other aggrieved
18 employees during employment as herein alleged;

19 (d) Violation of Labor Code section 2802 for failure to provide Plaintiff and
20 other aggrieved employees with full reimbursement of all necessary business expenditures suffered
21 during employment as herein alleged;

22 (e) Violation of Labor Code sections 226 and 226.3 for failure to provide
23 accurate itemized wage statements to Plaintiff and other aggrieved employees as herein
24 alleged; and

25 (f) Violation of Labor Code section 1174 for failure to maintain accurate
26 records regarding the employment of Plaintiff and other aggrieved employees as herein alleged.

1 115. Further, Labor Code section 558(a) provides “[a]ny employer or other person acting
2 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
3 provision regulating hours and days of work in any order of the Industrial Welfare Commission
4 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
5 underpaid employee for each pay period for which the employee was underpaid . . . (2) For each
6 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period
7 for which the employee was underpaid.”

8 116. Labor Code section 1197.1 also provides “[a]ny employer or other person acting
9 either individually or as an officer, agent, or employee of another person, who pays or causes to be
10 paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by
11 an order of the commission shall be subject to a civil penalty . . . as follows: (1) For any initial
12 violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee
13 for each pay period for which the employee is underpaid . . . (2) For each subsequent violation for
14 the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each
15 pay period for which the employee is underpaid regardless of whether the initial violation is
16 intentionally committed.

17 117. As set forth above, Defendants have violated numerous provisions of the Labor
18 Code regulating hours and days of work as well as the IWC Wage Orders. Accordingly, Plaintiff
19 also seeks the civil penalties set forth in Labor Code sections 558 and 1197.1 for himself, the
20 underpaid employees, and the State of California.

21 118. Plaintiff is an “aggrieved employee” because he was employed by the alleged
22 violators and had one or more of the alleged violations committed against him, and therefore is
23 properly suited to represent the interests of all other aggrieved employees.

24 119. Plaintiff has exhausted the procedural requirements under Labor Code section
25 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of himself
26 and all other aggrieved employees under the PAGA.

120. Pursuant to Labor Code sections 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

121. For bringing this action, Plaintiff is entitled to attorney's fees and costs incurred herein..

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself, the proposed Class, and other aggrieved employees, prays for judgment and the following specific relief against Defendants as follows:

1. That the Court determine that this action may be maintained as a class action under California Code of Civil Procedure section 382;

2. That Plaintiff be appointed the representative of the Class Members;

3. That the attorneys of record for Plaintiff whose names appear in this FAC be appointed Class Counsel;

4. For compensatory damages, including unpaid wages for all work for which they were not paid, in an amount according to proof with interest thereon;

5. For such general and special damages as may be appropriate;

6. For penalties, including, pursuant to Labor Code sections 203 and 226.

7. For pre-judgment interest;

8. For the amounts provided for in Labor Code section 226.7;

9. For attorney's fees and costs of suit, including expert fees pursuant to Labor Code sections 218.5, 218.6, 226, 1194.3, 2699(g)(1), and California Code of Civil Procedure section 1021.5;

10. For restitution as described in the cause of action under Cal. Bus. & Prof. Code sections 17200 *et seq.* above;

11. For permanent injunctive and declaratory relief described in the cause of action under Cal. Bus. & Prof. Code sections 17200 *et seq.* above;

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Justin E. D. Daily
Reed Aljian
Simon Kwak
Joshua D. Klein
Attorneys for Plaintiff
Hermilo Figueroa Celis, on behalf of
himself and all others similarly situated

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all others similarly situated, hereby requests a jury trial on the claims so triable.

Dated: November 22, 2021

DAILY ALJIAN LLP

By: /s/ Justin E. D. Daily

Justin E. D. Daily
Reed Aljian
Simon Kwak
Joshua D. Klein
Attorneys for Plaintiff
Hermilo Figueroa Celis, on behalf of
himself and all others similarly situated

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

Case Name: ***CELIS v. EARL ADAMS TILE-COPING & PLASTERING, INC. et al.***

I am employed in the City of Newport Beach, County of Orange, State of California. I am over the age of 18 years and not a party to the above-titled action. My business address is 100 Bayview Circle, Suite 5500, Newport Beach, California 92660. On November 22, 2021, I caused the foregoing document(s) to be served:

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

on the following parties:

Eileen P. Darroll
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1010 B Street, Suite 300
San Rafael, CA 94901
*Attorney for Earl Adams Tile-Coping
& Plastering, Inc.*

[X] (BY MAIL) I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Newport Beach, California. I am readily familiar with the practice of DAILY ALJIAN LLP for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 22, 2021, at Newport Beach, California.

/s/ Hilda Crowley
Hilda Crowley

EXHIBIT C

September 15, 2021

VIA ONLINE FILING

California Labor and Workforce Development Agency

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

Earl Adams Tile-Coping & Plastering, Inc.
3675 Old Santa Rita Rd.
Pleasanton, CA 94588

Agent for Service of Process for Earl Adams Tile-Coping & Plastering, Inc.
Tony C. Adams
3675 Old Santa Rita Rd.
Pleasanton, CA 94588

Re: Hermilo Figueroa Celis v. Earl Adams Tile-Coping & Plastering, Inc.
Notice Pursuant to Labor Code Section 2699.3(a)

Dear Labor and Workforce Development Agency, Earl Adams Tile-Coping & Plastering, Inc.:

We write to give notice of previous and ongoing Labor Code violations by Defendant Earl Adams Tile-Coping & Plastering, Inc. ("Defendant"). This firm represents Hermilo Figueroa Celis ("Claimant"), a former employee of Defendant. This letter shall serve as Claimant's notice of Labor Code violations and the facts and theories to support the alleged violations against her current employer pursuant to California Labor Code section 2699.3(a).

As detailed herein below, while in Defendant's employ, Claimant and other aggrieved employees experienced one or more of Defendant's violations of the California Labor Code and IWC Wage Orders. Once vested with statutory authority, Claimant intends to assert a claim for civil penalties pursuant to Labor Code section 2698, *et seq.* ("PAGA").

California Labor Code Provisions Allegedly Violated by Defendant

The specific provisions of the Labor Code alleged to have been violated by Defendant and those upon which Claimant seeks remedies available under PAGA include, but are not limited to, the following: §§ 201-204, 204b, 210, 218, 218.5, 218.6, 221, 225.5, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, *et seq.*, and 2802.

Facts and Theories Supporting the Allegations Against Defendant

Defendant hires non-exempt employees to construct and remodel swimming pools at multiple locations within the State of California. Claimant was employed by Defendant within the past year. Defendant, along with other persons (whose exact identities have yet to be confirmed) acting on behalf of the corporate entities, violated or caused to be violated the California Labor Code and applicable provisions of the Industrial Welfare Commission (“IWC”) Wage Orders.

Claimant and other aggrieved employees worked for Defendant as non-exempt hourly employees in California. Claimant’s responsibilities as a construction crew member included, among other things, constructing and remodeling swimming pools at multiple client locations.

At all times relevant, Labor Code section 1182.12 required that on and after January 1, 2016, the minimum wage for all industries shall be not less than ten dollars (\$10) per hour. (Lab. Code, § 1182.12.) In addition, “[f]or any employer who employs 26 or more employees, the minimum wage shall be as follows: (D) From January 1, 2020, to December 31, 2020, inclusive, thirteen dollars (\$13) per hour. (E) From January 1, 2021, to December 31, 2021, inclusive, fourteen dollars (\$14) per hour.” (*Id.*)

At all times relevant, pursuant to Labor Code sections 1197 and 1198, it was unlawful to pay less than the wage established by law or to employ persons in excess of the hours fixed by the IWC or under conditions prohibited by the IWC Wage Orders codified at 8 Cal. Code Reg., Division 1 (the “Wage Order”). Labor Code section 1199 provides that “[e]very employer or other person acting either individually or as an officer, agent, or employee of another person is . . . punishable by a fine of not less than one hundred dollars (\$100)” for requiring any employee to work longer hours fixed by or under conditions of labor prohibited by a Wage Order, paying any employee less than the minimum fixed by a Wage Order, or violates to comply with the Labor Code or any Wage Order.

At all times relevant, Labor Code section 558 provided, in pertinent part, “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee.”

At all times relevant, Labor Code section 204 provided that all wages, other than those mentioned in Section 201 or 202 earned by any person in any employment, are due and payable twice during each calendar month, on days

designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. Labor Code section 204b provided that labor performed by a weekly-paid employee shall be paid no later than the regular pay day or no later than seven days after the regular pay day depending on when the labor was performed.

At all times relevant, Labor Code section 210 provided, in pertinent part, “every person who fails to pay the wages of each employee as provided in Sections . . . 204, 204b, . . . shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

At all times relevant, Labor Code section 218 provided in pertinent part, “...Nothing in this article shall limit the right of any wage claimant to sue directly or through an assignee for any wages or penalty due him under this article.”

At all times relevant, Labor Code section 510 and all applicable Wage Orders required the payment of wages at a rate of one-half times the regular rate of pay for work in excess of eight (8) hours in one workday and/or forty (40) hours in one workweek, and the payment of wages at a rate of two times the regular rate of pay for work in excess of twelve (12) hours in one workweek.

At all times relevant, Labor Code section 203 provided that an employer who willfully fails to pay, without abatement or reduction, in accordance with Sections 201 and 202, 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 therefore is commenced; but the wages shall not continue for more than thirty (30) days

Throughout the course of Claimant’s employment, Defendant failed to pay Claimant and other aggrieved employees all wages for hours worked, including minimum, regular and overtime wages. Specifically, Defendant failed to compensate Claimant and other aggrieved employees for all hours worked by not compensating them for all hours exceeding eight (8) in one workday. Claimant and other aggrieved employees typically worked shifts of 12-14 hours in one workday. Defendant, however, failed to accurately report and pay for the time that Claimant and other aggrieved employees worked by, *inter alia*, rounding the times that employees worked, shaving the hours that employees worked, automatically deducting time for meal periods, and/or reporting only scheduled shift time as hours worked as opposed to the actual hours worked. Thus, to the extent such off-the-clock or unrecorded work time also entitled Claimant and other aggrieved employees to the payment of overtime wages, Defendant failed to pay all overtime wages owed. By failing to properly compensate Claimant and aggrieved employees all wages for all hours

worked, Claimant and aggrieved employees were not paid all lawful minimum wages, straight time wages, and overtime wages, in violation of Labor Code sections 201-204, 510, 1194, 1194.2, 1197, 1197.1, and 1198.

At all times relevant, the applicable Wage Orders and Labor Code § 512 require an employer to provide a duty-free, uninterrupted, thirty-minute meal period prior to the start of the sixth hour of work, and a second, duty-free, uninterrupted, thirty-minute meal period prior to the start of the eleventh hour of work.

At all times relevant, the applicable Wage Orders requires an employer to provide a duty-free, uninterrupted, ten-minute rest period for every four hours worked by an employee, or greater fraction thereof.

At all times relevant, the applicable Wage Orders and Labor Code section § 226.7 require an employer to pay an additional one (1) hour of compensation at the employee's regular rate of pay for each workday in which an employer fails to meet its obligations with respect to providing meal breaks, and an additional one (1) hour of compensation at the employee's regular rate of pay for each workday in which an employer fails to meet its obligations with respect to providing rest breaks.

Defendant failed to provide Claimant and other aggrieved employees all lawful meal periods as required by Labor Code Section 512 and section 11 of the applicable Wage Order. Claimant and other aggrieved employees were often not relieved of all duties to take a 30-minute meal period within the first five (5) hours of work or were required to work during their meal periods such that their meal periods were interrupted or cut short. Further, Defendant failed to adopt and implement a policy authorizing a second 30-minute meal period when Claimant and other aggrieved employees worked in excess of 10 hours per workday and maintained a practice of prioritizing work demands over allowing employees to take compliant meal periods. Accordingly, Defendant failed to provide Claimant and other aggrieved employees with uninterrupted off-duty meal periods for at least 30 minutes when they worked more than five hours and failed to provide uninterrupted off-duty meal periods for at least 30 minutes when they worked more than 10 hours in a workday. Defendant failed to compensate Claimant and other aggrieved employees with an additional hour of pay at their regular rate for every day in which they were denied a compliant meal period, in violation of Labor Code sections 226.7 and 512, and the applicable IWC Wage Orders.

Defendant failed to authorize or permit net ten-minute (10) rest periods for every four (4) hours or major fraction thereof worked because Claimant's and other aggrieved employees' rest periods were late, missed or uninterrupted. Additionally, Defendant failed to adopt and implement a policy authorizing a third rest period after 10 hours of work in a workday. When Claimant and other aggrieved employees did not receive lawful rest periods, Defendant violated Labor Code Section 226.7 and section 12 of the applicable Wage Order by failing to pay an additional hour of pay at the regular rate of pay for every day in which Claimant and other aggrieved employees suffered rest period violations.

At all times relevant, Labor Code section 2802 requires employers to indemnify employees for all necessary expenditures incurred by employees in the discharge of their duties

Defendant failed to reimburse Claimant and other aggrieved employees for all business expenses incurred as a direct consequence of the discharge of their job duties in violation of Labor Code sections 2800 and 2802. Defendant required Claimant and other aggrieved employees to use their personal cellular phones to communicate with supervisors, without compensating them for a reasonable portion of their monthly bills attributable to work duties. Defendant also required Claimant and other aggrieved employees to perform work duties, such as loading and unloading materials, without compensating them for the cost of insurance, fuel, wear and tear, and other related expenses of operating their personal automobiles. Defendant's failure to reimburse Claimant and other aggrieved employees for necessary business expenses amounted to an unlawful deduction of wages in violation of Labor Code section 221. Labor Code section 225.5 provides that an employer is subject to a civil penalty of one hundred dollars (\$100) for any initial violation per employee and two hundred dollars (\$200) for each subsequent violation, plus 25 percent of the amount unlawfully withheld.

At all times relevant, Labor Code section 200 defined "wages" as including all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.

At all times relevant, Labor Code section 201 provided that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

At all times relevant, Labor Code section 202 provided that if an employee not having a written contract for a definite period quits their employment, their wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours advance notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

At all times relevant, Labor Code section 226 provided that an employer must furnish semimonthly accurate itemized statements showing, *inter alia*, "(1) gross wages earned, (2) total hours worked by the employee...(5) net wages earned...[and] (8) the name and address of the legal entity that is the employer..." (*Ibid.*)

As a result of, and in addition to, these actions, Defendant violated Labor Code section 226 by failing to provide itemized wage statements that accurately reported the total hours worked, and the total and net wages earned. Defendant also failed to include its legal name on itemized wage statements. Furthermore, Defendant failed to properly pay all these wages owed throughout Claimant's and other aggrieved employees' employment and following the end of these workers' employment with Defendant, in violation of Labor Code sections 201-204, and 210.

Defendant further violated Labor Code sections 1174 and 1174.5 by failing to maintain accurate and complete records showing the hours worked daily and the wages paid to Claimant and other aggrieved employees (due to the same unpaid wages and premium wages for missed meal and rest periods referenced above).

Claimant seeks attorneys' fees, interest, and penalties under the Labor Code and PAGA for all of the above violations. *See* Labor Code sections 218, 218.5, 218.6, and 2699(g).

Should the Labor & Workforce Development Agency have any questions or comments regarding the foregoing, or any aspect of this matter, please do not hesitate to contact my office.

Sincerely,

DAILY ALJIAN LLP

/s/ Joshua D. Klein

Joshua D. Klein

cc: Justin Daily
Reed Aljian
Simon Kwak