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9 **SUPERIOR COURT OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF LOS ANGELES**

11 MARIO HERRERA, on behalf of all others
12 similarly aggrieved,

13 Plaintiff,

14 vs. STONE ETC., INC., a California
15 corporation, G.B. MARBLE, INC., a
California corporation, GIORA BAREKET,
16 an individual, and DOES 1 through 10,
inclusive,

17 Defendants.
18
19

CASE NO. 21STCV43188

Assigned for All Purposes to:
Hon. Michelle Williams Court
Dept. 74

STIPULATION OF CLASS AND
REPRESENTATIVE ACTION SETTLEMENT
AND RELEASE

20 **STIPULATION OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT**
21 **AND RELEASE**

22 This Stipulation of Class Action Settlement and Release (“Settlement” or “Settlement
23 Agreement”) is made and entered into by and between Plaintiff Mario Herrera (“Plaintiff” or
24 “Class Representative”), as individuals and on behalf of all others similarly situated and
25 aggrieved, and Defendants Stone Etc., Inc., G.B. Marble, Inc., and Giora Bareket (collectively
26 “Defendants” or “Stone”) (collectively with Plaintiff, the “Parties”).
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DEFINITIONS

The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

1. “Action” means the civil lawsuit filed by Plaintiff against Defendants, styled Mario Herrera v. Stone Etc., Inc., et al., Los Angeles County Superior Court Case No. 21STCV43188.

2. “Appeal” means a timely appeal by a Class Member to the Order and Judgment approving the Settlement, or an appeal by one of the Parties to an order that materially alters the Settlement.

3. “Attorney’s Fees and Costs” means attorney’s fees agreed upon by the Parties and approved by the Court for Class Counsel’s litigation and resolution of the Action, and all costs incurred and to be incurred by Class Counsel in the Action, including but not limited to, costs associated with documenting the Settlement, providing any notices required as part of the Settlement or Court order, securing the Court’s approval of the Settlement, administering the Settlement, obtaining entry of an Order and Judgment approving the Settlement, and expenses for any experts. Class Counsel will request not more than one-third of the Gross Settlement Amount, or One Hundred Eleven Thousand Six Hundred Sixty Six Dollars and Sixty Seven Cents (\$111,666.67) in attorney’s fees, and not more than Fifteen Thousand Dollars and Zero Cents (\$15,000.00) in litigation costs and expenses. Defendants have agreed not to oppose Class Counsel’s request for attorney’s fees and costs and expenses as set forth above.

4. “Class Counsel” means J. Kirk Donnelly and the Law Offices of J. Kirk Donnelly, A Professional Corporation.

5. “Class List” means a complete list of all Class Members that Defendants will diligently and in good faith compile from its records and provide to the Settlement Administrator within ten (10) business days after entry of an Order granting Preliminary Approval of this Settlement. The Class List will be formatted in Microsoft Office Excel and will include each Class Member’s full name; most recent mailing address and telephone number; Social Security Number; and dates of employment.

- 1 6. “Class Member(s)” or “Settlement Class” means all individuals employed by
2 Defendants in California as an hourly-paid, non-exempt employee during the Class Period.
- 3 7. “Class Notice” means the Notice of Class Action Settlement substantially in the
4 form attached hereto as Exhibit A, and approved by the Court.
- 5 8. “Class Period” means the period from November 23, 2017 through July 16, 2022,
6 inclusive.
- 7 9. “Class Representative” means Plaintiff Mario Herrera.
- 8 10. “Gross Settlement Amount” means the amount of Three Hundred Thirty Five
9 Thousand Dollars and Zero Cents (\$335,000.00), to be paid by Defendants in full satisfaction of
10 all claims alleged in the Action or that could have been alleged in the Action, based on the
11 operative facts alleged therein, which includes all Individual Settlement Payments to Participating
12 Class Members, the Labor & Workforce Development Agency Payment, Attorney’s Fees and
13 Costs, the Class Representative Enhancement Payment, and Settlement Administration Costs.
14 Any employer-side payroll taxes required by law, including the employer-side FICA, FUTA, and
15 SDI contributions, will be paid by Defendants separately and apart from the Gross Settlement
16 Amount. There will be no reversion of any portion of the Gross Settlement Amount to
17 Defendants.
- 18 11. “Court” means Department 74 of the Los Angeles County Superior Court.
- 19 12. “Effective Date” shall be when Final Approval of the Settlement can no longer be
20 appealed by an objector, or in the absence of any objections (or if all objections are withdrawn
21 with Court approval by the time of the Final Approval Hearing) or any plaintiff in intervention,
22 upon Notice of Entry of Judgment. If objections are heard by the Court and overruled, and no
23 appeal is taken of the Judgment by an objector or plaintiff in intervention, then the Effective Date
24 shall be sixty-five (65) calendar days after Notice of Entry of Judgment. If any appeal is taken
25 from the Court’s overruling of any objections to the Settlement, then the Effective Date shall be
26 ten (10) calendar days after all appeals are withdrawn or after an appellate decision affirming the
27 Final Approval and Judgment becomes final.
- 28 13. “Final Approval” means the Court’s Order granting final approval of the

1 Settlement.

2 14. "Individual Settlement Payment" means each Participating Class Member's
3 respective share of the Net Settlement Amount.

4 15. "Labor & Workforce Development Agency Payment" means the payment of Three
5 Thousand Seven Hundred Fifty Dollars (\$3,750.00) from the Gross Settlement Amount to the
6 California Labor & Workforce Development Agency for its portion of the civil penalties paid
7 under the Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.* 16.

8 "Net Settlement Amount" means the portion of the Gross Settlement Amount remaining
9 after deducting the Class Representative Enhancement Payments, the Labor & Workforce
10 Development Agency Payment, Attorney's Fees and Costs, and Settlement Administration Costs.
11 The entire Net Settlement Amount will be distributed to the Participating Class Members. There
12 will be no reversion of any portion of the Net Settlement Amount to Defendants. The Parties
13 estimate there were approximately 17,248 Qualified Workweeks at issue. If the number of Qualified
14 Workweeks is 10% higher (or 18,973 Qualified Workweeks), then the Net Settlement Amount shall be
15 increased proportionally by the Qualified Workweeks worked in excess of 18,973 workweeks multiplied
16 by the per Workweek Value. The Parties agree that the Workweek Value is \$19.42 (\$335,000/17,248
17 workweeks).

18 17. "Notice of Entry of Judgment" means a Notice of Entry of Judgment pursuant to
19 section 664.5(c) of the California Code of Civil Procedure filed and served by Plaintiff.

20 18. "Objection" means a Class Member's valid and timely written objection to the
21 Settlement Agreement. For an Objection to be valid, it must include: (i) the objector's full name,
22 signature, address, and telephone number; (ii) a written statement of all grounds for the objection
23 accompanied by any legal support for such objection; and (iii) copies of papers, briefs, or other
24 documents upon which the objection is based, if any. Alternatively, any Class Member may
25 object by appearing at the Final Approval Hearing either with or without submitting a written
26 Objection.

27 19. "Parties" means Plaintiff and Defendants collectively.

28 20. "Participating Class Member" means any Class Member who does not submit a

1 timely and valid Request for Exclusion.

2 21. "Plaintiff" means Mario Herrera.

3 22. "Plaintiff's Counsel" means J. Kirk Donnelly and the Law Office of J. Kirk
4 Donnelly, A Professional Corporation.

5 23. "Preliminary Approval" means the Court order granting preliminary approval of
6 the Settlement.

7 25. "Qualifying Workweek(s)" means each seven-day period(s) commencing on
8 Sunday at 12:00 a.m. and ending on a Saturday at 11:59 p.m. in which a Class Member was
9 employed by Defendants in California during the Class Period, minus furlough/leave dates (as
10 applicable).

11 26. "Released Claims" means any and all class claims that were asserted in the
12 operative First Amended Class and Representative Action Complaint or that could have been
13 asserted based on the allegations made in the operative First Amended Class and Representative
14 Action Complaint, for the duration of the Class Period. As to claims under PAGA, the Released
15 Claims include any and all claims for civil penalties under PAGA asserted in the PAGA Notice
16 filed with the LWDA, or claims for civil penalties under PAGA that arise based on the allegations
17 in the PAGA Notice filed with the LWDA, for the duration of the PAGA period of September 19,
18 2020 to July 16, 2022. The Released Claims do not include any claims that cannot be released as a
19 matter of law.

20 27. "Released Parties" means Defendants and each of their former, present and future
21 owners, parents, and subsidiaries, and all of their current, former, and future officers, directors,
22 members, managers, employees, consultants, partners, shareholders, joint venturers, agents,
23 predecessors, successors, assigns, accountants, insurers, reinsurers, and/or legal representatives.

24 28. "Request for Exclusion" means a timely letter submitted by a Class Member
25 indicating a request to be excluded from the Settlement. The Request for Exclusion must: (i) set
26 forth the name, address, telephone number and last four digits of the Social Security Number of
27 the Class Member requesting exclusion; (ii) be signed by the Class Member; (iii) be returned to
28 the Settlement Administrator; (iv) clearly state that the Class Member does not wish to be

1 included in the Settlement; and (v) be postmarked on or before the Response Deadline.

2 29. "Response Deadline" means the deadline by which Class Members must postmark
3 to the Settlement Administrator Requests for Exclusion, or postmark Objections to the Settlement
4 Administrator. The Response Deadline will be forty-five (45) calendar days from the initial
5 mailing of the Class Notice by the Settlement Administrator, unless the 45th day falls on a
6 Sunday or Federal holiday, in which case the Response Deadline will be extended to the next day
7 on which the U.S. Postal Service is open.

8 30. "Settlement Administration Costs" means the costs to the Settlement
9 Administrator for administering this Settlement, including, but not limited to, printing,
10 distributing, and tracking documents for this Settlement, creating and maintaining a web site and
11 toll-free telephone number, tax reporting, distributing the Gross Settlement Amount, and
12 providing necessary reports and declarations, as requested by the Parties or the Court. The
13 Settlement Administration Costs will not exceed Fifteen Thousand Dollars and No Cents
14 (\$15,000.00).

15 31. "Settlement Administrator" means CPT Group, Inc., or any other third-party class
16 action settlement administrator agreed to by the Parties and approved by the Court for the
17 purposes of administering this Settlement. The Parties each represent that they do not have any
18 financial interest in the Settlement Administrator or otherwise have a relationship with the
19 Settlement Administrator that could create a conflict of interest.

20 **TERMS OF AGREEMENT**

21 The Plaintiff, on behalf of himself and the Settlement Class, and Defendants agree as
22 follows:

23 32. Class Certification. For settlement purposes only, the Parties agree that the Class
24 shall be certified. This Settlement Agreement is contingent upon the approval and certification by
25 the Court of the Class for settlement purposes only. Defendants do not waive, and instead
26 expressly reserve, all rights to challenge the propriety of class certification for any purpose should
27 the Court not approve the Settlement. In connection with the proposed certification of the Class,
28 the Parties shall cooperate and present to the Court for its consideration competent evidence, as

1 may be requested by the Court, under the applicable due process requirements and standards for
2 class certification. In the event either preliminary or final approval of the Settlement is not
3 obtained or, if obtained, is reversed upon appeal, the Parties shall be returned to their respective
4 positions in the action as they existed immediately prior to the execution of this Agreement.
5 Furthermore, nothing said or represented in connection with obtaining approval of the Court with
6 respect to this settlement, either on a preliminary or final basis, shall be admissible for any
7 purpose other than to obtain approval by the Court of this Settlement. To effectuate the
8 settlement on a class basis, the Parties will stipulate to Plaintiff filing an amended complaint alleging
9 class claims consistent with the original complaint and this settlement, including claims for alleged facial
10 wage statement violations and alleged failure to reimburse expenses, either before or concurrently with
11 submission of the motion seeking preliminary approval of the settlement.

12 33. Funding of the Gross Settlement Amount. Defendants will deposit the Gross
13 Settlement Amount via wire transfer into a Qualified Settlement Account (“QSA”) to be
14 established by the Settlement Administrator in three installments as follows:

15 First Installment: in the amount of One Hundred Thirty Five Thousand Dollars and No
16 Cents (\$135,000.00) within thirty (30) calendar days of the Effective Date;

17 Second Installment: in the amount of One Hundred Thousand Dollars and No Cents
18 (\$100,000.00) within one hundred eighty (180) calendar days of the First Installment; and

19 Third Installment: in the amount of One Hundred Thousand Dollars and No Cents
20 (\$100,000.00) within one hundred eighty (180) calendar days of the Second Installment.

21 34. Attorney’s Fees and Costs. Defendants agree not to oppose or impede any
22 application or motion by Class Counsel for Attorney’s Fees and Costs, not to exceed one-third
23 (1/3) of the Gross Settlement Amount, or One Hundred Eleven Thousand Six Hundred Sixty Six
24 Dollars and Sixty Seven Cents (\$111,666.67) in attorney’s fees, and actual litigation costs and
25 expenses not to exceed Fifteen Thousand Dollars and Zero Cents (\$15,000.00). The Parties
26 stipulate that, for purposes of settlement only, Plaintiff and the Class are the prevailing parties in
27 the Action and are entitled to attorney’s fees and costs under the applicable fee-shifting statutes,
28 including, inter alia, California Code of Civil Procedure section 1021.5, and Labor Code sections

1 218.5, 1194(a) and 2699(g). Any funds allocated to Attorney's Fees and Costs but not awarded
2 by the Court will be included in the Net Settlement Amount and distributed pro rata to the
3 Participating Class Members. The Settlement Administrator will issue an IRS Form 1099 to
4 Class Counsel for the Attorney's Fees and Costs.

5 35. Class Representative Enhancement Payments. In exchange for a general release,
6 and in recognition of his effort and work in prosecuting the Action on behalf of the Class
7 Members, Defendants agree not to oppose or impede any application or motion for a Class
8 Representative Enhancement Payment not to exceed Seven Thousand Five Hundred Dollars and
9 Zero Cents (\$7,500.00) to Plaintiff. The Class Representative Enhancement Payment will be paid
10 from the Net Settlement Amount and will be in addition to Plaintiff's Individual Settlement
11 Payment. Any funds allocated to the Class Representative Enhancement Payment but not
12 awarded by the Court will be included in the Net Settlement Amount and distributed pro rata to
13 the Participating Class Members. Plaintiff will be solely responsible to pay any and all applicable
14 taxes on the payment made pursuant to this paragraph, and the Settlement Administrator will
15 issue an IRS Form 1099 to Plaintiff for the Class Representative Enhancement Payment.

16 36. Settlement Administration Costs. The Settlement Administrator will be paid for
17 the reasonable costs of administration of the Settlement and distribution of payments from the
18 Gross Settlement Amount, which Settlement Administration Costs shall not exceed Fifteen
19 Thousand Dollars and Zero Cents (\$15,000.00). These costs, will include, *inter alia*, the required
20 tax reporting on the Individual Settlement Payments, the issuing of 1099 and W-2 IRS Forms,
21 distributing Class Notices, creating and maintaining a web site and toll-free telephone number,
22 calculating Individual Settlement Payments and distributing the Gross Settlement Amount as set
23 forth herein, and providing necessary reports and declarations. These costs shall be paid from the
24 Gross Settlement Amount. Any funds allocated to Settlement Administration Costs but not
25 incurred by or otherwise paid to the Settlement Administrator will be included in the Net
26 Settlement Amount and distributed pro rata to the Participating Class Members.

27 37. PAGA Allocation. The Parties agree to allocate Five Thousand Dollars (\$5,000)
28 from the Gross Settlement Amount to the resolution of all claims related to the Class Members

1 arising under the California Private Attorneys General Act of 2004 (California Labor Code
2 sections 2698, *et seq.*, “PAGA”). Pursuant to PAGA, Seventy-Five Percent (75%) of the PAGA
3 allocation, or Three Thousand Seven Hundred Fifty Dollars and No Cents (\$3,750.00), will be
4 paid to the California Labor & Workforce Development Agency as the Labor & Workforce
5 Development Agency Payment, and the remaining Twenty Five Percent (25%) of the PAGA
6 allocation, or One Thousand Two Hundred Fifty Dollars and No Cents (\$1,250.00), will be
7 allocated to the Net Settlement Amount for distribution to the Participating Class Members
8 employed by Defendants during the PAGA Period (defined as September 19, 2020 to July 16,
9 2022).

10 38. Individual Settlement Payment Calculations. The Individual Settlement Payment
11 for each Participating Class Member shall be determined as follows:

12 (a) forty percent (40%) of the Net Settlement Amount is allocated to all individuals
13 employed as a slab installer and/or slab installer helper;

14 (b) fifty percent (50%) of the Net Settlement Amount is allocated to all individuals
15 employed as a tile installer and/or tile installer helper; and

16 (c) ten percent (10%) of the Net Settlement Amount is allocated to all individuals
17 employed in any other non-exempt job position, including without limitation fabricator, polisher,
18 cutter, helper/janitorial, driver, and forklift/yard.

19 Each allocation above shall be divided by the total number of Qualifying Workweeks of
20 all individuals eligible to participate in the allocation. The result of this division is referred to as
21 the “Weekly Rate;” and (b) the amount of each Class Member’s Individual Settlement Payment
22 shall be the result of multiplying each Class Member’s number of Qualifying Workweeks by the
23 applicable Weekly Rate. The Settlement Administrator will perform all calculations necessary to
24 determine the Individual Settlement Payments based upon information provided by Defendants
25 with the Class List.

26 39. The Settlement Administrator shall be responsible for reducing each Individual
27 Settlement Payment based on any required deductions for each Participating Class Member as
28 specifically set forth herein, including employee-side tax withholdings or deductions.

1 40. The entire Net Settlement Amount will be disbursed to all Class Members who do
2 not submit timely and valid Requests for Exclusion. If there are any timely and valid Requests
3 for Exclusion from members of the Class, the Settlement Administrator shall not include all
4 Qualifying Workweeks attributable to such individuals as part of the calculation of the total class-
5 wide Qualifying Workweeks for all Participating Class Members under paragraph 38 above, so
6 that the amount available for distribution to the Participating Class Members equals 100% of the
7 Net Settlement Amount.

8 41. No Credit To Benefit Plans. The Individual Settlement Payments made to
9 Participating Class Members under this Settlement, as well as any other payments made pursuant
10 to this Settlement, will not be utilized to calculate any additional benefits under any benefit plans
11 to which any Class Members may be eligible, including, but not limited to: profit-sharing plans,
12 bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and
13 any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not
14 affect any rights, contributions, or amounts to which any Class Members may be entitled under
15 any benefit plans.

16 42. Administration Process. The Parties agree to cooperate in the administration of the
17 settlement and to make all reasonable efforts to control and minimize the costs and expenses
18 incurred in administration of the Settlement.

19 43. Delivery of the Class List. Within ten (10) business days of Preliminary Approval,
20 Defendants will provide the Class List to the Settlement Administrator.

21 44. Notice by First-Class U.S. Mail. Within ten (10) business days after receiving the
22 Class List from Defendants, the Settlement Administrator will mail a Class Notice to all Class
23 Members via regular First-Class U.S. Mail, using the most current, known mailing addresses
24 identified in the Class List.

25 45. Confirmation of Contact Information in the Class List. Prior to mailing, the
26 Settlement Administrator will perform a search based on the National Change of Address
27 Database for information to update and correct for any known or identifiable address changes.
28 Any Class Notices returned to the Settlement Administrator as non-deliverable on or before the

1 Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding
2 address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing
3 on the Class Notice. If no forwarding address is provided, the Settlement Administrator will
4 promptly attempt to determine the correct address using a skip-trace or other search using the
5 name, address and/or Social Security Number of the Class Member involved, and will then
6 perform a single re-mailing.

7 46. Class Notices. All Class Members will be mailed a Class Notice via First Class
8 U.S. Mail. Each Class Notice will provide: (i) information regarding the nature of the Action; (ii)
9 a summary of the Settlement's principal terms; (iii) the Settlement Class definition; (iv) the total
10 number of Qualifying Work Weeks worked by each respective Class Member while working for
11 Defendants as an hourly-paid, non-exempt employee during the Class Period; (v) each Class
12 Member's estimated Individual Settlement Payment and the formula for calculating Individual
13 Settlement Payments; (vi) the procedure for a Class Member to dispute the calculation of their
14 estimated Individual Settlement Payments; (vii) the dates that comprise the Class Period; (viii)
15 instructions on how to submit a Request for Exclusion or Objection; (ix) the deadlines by which
16 the Class Member must postmark Requests for Exclusion, and the deadlines by which the Class
17 Members must postmark Objections to the Settlement; and (x) the claims to be released. The
18 Class Notice shall be in substantially the same form as Exhibit A hereto, as approved by the
19 Court.

20 47. The Settlement Administrator will also set up and maintain a toll-free telephone
21 number for Class Members to contact the Settlement Administrator regarding the Settlement, and
22 the toll-free telephone number will be identified in the Class Notice.

23 48. Disputed Information on Class Notices. Class Members will have an opportunity
24 to dispute the information provided in their Class Notices. To the extent Class Members dispute
25 their total Qualifying Work Weeks while working for Defendants as an hourly-paid, non-exempt
26 employee during the Class Period, Class Members may produce evidence to the Settlement
27 Administrator showing that such information in the Class Notice is inaccurate. The Settlement
28 Administrator will decide the dispute. Defendants' records will be presumed correct, but the

1 Settlement Administrator will evaluate the evidence submitted by the Class Member and will
2 make the final decision as to the merits of the dispute, which decision shall be final and
3 unappealable by any Party or Class Member. All disputes will be resolved within ten (10)
4 business days of the Response Deadline.

5 49. Request for Exclusion Procedures. Any Class Member wishing to opt-out from
6 the Settlement Agreement must sign and postmark a written Request for Exclusion to the
7 Settlement Administrator within the Response Deadline. The postmark date will be the exclusive
8 means to determine whether a Request for Exclusion has been timely submitted.

9 50. Defective Submissions. If a Class Member's Request for Exclusion is defective as
10 to the requirements listed herein, that Class Member will be given an opportunity to cure the
11 defect(s). The Settlement Administrator will mail the Class Member a cure letter within three (3)
12 business days of receiving the defective submission to advise the Class Member that his or her
13 submission is defective and that the defect must be cured to render the Request for Exclusion
14 valid. The Class Member will have until the later of (i) the Response Deadline or (ii) fifteen (15)
15 calendar days from the date of the cure letter to postmark a revised Request for Exclusion. If the
16 revised Request for Exclusion is not postmarked within that period, it will be deemed untimely.

17 51. Option to Rescind the Settlement Agreement: Defendants may elect, at their
18 option, to rescind the Settlement if more than five percent (5%) of Class Members submit timely
19 and valid Requests for Exclusion. If Defendants exercise the conditional right to rescind, they
20 must do so by written communication to Class Counsel that is received by Class Counsel within
21 thirty (30) calendar days of the Response Deadline. In the event Defendants exercise the
22 conditional right to rescind, Defendants will be responsible for all Settlement Administration
23 Costs incurred to the date of rescission.

24 52. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
25 Member who does not affirmatively opt-out of the Settlement Agreement by submitting a timely
26 and valid Request for Exclusion will be bound by all of its terms, including those pertaining to the
27 Released Claims, as well as any Judgment that may be entered by the Court if it grants final
28 approval to the Settlement.

1 53. Objection Procedures. To object to the Settlement Agreement, a Class Member
2 must timely submit to the Settlement Administrator a written Objection. Any written Objection
3 must be signed by the Class Member and contain all information required by this Settlement
4 Agreement, as specified in the Class Notice. Written Objections may be mailed to the Settlement
5 Administrator as explained in the Class Notice. The Settlement Administrator will forward
6 copies of all written Objections to both Class Counsel and counsel for the Defendants within three
7 (3) calendar days of receipt. The postmark date will be deemed the exclusive means for
8 determining whether a written Objection is timely. Class Members who fail to object in the
9 manner specified above will be deemed to have waived all objections to the Settlement and will
10 be foreclosed from making any objections, whether by appeal or otherwise, to the Settlement
11 Agreement. Alternatively, any Class Member may appear at the Final Approval Hearing,
12 personally or through their own counsel, in order to have their objections heard by the Court,
13 regardless of whether such Class Member submits a written Objection. Only those Class
14 Members who do not submit a Request for Exclusion may object to the Settlement. At no time
15 will any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to
16 submit written or oral objections to the Settlement Agreement or appeal from the Order and
17 Judgment. Class Counsel will not represent any Class Members with respect to any such
18 objections to this Settlement.

19 54. Certification Reports. The Settlement Administrator will provide all counsel with
20 a weekly report that certifies the number of Class Members who have submitted valid Requests
21 for Exclusion, and whether any Class Member has submitted a challenge to any information
22 contained in their Class Notice. Additionally, the Settlement Administrator will provide to
23 counsel for both Parties any updated reports regarding the administration of the Settlement
24 Agreement as needed or requested.

25 55. Distribution of Settlement Payments. Within ten (10) calendar days of receipt of
26 each Installment Payment, the Settlement Administrator will issue on a pro rata basis all Court-
27 approved payments to: (i) the Participating Class Members; (ii) the Labor & Workforce
28 Development Agency; (iii) Plaintiff; (iv) Class Counsel, and (v) itself.

1 56. Un-cashed Settlement Checks. If a Participating Class Member's Individual
2 Settlement Payment check is not cashed within 120 days after its last mailing to the Participating
3 Class Member, the Settlement Administrator will send the Participating Class Member a letter
4 informing him or her that unless the check is cashed in the next 30 days, it will expire and
5 become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed.
6 All funds represented by uncashed checks and funds represented by Individual Settlement
7 Payments returned as undeliverable from the distributions of the First and Second Installment
8 Payments will be added back into the NSA and distributed pro rata to the Participating Class
9 Members. Subject to Court approval, if any checks remain uncashed following distribution of the
10 Third Installment Payment, the funds represented by those checks and funds represented by
11 Individual Settlement Payment checks returned as undeliverable will be forwarded to the California
12 State Controller's Unclaimed Property Fund.

13 57. Certification of Completion. Upon completion of administration of the Settlement,
14 the Settlement Administrator will provide a written declaration under oath to certify such
15 completion to the Court and counsel for all Parties.

16 58. Treatment of Individual Settlement Payments. All Individual Settlement Payments
17 will be allocated as follows: (i) one-third (1/3) of each Individual Settlement Payment will be
18 allocated as wages for which IRS Forms W-2 will be issued; and (ii) two-thirds (2/3) will be
19 allocated to expenses, penalties and interest for which IRS Forms 1099-MISC will be issued.

20 59. Administration of Taxes by the Settlement Administrator. The Settlement
21 Administrator will be responsible for issuing to Plaintiff, Participating Class Members, and Class
22 Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid
23 pursuant to this Settlement. The Settlement Administrator will also be responsible for forwarding
24 all payroll taxes and penalties to the appropriate government authorities.

25 60. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
26 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY
27 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER
28 PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS

1 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
2 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
3 INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE
4 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN
5 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31
6 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
7 EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX
8 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
9 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
10 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
11 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
12 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
13 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
14 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
15 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
16 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
17 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
18 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
19 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
20 AGREEMENT.

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

25 62. Nullification of Settlement Agreement. In the event that: (i) the Court does not
26 finally approve the Settlement as provided herein; or (ii) the Settlement does not become final for
27 any other reason, then this Settlement Agreement, and any documents generated to bring it into
28 effect, will be null and void. Any order or judgment entered by the Court in furtherance of this

1 Settlement Agreement will likewise be treated as void from the beginning.

2 63. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to
3 request the Preliminary Approval of the Settlement, and the entry of a Preliminary Approval
4 Order for (a) conditional certification of the Settlement Class for settlement purposes only, (b)
5 Preliminary Approval of the proposed Settlement Agreement, and (c) setting a date for the Final
6 Approval. The Preliminary Approval Order will provide for the Class Notice to be sent to all
7 Class Members as specified herein. In conjunction with the Preliminary Approval hearing,
8 Plaintiff will submit this Settlement Agreement, which sets forth the terms of this Settlement, and
9 will include the proposed Class Notice, which is attached hereto as Exhibit A. Plaintiff shall also
10 timely provide notice of the settlement and Preliminary Approval Hearing to the Labor &
11 Workforce Development Agency as required by PAGA.

12 64. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the
13 deadline to postmark Requests for Exclusion and Objections, and with the Court's permission, a
14 Final Approval Hearing will be conducted to determine the Final Approval of the Settlement,
15 along with the amounts properly payable for: (i) Individual Settlement Payments; (ii) the Labor &
16 Workforce Development Agency Payment; (iii) the Class Representative Enhancement Payments;
17 (iv) Attorney's Fees and Costs; and (v) all Settlement Administration Costs. The Final Approval
18 Hearing will not be held earlier than thirty (30) calendar days after the Response Deadline. Class
19 Counsel will be responsible for drafting all documents necessary to obtain final approval. Class
20 Counsel will also be responsible for drafting the application for the Representative Enhancement
21 Payments and Attorney's Fees and Costs, and a request for approval of the Settlement
22 Administration Costs, to be heard at the Final Approval Hearing.

23 65. Release by Plaintiff, the Settlement Class and LWDA. Upon the Effective Date
24 and conditioned upon full satisfaction of the payment obligations in Paragraph 55, Plaintiff and
25 all Participating Class Members will be deemed to have released the Released Claims, and the
26 LWDA will be deemed to have released the Released Claims brought under PAGA, and will be
27 barred from bringing or prosecuting any of the Released Claims against the Released Parties.

28 66. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by

1 the Court or after the Final Approval Hearing, the Parties will present the Judgment to the Court
2 for its approval. After entry of the Judgment, under Code of Civil Procedure section 664.6, the
3 Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and
4 enforcement of the terms of the Settlement, (ii) settlement administration matters, and (iii) such
5 post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement
6 Agreement.

7 67. Release by Plaintiff. Upon the Effective Date, in addition to the claims being
8 released by all Participating Class Members, Plaintiff will release and forever discharge the
9 Released Parties, to the fullest extent permitted by law, of and from any and all claims, known
10 and unknown, asserted and not asserted, which Plaintiff has or may have against the Released
11 Parties as of the date of execution of this Settlement Agreement. To the extent the foregoing
12 releases are releases to which Section 1542 of the California Civil Code or similar provisions of
13 other applicable law may apply, Plaintiff expressly waives any and all rights and benefits
14 conferred upon him by the provisions of Section 1542 of the California Civil Code or similar
15 provisions of applicable law, which are as follows:

16 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
17 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**
18 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
19 **RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY**
20 **AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED**
21 **PARTY.**

22 68. Exhibit Incorporated by Reference. The terms of this Settlement Agreement
23 include the terms set forth in the attached Exhibit, which is incorporated by this reference as
24 though fully set forth herein. Any Exhibit to this Settlement Agreement is an integral part of the
25 Settlement.

26 69. Entire Agreement. This Settlement Agreement and attached Exhibit constitute the
27 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral
28 agreements may be deemed binding on the Parties. The Parties expressly recognize California

1 Civil Code Section 1625 and California Code of Civil Procedure Section 1856(a), which provide
2 that a written agreement is to be construed according to its terms and may not be varied or
3 contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written
4 representations or terms will modify, vary or contradict the terms of this Settlement Agreement.

5 70. Amendment or Modification. Except as to non-material changes required by the
6 Court, no amendment, change, or modification to this Settlement Agreement will be valid unless
7 in writing and signed by the Parties. Concerning non-material changes required by the Court, the
8 Parties agree that their counsel may submit stipulated amendments to this Settlement Agreement
9 without obtaining further signatures from the Parties.

10 71. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant
11 and represent they are expressly authorized by the Parties whom they represent to negotiate this
12 Settlement Agreement and to take all appropriate action required or permitted to be taken by such
13 Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other
14 documents required to effectuate the terms of this Settlement Agreement. The Parties and their
15 counsel will cooperate with each other and use their best efforts to effect the implementation of
16 the Settlement. If the Parties are unable to reach agreement on the form or content of any
17 document needed to implement the Settlement, or on any supplemental provisions that may
18 become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of
19 the Court to resolve such disagreement.

20 72. Binding on Successors and Assigns. This Settlement Agreement will be binding
21 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
22 defined.

23 73. California Law Governs. All terms of this Settlement Agreement and Exhibit
24 hereto will be governed by and interpreted according to the laws of the State of California.

25 74. Execution and Counterparts. This Settlement Agreement is subject only to the
26 execution of all Parties. However, the Settlement Agreement may be executed in one or more
27 counterparts. All executed counterparts and each of them, including facsimile and scanned copies
28 of the signature page, will be deemed to be one and the same instrument provided that counsel for

1 the Parties will exchange among themselves original signed counterparts.

2 75. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe
3 this Settlement Agreement is a fair, adequate and reasonable settlement of the Action and have
4 arrived at this Settlement after adversarial and arm's-length negotiations before a well-respected
5 and neutral mediator, in the context of adversarial litigation, and taking into account all relevant
6 factors, present and potential. The Parties further acknowledge that they are each represented by
7 competent counsel and that they have had an opportunity to consult with their counsel regarding
8 the fairness and reasonableness of this Settlement.

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

13 77. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however,
14 that either party may appeal any court order that materially alters the Settlement Agreement's
15 terms.

16 78. Notices. Unless otherwise specifically provided herein, all notices, demands or
17 other communications given hereunder shall be in writing and shall be deemed to have been duly
18 given as of the third business day after mailing by United States registered or certified mail,
19 return receipt requested, addressed as follows:

20 To Plaintiff and the Settlement Class:

21 J. Kirk Donnelly
22 LAW OFFICES OF J. KIRK DONNELLY, APC
23 2173 Salk Ave., Suite 250
Carlsbad, CA 92008

24 To Defendants:

25 Jeffrey Ranen
26 Jack Jimenez
27 LEWIS BRISBOIS
28 555 W. Fifth St., Suite 4000
Los Angeles, CA 90071

79. Non-Admission of Liability. The Parties enter into this Settlement to resolve the

1 dispute that has arisen between them and to avoid the burden, expense and risk of continued
2 litigation. In entering into this Settlement, Defendants do not admit, and specifically deny, that
3 they violated any federal, state, or local law; violated any regulations or guidelines promulgated
4 pursuant to any statute or any other applicable laws, regulations or legal requirements; breached
5 any contract; violated or breached any duty; engaged in any misrepresentation or deception; or
6 engaged in any other unlawful conduct with respect to their employees. Neither this Settlement
7 Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, will
8 be construed as an admission or concession by Defendants of any such violations or failures to
9 comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this
10 Settlement, this Settlement Agreement and its terms and provisions will not be offered or received
11 as evidence in any action or proceeding to establish any liability or admission on the part of
12 Defendants or to establish the existence of any condition constituting a violation of, or a non-
13 compliance with, federal, state, local or other applicable law.

14 80. Waiver. No waiver of any condition or covenant contained in this Settlement
15 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered
16 to imply or constitute a further waiver by such party of the same or any other condition, covenant,
17 right or remedy.

18 81. Enforcement Actions. In the event that one or more of the Parties institutes any
19 legal action or other proceeding against any other Party or Parties to enforce the provisions of this
20 Settlement or to declare rights and/or obligations under this Settlement, the successful Party or
21 Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorney's
22 fees and costs, including expert witness fees incurred in connection with any enforcement actions.

23 82. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
24 and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be
25 construed more strictly against one party than another merely by virtue of the fact that it may
26 have been prepared by counsel for one of the Parties, it being recognized that, because of the
27 arms-length negotiations between the Parties, all Parties have contributed to the preparation of
28 this Settlement Agreement.

1 83. Representation By Counsel. The Parties acknowledge that they have been
2 represented by counsel throughout all negotiations that preceded the execution of this Settlement
3 Agreement, and that this Settlement Agreement has been executed with the consent and advice of
4 counsel. Further, Plaintiff and Plaintiff's Counsel warrant and represent that there are no liens on
5 the Settlement Agreement.

6 84. All Terms Subject to Final Court Approval. All amounts and procedures described
7 in this Settlement Agreement herein will be subject to final Court approval.

8 85. Cooperation and Execution of Necessary Documents. All Parties will cooperate in
9 good faith and execute all documents to the extent reasonably necessary to effectuate the terms of
10 this Settlement Agreement.

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

16 87. Interim Stay of Proceedings. The Parties agree to stay and hold all proceedings in
17 the Action, except such proceedings necessary to implement and complete the Settlement, in
18 abeyance pending the Final Approval to be conducted by the Court.

19 88. Confidentiality. Plaintiff, Plaintiff's Counsel, Defendants and their counsel agree
20 that they will not issue any press releases, initiate any contact with the press, respond to any press
21 inquiry or have any communication with the press about the fact, amount or terms of the
22 Settlement Agreement prior to Preliminary Approval. Nothing in this Settlement Agreement shall
23 limit Defendants' ability to fulfill disclosure obligations reasonably required by law or in
24 furtherance of business purposes, including the fulfillment of obligations stated in this Settlement
25 Agreement.

26
27 **SIGNATURES FOLLOW ON NEXT PAGE**

SIGNATURES

PLAINTIFF

DATED: 06 / 24 / 2022

By


Mario Herrera

DEFENDANTS

DATED:

By

Name

Title

Stone Etc., Inc.

DATED:

By

Name

Title

G.B. Marble, Inc.

DATED:

By

Giora Bareket

APPROVED AS TO FORM:

DATED: 6/27/22

By


J. Kirk Donnelly
Law Offices of J. Kirk Donnelly, APC
Attorneys for Mario Herrera

DATED:

By

Jeffrey Ranen
Jack Jimenez
Lewis Brisbois
Attorneys for Stone Etc., Inc.,
G.B. Marble, Inc., and Giora
Bareket

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SIGNATURES

PLAINTIFF

DATED:

By _____
Mario Herrera

DEFENDANTS

DATED: 6/20/12

By _____
Name Giora Bareket
Title President
Stone Etc., Inc.

DATED: 6/20/12

By _____
Name Giora Bareket
Title President
G.B. Marble, Inc.

DATED: 6/20/12

By _____
Giora Bareket

APPROVED AS TO FORM:

DATED:

By _____
J. Kirk Donnelly
Law Offices of J. Kirk Donnelly, APC
Attorneys for Mario Herrera

DATED: 6/20/12

By _____
Jeffrey Ranen
Jack Jimenez
Lewis Brisbois
Attorneys for Stone Etc., Inc.,
G.B. Marble, Inc., and Giora
Bareket

EXHIBIT A

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

**IF YOU WORKED AS AN HOURLY PAID EMPLOYEE IN
CALIFORNIA FOR STONE ETC. INC. AND/OR G.B. MARBLE,
INC., YOU MAY OBTAIN PAYMENTS FROM A SETTLEMENT
REACHED IN A PROPOSED CLASS AND REPRESENTATIVE
ACTION LAWSUIT**

**PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE
AFFECTED.**

This Notice is court approved. This is not a solicitation from an attorney.

YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT	
DO NOTHING	Receive compensation but release your rights to sue separately. If you do nothing, you will receive a proportional share of the settlement based on the time you worked in a relevant position during the Settlement Class period for the claims alleged in this lawsuit. You will also give up your rights to sue Stone Etc., Inc. and/or G.B. Marble, Inc. (together referred to as “Stone”) about any of the claims in this case that arose during the Settlement Class period.
EXCLUDE YOURSELF FROM THE SETTLEMENT	Get no compensation but keep rights to sue separately. If you ask to exclude yourself or “opt out” from the settlement, you remove yourself from this lawsuit and will not receive any compensation from the settlement, but you will keep your rights to sue Stone for the claims alleged in the lawsuit. However, the PAGA claims as described in this Notice will be released even if you opt-out of the Settlement.
OBJECT OR COMMENT	Tell the Court why you like or don’t like the settlement. You may write to the Court, or you may appear personally or through your own attorney and your own expense, and tell the Court about why you do or do not like the settlement. You must remain a part of the lawsuit to comment or object to the settlement, and you cannot object if you also ask to be excluded.

Any Questions? Call **[Settlement Admin Toll Free Ph. #]**

These rights and options – **and the time deadlines for exercising them** – are explained further in this Notice.

1. WHY DID I GET THIS NOTICE?

You have received this Notice because Stone’s records identify that you are a class member who may be entitled to money from this settlement.

This Notice describes a proposed settlement of a lawsuit called *Mario Herrera v. Stone Etc., Inc., G.B. Marble, Inc., and Giora Bareket*, filed on November 23, 2021 in the Los Angeles County Superior Court, Case Number 21STCV43188 (the “Lawsuit”). This Notice is being sent to you by the order of the Los Angeles County Superior Court, which preliminarily approved the settlement and conditionally certified the Settlement Class on [REDACTED].

At this time, the Court has determined only that there is sufficient evidence that the settlement might be fair, reasonable and adequate and any final determination of these issues will be made at the Final Approval Hearing described below. The Court has not made any rulings on the merits of the claims alleged.

This Notice informs you of the terms of the proposed settlement, describes your rights and options in connection with the settlement, and explains what steps you may take to participate in, object to, or exclude yourself from, the settlement. If you do not exclude yourself from the settlement and the settlement is finally approved by the Court, you will receive a settlement payment and be bound by the terms of the settlement and any final judgment.

2. WHAT IS THIS LAWSUIT ABOUT?

The Lawsuit was filed by Plaintiff Mario Herrera on behalf of all individuals who worked in California as employees paid on an hourly basis by defendants Stone Etc., Inc. and G.B. Marble, Inc. (together “Stone”) at any point between November 23, 2017 and July 16, 2022, inclusive. The Lawsuit initially alleged only claims under the California Private Attorneys General Act (“PAGA”) and later was amended to include class action allegations.

The Lawsuit currently alleges Defendants failed to pay Class Members for all hours worked, failed to provide all meal and rest breaks required under California law, failed to reimburse certain business expenses, failed to provide proper itemized wage statements, and failed to pay all wages due upon separation of employment. The Lawsuit also contains claims for unfair competition and violation of PAGA based on the same alleged Labor Code violations. Plaintiff seeks allegedly unpaid wages and expenses as well as statutory and civil penalties related to these claims. Defendants deny each and all of the claims and contentions alleged by the Plaintiff and believe they have consistently complied with all applicable laws. The Court has not made any rulings regarding the merits of the Lawsuit.

After engaging in extensive investigation and a full day of mediation before an experienced mediator, in which both sides recognized the substantial risks of an adverse result in the Lawsuit for either side, Plaintiff and Defendants agreed on a settlement of all class and PAGA claims that was preliminarily approved by the Court on [REDACTED]. Plaintiff and Class Counsel support the settlement.

Any Questions? Call [Settlement Admin Toll Free Ph. #]

The settlement represents a compromise of highly disputed claims. Nothing in the settlement is intended to or will be construed as an admission by Defendants that Plaintiff's claims in the Lawsuit have merit or that they have any liability to Plaintiffs or the Class on those claims. By agreeing to settle, Defendants are not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action. Stone has agreed to settle the case as part of a compromise with Plaintiff solely because of the risk and expense of continued litigation.

The parties and their counsel have concluded that the settlement is advantageous, considering the risks and uncertainties to each side of continued litigation and trial.

3. WHAT IS A CLASS ACTION?

In a class action lawsuit, one or more persons, called Class Representatives, sue on behalf of other people who they believe have similar claims. Plaintiff Mario Herrera is the Class Representative in the Lawsuit, and he asserts claims on behalf of himself and the Class Members. A class action potentially allows one court to resolve the claims of all the Class Members who choose not to exclude themselves from the class at the same time. A Class Member is bound by the determination or judgment entered in this case, whether the class wins or loses, and may not file his or her own lawsuit on the same claims that were decided in the class action.

4. WHY IS THERE A SETTLEMENT?

The Court did not decide in favor of Plaintiff or Defendants. Instead, both sides agreed to a settlement. That way, both sides avoid the risks and costs of a trial, and people affected will quickly receive compensation. The Class Representative and the attorneys think the settlement is best for the Class.

5. WHO IS INCLUDED IN THE SETTLEMENT CLASS?

All individuals who worked as an hourly-paid employee employed by Stone Etc. and/or G.B. Marble in California at any point from November 23, 2017 through July 16, 2022, inclusive, are included in the Class.

According to Defendants' records, you are member of the Class and eligible for payments under the settlement. If you are still not sure if you are entitled to participate in the settlement, please call [SETTLEMENT ADMIN. TOLL FREE PHONE NUMBER].

All individuals employed by Defendants as an hourly-paid employee at any point from September 19, 2020 through July 16, 2022, inclusive, are also a "PAGA Employee" and are eligible to receive a separate payment representing civil penalties allegedly owed under PAGA.

6. WHAT ARE THE TERMS OF THE CLASS SETTLEMENT?

In exchange for the release of claims against them and final disposition of the Lawsuit, Defendants will pay a total of Three Hundred Thirty Five Thousand Dollars and Zero Cents (\$335,000.00) ("Gross Settlement Amount" or "GSA"). Defendants will pay the GSA in three installments over approximately 13 months following final Court approval of the Settlement.

After attorney's fees and costs, a service payment to Plaintiff, a payment to the California Labor & Workforce Development Agency, and settlement administration costs are deducted from the Gross Settlement Amount, the remaining "Net Settlement Amount" will be distributed to Class Members who do not validly exclude themselves from the settlement ("Participating Class Members"), and to the PAGA Employees.

Subject to Court approval, the Gross Settlement Amount will be allocated as follows:

- **Individual Settlement Payment: Each Participating Class Member will receive a payment based the total number of "Qualifying Workweeks" they were employed by Defendants in California as an hourly-paid employee during the relevant time period.**

Because the legal claims available to Class Members are different depending on their job position, the Net Settlement Amount will be allocated as follows:

- (a) forty percent (40%) of the Net Settlement Amount is allocated to all individuals employed as a slab installer and/or slab installer helper;
- (b) fifty percent (50%) of the Net Settlement Amount is allocated to all individuals employed as a tile installer or tile installer helper; and
- (c) ten percent (10%) of the Net Settlement Amount is allocated to all individuals employed in any other non-exempt job position, including without limitation fabricator, polisher, cutter, helper/janitorial, driver, and forklift/yard.

Individual Settlement Payments will be calculated as follows: first, the allocation of the Net Settlement Amount for each group identified above will be divided by the total number of Qualifying Workweeks worked by all of the Class Members in each to determine the applicable "Workweek Rate." Second, the number of Qualifying Workweeks worked by individual Class Members in each group will be multiplied by the applicable Workweek Rate to arrive at each person's Individual Settlement Payment. (Some Class Members may have Qualifying Workweeks in more than one of the above groups.)

Your estimated Individual Settlement Payment is set forth in Section 7 below.

- **Class Representative Service Payments:** For acting as the Class Representative, Plaintiff will request from the Court an award of \$7,500.00 in recognition of and as compensation for his efforts, such as starting the Lawsuit, volunteering time to assist with the case, and providing information and documents, as well as risks he assumed in starting and assisting with the prosecution of the Lawsuit. Any amounts ordered by the Court will be paid from the Gross Settlement Amount.
- **Class Counsel's Attorney's Fees and Costs:** Class Counsel will request from the Court no more than one-third (1/3) of the Gross Settlement Amount (\$111,666.67) as attorney's fees for litigation and resolution of the Lawsuit. Class Counsel will also request from the Court reimbursement for litigation costs advanced on behalf of the Class, which will be no more than \$15,000.00. Any amount ordered by the Court for Class Counsel's attorney's fees and costs will be paid from the Gross Settlement Amount.
- **PAGA Allocation:** \$5,000.00 from the Gross Settlement Amount is allocated for settlement of Plaintiffs' claims under PAGA. Upon Court approval, 75% of the PAGA Payment (\$3,750.00)

will be paid to the California Labor & Workforce Development Agency, and 25% of the PAGA Payment (\$1,250.00) will be distributed to PAGA Employees who were employed by Defendants in California between September 19, 2020 and July 16, 2022 (the “PAGA Period”). There is no statutory right to opt out or otherwise exclude yourself from your Individual PAGA Payment and the associated release of claims and rights under PAGA.

- **Settlement Administration:** The costs of settlement administration will not exceed \$15,000.00, which pays for tasks such as mailing and tracking this Notice, mailing checks and tax forms, and reporting to the parties and the Court. Any amount ordered by the Court will be paid from the Gross Settlement Amount.
- All checks issued to Participating Class Members and PAGA Employees shall remain valid and negotiable for one hundred eighty (120) days from the date of their issuance. After expiration of this time, all funds related to unclaimed or uncashed checks will be forwarded to the California State Controller’s Unclaimed Property Fund.

7. WHAT DO I NEED TO DO TO RECEIVE A SETTLEMENT PAYMENT, AND HOW MUCH WILL I RECEIVE?

You do not need to do anything to receive a payment from the settlement.

Defendants’ records show that you worked a total of [Number of Workweeks] as an hourly-paid employee during the relevant time period. Accordingly, your anticipated Individual Settlement Payment is [\$ AMOUNT]. The actual amount you receive may vary somewhat depending on actual implementation of the Settlement.

There will be three separate distributions of your Individual Settlement Payment – the first distribution will be shortly after final approval of the Settlement, the second distribution will be about 6 months after the first distribution, and the third and final distribution will be about 6 months after the second distribution.

One-third of your Individual Settlement Payment will be issued in checks representing alleged unpaid wages with applicable federal, state, and local tax withholdings taken out, and you will be sent an IRS Form W-2 for tax purposes (just like a paycheck). Two-thirds of your Individual Settlement Payment will be issued in checks representing alleged penalties and interest, and you will be issued an IRS Form 1099 for tax purposes. 100% of your Individual PAGA Payment, if any, will be issued in checks representing alleged penalties and interest, and you will be issued an IRS Form 1099 for tax purposes. You will need to speak with an accountant or other tax professional about any tax issues related to your settlement checks.

If you dispute the information about the amount of your anticipated Individual Settlement Payment, you must send the Settlement Administrator in the mail any records (such as paystubs, pay checks or other records) supporting your calculation of the total number of work weeks you were employed by Defendants in an, hourly-paid position in California during the relevant time frame, along with a letter explaining the reasons for your dispute that also includes the last four digits of your social security number. The letter must be sent to the Settlement Administrator by [RESPONSE DEADLINE]. The date of the postmark will determine if it was timely mailed. The Settlement Administrator will review the information you submit along with Defendants’ records and make a final determination as to the correct amount of your settlement share.

Any Questions? Call [Settlement Admin Toll Free Ph. #]

The Settlement Administrator is:

Herrera v. Stone Etc. & G.B. Marble Settlement Administration
c/o Settlement Administrator
Street Address/PO Box
City, State, Zip Code

8. WHAT AM I GIVING UP TO STAY IN THE CLASS AND GET COMPENSATION?

For all Class Members, unless you ask to be excluded, you will remain a part of the Settlement Class, and that means you can't sue, continue to sue, or be a part of any other lawsuit or proceeding making any of the same claims and allegations made in *this* case. It also means all of the Court's orders will apply to you and legally bind you. If you stay in the Settlement Class, you will be deemed to have released and discharged Defendants and all their present and former officers, directors, employees, and agents (the "Released Parties), from any and all claims stated in the operative complaint of the Lawsuit or that are based upon the facts alleged in the operative complaint that arose during the Class Period, (the "Released Class Claims").

The Settlement Agreement contains additional details about the scope of the Released Claims and you may obtain a copy of the Settlement Agreement from the Settlement Administrator or Class Counsel listed below.

9. DO I HAVE A LAWYER IN THIS CASE?

The Court has decided the law firm below is qualified to represent you and the Settlement Class. This law firm is called "Class Counsel."

Law Offices of J. Kirk Donnelly, APC
2173 Salk Ave., Suite 250
Carlsbad CA 92008
(760) 209-5894

If you want to be represented by your own lawyer, you may hire one at your own expense.

10. WHAT IF I DON'T WANT TO PARTICIPATE IN THIS SETTLEMENT?

You have the right to request exclusion from the settlement. To do so, you must submit a Request for Exclusion to the Settlement Administrator at the following address:

Herrera v. Stone Etc. & G.B. Marble Settlement Administration
c/o Settlement Administrator
Street Address/PO Box
City, State, Zip Code

Any Questions? Call [Settlement Admin Toll Free Ph. #]

You must send your Request for Exclusion Form by mail no later than [RESPONSE DEADLINE] to the Settlement Administrator at the above address. The date of the postmark will determine if your Request for Exclusion Form was timely mailed. Unless you timely request to be excluded from the settlement, you will be bound by the judgment upon final approval of the settlement and payment of the Gross Settlement Amount, including the Release described in this Notice.

If you timely request to be excluded from the settlement, you will not be entitled to receive any payment under the settlement. However, to the extent you are a PAGA Employee and eligible to receive a portion of the PAGA Allocation, you will still receive that amount whether or not you submit a Request for Exclusion. This is because, if the Court approves the PAGA Allocation, there is no statutory right to opt out, object or otherwise exclude yourself from receiving a payment for PAGA claims and the associated release of claims and rights under PAGA.

11. WHAT IF I WANT TO OBJECT TO THIS SETTLEMENT?

Any Class Member who has **not** asked to be excluded from the settlement may object to the proposed settlement either in writing, by appearing at the Final Approval Hearing in person or through an attorney at your own expense, or both. The Final Approval Hearing is scheduled to take place on [REDACTED], 2022, at 8:30 a.m. in Department 74 of the Los Angeles County Superior Court, located at 111 N. Hill Street, Los Angeles, California 90012.

You must submit your Objection and all supporting papers if any to the Settlement Administrator by mailing to the following address:

Herrera v. Stone Etc. & G.B. Marble Settlement Administration
c/o Settlement Administrator
Street Address/PO Box
City, State, Zip Code

To be valid, your Objection and all supporting papers must be postmarked/faxed on or before [RESPONSE DEADLINE].

If you do not submit a written Objection, you may still appear at the Final Approval Hearing and make your objection verbally to the Court.

12. WHAT HAPPENS IF I DO NOT EXCLUDE MYSELF FROM THIS SETTLEMENT?

The settlement, if finally approved by the Court, will bind all Class Members who do not request to be excluded from the settlement whether or not they receive or timely cash their Individual Settlement Award. Final approval of the settlement will bar any Class Member who does not request to be excluded from the settlement from initiating a lawsuit or proceeding regarding the Released Claims.

13. WHAT IF MY CONTACT INFORMATION CHANGES?

Any Questions? Call [Settlement Admin Toll Free Ph. #]

If, after you receive this Notice you change your mailing address, it is your responsibility to inform the Settlement Administrator of your updated information.

14. THE FINAL APPROVAL HEARING

The Final Approval Hearing is scheduled to take place on [REDACTED], 2022, at 8:30 a.m. Department 74 of the Los Angeles County Superior Court, located at 111 N. Hill Street, Los Angeles, California 90012. The date and time may change without further notice to the Class.

At the Final Approval Hearing, the Court will make a final decision whether to approve the settlement, and will also decide what amounts will be awarded to Plaintiff for a service award, and to Class Counsel for attorney's fees and costs.

15. FURTHER INFORMATION

This Notice is only a summary of the settlement. To obtain a copy of the Settlement Agreement (which defines the capitalized terms used in this Notice), the Court's Preliminary Approval Order, or the operative complaint filed in the Lawsuit, please contact the Settlement Administrator at [SETTLEMENT ADMIN. TOLL FREE PHONE NUMBER] or Class Counsel listed above.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at [SETTLEMENT ADMIN. TOLL FREE PHONE NUMBER] or Class Counsel listed above. Please refer to the Herrera v. Stone Etc. and GB Marble Class Action Settlement.

PLEASE DO NOT TELEPHONE OR CONTACT THE COURT WITH QUESTIONS OR FOR INFORMATION REGARDING THIS SETTLEMENT