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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

EDGAR MARISCAL, individually,
and on behalf of other members of the
general public similarly situated,

Plaintiffs,

v.

ARIZONA TILE, LLC, an unknown
business entity; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 8:20-CV-02071-JLS-KES

Honorable Josephine L. Staton

CLASS ACTION

**DECLARATION OF EDWIN
AIWAZIAN IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT**

[Filed concurrently with Notice of Motion
and Motion for Preliminary Approval of
Class Action and PAGA Settlement;
Declaration of Proposed Class
Representative (Edgar Mariscal); and
[Proposed] Order]

Date: June 17, 2022
Time: 10:30 a.m.
Courtroom: 10A

Complaint Filed: September 15, 2020
FAC Filed: May 28, 2021
Trial Date: None Set

DECLARATION OF EDWIN AIWAZIAN

I, **Edwin Aiwazian**, hereby declare as follows:

1. I am an attorney duly licensed to practice law before all courts of the State of California and all United States District Courts in the State of California. I am a member of Lawyers *for* Justice, PC, attorneys of record for Plaintiff Edgar Mariscal in the above-captioned action. The facts set forth in this declaration are within my personal knowledge or based on information and belief and, if called as a witness, I could and would competently testify thereto.

ADEQUACY OF LAWYERS *for* JUSTICE, PC***EDUCATION***

2. In May of 2004, I graduated from *Pepperdine University School of Law* with a Juris Doctor degree. I have extensive formal training in dispute resolution and negotiation from the Straus Institute for Dispute Resolution as part of its Masters in Dispute Resolution degree program. In addition, I have previously served as a *pro bono* mediator for the Los Angeles County Superior Court. In October of 2000, I obtained a Litigation Paralegal Certificate from the *UCLA Extension Program*. During the summer of 2000, I studied Legal Writing at *Harvard University*. In April of 1999, I obtained a Bachelor of Arts degree in Communication with a concentration in Natural Sciences from *Pepperdine University*.

JUDICIAL EXTERNSHIPS

3. From approximately September 2002 to approximately December 2002, I served as a Judicial Extern to the Honorable Kim McLane Wardlaw of the *United States Court of Appeals for the Ninth Circuit*. From approximately June 2002 to approximately August 2002, I served as a Judicial Extern to the Honorable Earl Johnson, Jr. of the *California Court of Appeal for the Second Appellate District*.

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**LITIGATION AND REPRESENTATIVE AND CLASS ACTION
EXPERIENCE**

4. In December of 2004, I obtained a license to practice law from the California State Bar. From approximately December 2004 to approximately August 2008, I was employed by *Girardi & Keese*.

5. At *Girardi & Keese*, my practice focused on class actions and other complex cases involving toxic torts and products liability. In addition, I gained substantial experience on cases involving insurance bad faith, premises liability, and medical negligence. While employed by *Girardi & Keese*, I argued approximately 100 motions, took or defended approximately 150 depositions, and prepared dozens of expert witnesses for deposition or trial.

6. Since its inception in or around October of 2008, our firm has almost exclusively focused on the prosecution of consumer and employment class actions, involving wage-and-hour claims, race discrimination, unfair business practices or consumer fraud. Currently, we are the attorneys of record in over a dozen employment-related putative class actions in both federal and state courts in the State of California. Our firm has successfully litigated cases involving the executive, administrative, and other overtime exemptions to the State of California and federal minimum wage and overtime compensation requirements. During this relatively short time, in association with other law firms, we have recovered millions of dollars on behalf of thousands of individuals in California.

EXAMPLES OF RESULTS IN COMPLEX AND CLASS ACTIONS

7. What follows are just a few examples of the type of results we have achieved on behalf of our clients:

a) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-hour class and representative action against a major property management company involving allegations of misclassification of various “manager” positions. On September 20, 2010, the court granted final

1 approval of the class and representative action settlement. The Los Angeles
2 County Superior Court Case Number is BC400414.

3 b) Our firm, in association with co-counsel, represented the
4 plaintiffs in a wage-and-hour class action against a national retailer involving
5 allegations of misclassification of the “Assistant Store Manager” position. On
6 October 28, 2010, the court granted final approval of the class action settlement.
7 The Los Angeles County Superior Court Case Number is BC413498.

8 c) Our firm, in association with co-counsel, represented the
9 plaintiffs in a wage-and-hour class and representative action against a national
10 property management company involving allegations of misclassification of the
11 “Property Manager” position. On May 23, 2012, the court granted final approval
12 of the class and representative action settlement. The Los Angeles County
13 Superior Court Case Number is BC430918.

14 d) Our firm, in association with co-counsel, represented the
15 plaintiffs in a wage-and-hour class action against a national retailer involving
16 allegations of misclassification of the “Store Manager” position. On June 10,
17 2011, the court granted plaintiffs’ motion for class certification. On August 26,
18 2013, the court granted final approval of the class action settlement. The Los
19 Angeles County Superior Court Case Number is BC424012.

20 e) Our firm, in association with co-counsel, represented the
21 plaintiffs in a wage-and-hour class and representative action against a bank,
22 involving allegations of misclassification of the “Assistant Branch Manager”
23 position. On August 27, 2013, the court granted final approval of the class and
24 representative action settlement. The Kern County Superior Court Case Number
25 is S-1500-CV-273194-LHB.

26 f) Our firm, in association with co-counsel, represented the
27 plaintiffs in a wage-and-hour class and representative action against a national
28 wholesale distributor of plumbing and builder supplies, involving allegations of

1 misclassification of multiple salaried “manager” positions. On May 22, 2014, the
2 court granted final approval of the class and representative action settlement. The
3 Sacramento County Superior Court Case Number is 34-2012-00136285.

4 g) Our firm, in association with other co-counsel, represented the
5 plaintiffs in a wage-and-hour class action involving allegations of
6 misclassification of the “Operations Manager” position. On September 16, 2014,
7 the court granted plaintiffs’ motion for class certification. The Los Angeles
8 County Superior Court Case Number is BC478769.

9 h) Our firm, in association with co-counsel, represented the
10 plaintiffs in a wage-and-hour class and representative action against a national
11 retailer of household items, on behalf of hourly-paid or non-exempt employees.
12 On May 27, 2015, the court granted final approval of the class and representative
13 action settlement. The San Francisco County Superior Court Case Number is
14 CGC-13-532344.

15 i) Our firm, in association with co-counsel, represented the
16 plaintiffs in a wage-and-hour class action involving allegations of
17 misclassification of the salaried residential “Property Manager” position. On
18 September 17, 2015, the court granted plaintiffs’ motion for class certification.
19 The Los Angeles County Superior Court Case Number is BC474784.

20 j) Our firm, in association with co-counsel, represented the
21 plaintiffs in a wage-and-hour class and representative action against a national
22 retailer of upscale hardware and home furnishings, on behalf of non-exempt
23 employees. On April 28, 2016, the court granted final approval of the class and
24 representative action settlement. The Los Angeles County Superior Court Case
25 Number is JCCP4794.

26 k) Our firm, in association with co-counsel, represented the
27 plaintiffs in a wage-and-hour class and representative action against a national
28 retailer of apparel and fashion accessories, on behalf of non-exempt employees.

1 On August 5, 2016, the court granted final approval of the class and representative
 2 action settlement. The Los Angeles County Superior Court Case Number is
 3 BC488069.

4 l) Our firm, in association with co-counsel, represented the
 5 plaintiffs in a wage-and-hour class action against a national retailer of apparel,
 6 accessories, and home products, involving allegations of misclassification of the
 7 “Department Manager” position. On August 12, 2016, the court granted plaintiffs’
 8 motion for class certification in part and certified a class. The Alameda County
 9 Superior Court Case Number is RG13680477.

10 m) Our firm represented the plaintiffs in a representative action
 11 under the Private Attorneys General Act (“PAGA”), against a real estate and
 12 property management company, on behalf of non-exempt employees. On
 13 November 4, 2016, the Court granted approval of the settlement. The Orange
 14 County Superior Court Case Number is 30-2015-00775439-CU-OE-CXC.

15 n) Our firm, in association with co-counsel, represented the
 16 plaintiffs in a wage-and-hour class action against a full-service bank, on behalf of
 17 non-exempt employees. On November 18, 2016, the court granted final approval
 18 of the class action settlement. The San Francisco County Superior Court Case
 19 Number is CJC-13-004839.

20 o) Our firm represented the plaintiffs in a wage-and-hour class and
 21 representative action against a foodservice distributor, on behalf of non-exempt
 22 employees. On January 26, 2017, the court granted final approval of the class and
 23 representative action settlement. The San Bernardino County Superior Court Case
 24 Number is CIVDS1507260.

25 p) Our firm, on behalf of the plaintiff and respondent in a PAGA
 26 representative action, successfully opposed in the trial court, and briefed and
 27 argued an appeal with respect to the employer’s motion to compel arbitration,
 28 which resulted in a published opinion by the California Court of Appeal in favor

of employees. *Roberto Betancourt v. Prudential Overall Supply*, 9 Cal.App.5th 439 (Cal. App. 4th Dist., Mar. 7, 2017), review denied, cert. denied (U.S. Supreme Court Docket No. 17-254).

q) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-hour class and representative action against a consumer packaging company, on behalf of non-exempt employees. On March 10, 2017, the court granted final approval of the class and representative action settlement. The Los Angeles County Superior Court Case Number is BC590429.

r) Our firm, in association with other co-counsel, represented the plaintiffs in a wage-and-hour class and representative action against a manufacturer of food service industry supplies on behalf of non-exempt employees. On April 14, 2017, the court granted final approval of the class and representative action settlement. The Orange County Superior Court Case Number is 30-2015-00810013-CU-OE-CXC.

s) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-hour class action and representative action against a lumber and hardware company on behalf of non-exempt employees. On April 26, 2017, the court granted final approval of the class action settlement. The Orange County Superior Court Case Number is 30-2014-00747750-CU-OE-CXC.

t) Our firm represented the plaintiff in a wage-and-hour class and representative action against a property management company, on behalf of non-exempt employees. On June 14, 2017, the court granted final approval of the class and representative action settlement. The Los Angeles County Superior Court Case Number is BC586234.

u) Our firm represented the plaintiffs in a wage-and-hour class and representative action against a food company on behalf of non-exempt employees. On June 30, 2017, the court granted final approval of the class action settlement. The Sacramento County Superior Court Case Number is 34-2015-00175871.

1 v) Our firm represented the plaintiffs in a wage-and-hour class and
2 representative action against a chocolate company on behalf of non-exempt
3 employees. On July 19, 2017, the court granted final approval of the class and
4 representative action settlement. The Alameda County Superior Court Case
5 Number is RG15764300.

6 w) Our firm represented the plaintiff in a PAGA representative
7 action, against the parent company of several restaurants, on behalf of hourly-paid,
8 non-exempt employees. On October 18, 2017, the court granted approval of the
9 PAGA representative action settlement. The Los Angeles County Superior Court
10 Case Number is BC569664.

11 x) Our firm represented the plaintiffs in a wage-and-hour class and
12 PAGA representative action against a manufacturer of plastic containers on behalf
13 of non-exempt employees. On October 31, 2017, the court granted final approval
14 of the class and PAGA representative action settlement. The Los Angeles County
15 Superior Court Case Number is BC577233.

16 y) Our firm, in association with co-counsel, represented the
17 plaintiffs in a wage-and-hour class and PAGA representative action against a bank
18 on behalf of non-exempt employees. On December 11, 2017, the court entered an
19 order granting final approval of the class and PAGA representative action
20 settlement. The Los Angeles County Superior Court Case Number is BC569646.

21 z) Our firm, in association with co-counsel, represented the
22 plaintiffs in a wage-and-hour class and PAGA representative action against a
23 property management company on behalf of hourly-paid and non-exempt
24 employees. On January 4, 2018, the court granted final approval of the class and
25 PAGA representative action settlement. The Los Angeles County Superior Court
26 Case Number is JCCP4819.

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1 aa) Our firm, in association with co-counsel, represented the
2 plaintiffs in a wage-and-hour class and PAGA representative action against a
3 global provider of flexible office space solutions. On February 15, 2018, the court
4 granted final approval of the class and PAGA representative action settlement. The
5 Los Angeles County Superior Court Case Number is BC498401.

6 bb) Our firm, in association with co-counsel, represented the
7 plaintiff in a wage-and-hour class action against a container manufacturer, on
8 behalf of non-exempt employees. On October 15, 2018, the court granted the
9 plaintiff's motion for class certification. The Tulare County Superior Court Case
10 Number is VCU264528.

11 cc) Our firm represented the plaintiffs in a wage-and-hour class and
12 PAGA representative action against a behavioral health service provider on behalf
13 of non-exempt employees. On November 13, 2018, the court granted final
14 approval of the class and PAGA representative action settlement. The Alameda
15 County Superior Court Case Number is RG16811450.

16 dd) Our firm, in association other co-counsel, represented the
17 plaintiff in a PAGA representative action, against a global provider of products
18 and services to the energy industry, on behalf of hourly-paid and non-exempt
19 employees. On November 19, 2018, the court granted approval of the PAGA
20 settlement. The Kern County Superior Court Case Number is S-1500-CV-280215-
21 SDC.

22 ee) Our firm represented the plaintiff in a wage-and-hour class
23 action against a parking company on behalf of non-exempt employees. On
24 September 3, 2019, the court granted the plaintiff's motion for class certification
25 and certified a class. The Santa Clara County Superior Court Case Number is
26 16CV292208 and the Judicial Council Coordination Proceeding Number is JCCP
27 4886.

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ff) Our firm, in association with other co-counsel, represents the plaintiffs in a wage-and-hour class and PAGA representative action against a bank on behalf of non-exempt employees. On September 27, 2019, the court granted the plaintiffs' motion for class certification in part and certified a class. The Alameda County Superior Court Case Number is RG15757606 and the Judicial Council Coordination Proceeding Number is JCCP No. 4921.

gg) Our firm, in association with other counsel, on behalf of the plaintiff and respondent in a PAGA representative action, successfully opposed in the trial court, and briefed and argued an appeal with respect to the employer's motion to compel arbitration, resulting in a notable decision from the California Supreme Court clarifying the law and finding, in part, that employer arbitration agreements are unenforceable where they block a PAGA claim from proceeding, *ZB, N.A. v. Superior Court*, 8 Cal.5th175 (2019).

hh) Our firm represented the plaintiffs in a wage-and-hour class and representative action against a national retailer of apparel and fashion accessories, on behalf of non-exempt employees. On October 9, 2019, the court granted the plaintiffs' motion for class certification in part and certified a class, the court certified a class. The Sacramento County Superior Court Case Number is 34-2015-00175330-CU-OE-GDS.

ii) Our firm represented the plaintiff in a wage-and-hour class and representative action against a medical equipment supplier on behalf of non-exempt employees. On February 13, 2020, the court granted the plaintiff's motion for class certification and certified a class. The San Bernardino County Superior Court Case Number is CIVDS1505744.

jj) Our firm, in association with counsel, represented the plaintiff in a wage-and-hour class and PAGA representative action against a large national drug testing laboratory on behalf of non-exempt employees. On February 21, 2020, the court granted the plaintiff's motion for class certification and certified a

1 class. The San Diego County Superior Court Case Number is 37-2018-00019611-
2 CU-OE-CTL.

3 kk) Our firm represented the plaintiffs in a wage-and-hour class and
4 representative action against a national retailer of sportswear, footwear, and
5 camping equipment on behalf of non-exempt employees. On March 16, 2020, the
6 court granted in part the plaintiff's motion for class certification and certified a
7 class. The Riverside County Superior Court Case Number is RICJCCP4930.

8 ll) Our firm, in association with co-counsel, represents the
9 plaintiffs in a wage-and-hour class and PAGA representative action against a
10 plastic packaging company on behalf of non-exempt employees. On June 8, 2020,
11 the court granted in part the plaintiffs' motion for class certification and certified
12 a class. The San Bernardino County Superior Court Case Number is
13 CIVDS1507361.

14 mm) Our firm, in association with co-counsel, represents the
15 plaintiffs in a wage-and-hour class action against manufacturer and supplier of
16 power products and services on behalf of non-exempt employees. On July 31,
17 2020, the court granted in part the plaintiffs' motion for class certification and
18 certified a class. The San Diego County Superior Court Case Number is 37-2015-
19 00025968-CU-OE-CTL.

20 nn) Our firm represents the plaintiff in a wage-and-hour class action
21 against a nutritional products manufacturer on behalf of non-exempt production
22 line employees. On December 13, 2021, the court granted the plaintiff's motion
23 for class certification in part and certified a class. The Solano County Superior
24 Court Case Number is FCS051001.

25 THE SETTLEMENT AND WORK PERFORMED

26 8. Attached hereto as "EXHIBIT 1" is a true and correct copy of the
27 fully executed Joint Stipulation of Class Action and PAGA Settlement and Release
28 of Claims ("Settlement," "Agreement," or "Settlement Agreement") entered into

1 by and between Plaintiff Edgar Mariscal (“Plaintiff”) and Defendant Arizona Tile,
2 LLC (“Defendant”). The parties and their counsel have approved the proposed
3 notice of class action settlement (“Class Notice”), which is attached to the
4 Settlement Agreement as “**Exhibit A**” and respectfully request that the Court
5 approve it as well.

6 9. Based on information provided by Defendant, the Class is estimated
7 to consist of approximately four hundred and fifteen (415) individuals.

8 10. The effectiveness of Lawyers *for* Justice, PC (“Class Counsel”) in
9 prosecuting the above-entitled action has translated into tangible monetary
10 benefits for the Class Members and State of California in the following respects:
11 (1) the Class Members and State of California recover over a reasonably short
12 period of time as opposed to waiting additional years for the same, or possibly,
13 worse result; (2) a guaranteed result that compares favorably with other similar
14 settlements of this type given the strengths and weaknesses of the of the case; and
15 (3) significant savings in litigation costs and expenses that would have only
16 increased significantly had the case progressed through certification, trial, and/or
17 appeals.

18 11. I have been actively engaged in this litigation since the action
19 commenced on September 15, 2020, as have several other members of Lawyers
20 *for* Justice, PC. The ongoing work has been extensive, demanding, and ultimately
21 successful in achieving a substantial settlement resolution. Before filing this
22 lawsuit, Class Counsel investigated and researched the facts and circumstances
23 underlying the pertinent issues and applicable law. This required thorough
24 discussions and interviews with Plaintiff and Class Members, and research into
25 the various legal issues in this case, namely, the current state of the law as it applied
26 to class certification, off-the-clock theory, meal and rest periods, wage-and-hour
27 enforcement, Plaintiff’s allegations, and Defendant’s potential defenses. Based on
28 Class Counsel’s research and investigations, Class Counsel determined that

1 Plaintiff's claims were well-suited for adjudication on a class-wide basis owing to
2 what appeared to be a common course of conduct affecting a similarly-situated
3 group of hourly-paid, non-exempt employees of Defendant within the State of
4 California.

5 12. After significant investigations and formal and informal discovery, the
6 parties engaged in extensive settlement negotiations, and with the aid of the
7 mediator's evaluations and proposal, the parties ultimately reached the proposed
8 Settlement. The parties' efforts to negotiate a settlement included participating in
9 a private full-day mediation on July 23, 2021, conducted by Jeffrey Krivis, Esq.,
10 a well-respected mediator who is highly experienced in mediating complex wage-
11 and-hour matters. During all settlement discussions, the parties conducted their
12 negotiations at arm's length in an adversarial position. Arriving at a settlement
13 that was acceptable to both parties was not easy. Defendant and its counsel felt
14 strongly about its ability to prevail on the merits and at certification, and Plaintiff
15 and Class Counsel believed that they would be able to obtain class certification
16 and prevail at trial. Thus, after conducting investigations, formal and informal
17 discovery, and exchange of information, extensive settlement negotiations, and
18 with the aid of the mediator's evaluation, the parties have agreed that this matter
19 is well-suited for settlement given the factual and legal issues relating to the class
20 and PAGA claims, as well as the costs and risks to both sides that would attend
21 further litigation. The Settlement is a fair, reasonable, and adequate resolution of
22 the Released Claims, of Plaintiff and Participating Class Members, against the
23 Released Parties.

24 13. Prior to reaching the Settlement, the parties exchanged information
25 and discussed various aspects of the case, including but not limited to, the risks
26 and delays of further litigation, the risks to the parties of proceeding with class
27 certification and/or representative adjudication, the law relating to off-the-clock
28 theory, meal and rest periods, PAGA claims, and wage-and-hour enforcement, as

1 well as the evidence produced and analyzed, and the possibility of appeals, among
2 other things. The parties used the pre-mediation time period to investigate the
3 veracity, strength, and scope of the claims. Class Counsel propounded multiple
4 sets of formal written discovery requests onto Defendant (consisting of one set of
5 requests for production and two sets of special interrogatories) and noticed the
6 depositions of Defendant's Person Most Knowledgeable designees. Defendant
7 served a notice of deposition of Plaintiff and requests for production, and also
8 provided responses to Plaintiff's discovery requests (which Class Counsel
9 reviewed and considered). Class Counsel interviewed Plaintiff, Class Members,
10 and percipient witnesses in order to obtain information about the case, including,
11 *inter alia*, information about the nature of the work they performed and the hours
12 that they worked while employed by Defendant. The information obtained
13 assisted Class Counsel in calculating the value of the claims and the monetary
14 recovery that could potentially be obtained for the class and PAGA claims, and
15 also permitted a full and complete understanding of Defendant's employment
16 policies, practices, and procedures. This information proved invaluable in
17 negotiating the Settlement with Defendant and reaching the amount that fairly and
18 adequately compensates the Class and State of California.

19 14. Prior to reaching the Settlement, Class Counsel reviewed a large
20 volume of data and documents, including, but not limited to: Plaintiff's and other
21 Class Members' employment records; sampling of time and pay data; class-wide
22 data regarding the class size, number of workweeks, pay periods, hourly rates, and
23 dates of employment; policies; multiple iterations of Defendant's Employee
24 Handbook (which included, *inter alia*, policies and procedures regarding
25 attendance and punctuality, meal periods, rest breaks, and personal appearance
26 requirements); job descriptions, internal memoranda; various agreements and
27 acknowledgements; and numerous other documents regarding Defendant's
28 employment policies, practices, and procedures, among other information and

documents. Class Counsel interviewed Plaintiff and other Class Members to gather facts and to identify potential witnesses. Counsel for the parties also met and conferred on numerous occasions over issues relating to the pleadings, jurisdiction, discovery, the production of documents and data prior to mediation, and settlement negotiations. Class Counsel also drafted pleadings and mediation brief and prepared for and attended court proceedings, mediation, and settlement negotiations, among other tasks.

15. Counsel for the parties have further invested time researching applicable law, which is constantly evolving as it relates to jurisdiction, class certification, representative PAGA claims, off-the-clock theory, meal and rest periods, wage-and-hour enforcement, Plaintiff's claims and damages, Defendant's defenses, as well as facts and evidence produced and analyzed. During all settlement discussions, the parties conducted their negotiations at arm's length in an adversarial position. Based on our analysis, I submit that the Settlement that has been reached is a fair, adequate, and reasonable.

16. The Settlement provides for a Gross Settlement Amount of Two Million Five Hundred Thousand Dollars (\$2,500,000) on a non-reversionary basis. The Settlement also provides that, to the extent the number of Compensable Workweeks increases beyond 50,649 by more than 10% (i.e., exceed 55,714), the Gross Settlement Amount shall increase 1% for each 1% increase over 10%.

17. Under the terms of the Settlement, the Net Settlement Amount is the Gross Settlement Amount less the following amounts subject to approval by the Court: 1) attorneys' fees of up to 35% of the Gross Settlement Amount (i.e. \$875,000 if the Gross Settlement Amount is \$2,500,000) and reimbursement of litigation costs and expenses to Class Counsel of up to \$25,000 ("Attorneys' Fees and Costs"); 2) Class Representative Service Award of up to \$7,500 to Plaintiff; 3) Settlement Administrator Costs of up to \$15,000 to Settlement Administrator; and 4) the LWDA Payment of \$112,500 to the LWDA for its seventy-five percent

(75%) share of the \$150,000 allocated from the Gross Settlement Amount as civil penalties recovered pursuant to PAGA (“LWDA Payment”). Assuming that the amounts allocated under the Settlement toward these payments are awarded in full, the Net Settlement Amount is currently estimated to be One Million Four Hundred Sixty-Five Thousand Dollars (\$1,465,000). The Net Settlement Amount will be used to pay Individual Settlement Payments to Class Members who do not submit a valid and timely Request for Exclusion (“Participating Class Members”).

18. The entire Net Settlement Amount will be distributed to Participating Class Members. Participating Class Members will be paid from the Net Settlement Amount on, a *pro rata* basis, based upon the number of weeks in which Class Member(s) performed work for Defendant in the State of California during the Class Period based on Defendant’s records (“Compensable Workweeks”). A Participating Class Member’s Individual Settlement Payment will be based on his/her individual number of Compensable Workweeks in proportion to the aggregate number of Compensable Workweeks worked by all Participating Class Members.

19. The parties have agreed to retain Phoenix Class Action Administration Solutions (“Phoenix” or “Settlement Administrator”) to handle the notice and settlement administration process, and respectfully request that this Court appoint Phoenix to serve as the Settlement Administrator. Defendant will provide Phoenix with a list of Class Members that Defendant will compile from its records, which will include each Class Member’s full name; last known address; last known home telephone number; social security number; and Compensable Workweeks (“Class Data”), and Phoenix will calculate each Class Member’s estimated share of the Net Settlement Amount (“Individual Settlement Payment”). Phoenix will format, print, and mail the Class Notice to all Class Members and re-mail any returned or undeliverable Class Notices as necessary; and receive, review, and process Requests for Exclusion, Compensable Workweeks disputes, and Notices of

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1 Objection. Phoenix will also transmit all required payments (including, *inter alia*,
2 distributing the settlement checks); provide weekly reports to counsel for the
3 parties; issue necessary W-2, 1099, or other tax forms to Plaintiff, Participating
4 Class Members, and Class Counsel; perform necessary tax withholdings and
5 reporting; provide necessary declarations; and perform all other usual and
6 customary duties for administering a class action settlement. The Settlement
7 Administrator Costs are currently estimated not to exceed Fifteen Thousand
8 Dollars (\$15,000) and will be paid out of the Gross Settlement Amount subject to
9 approval by the Court.

10 20. Based on investigation and information discovered, Class Counsel
11 believe that there is sufficient evidence to support Plaintiff's allegations that
12 Defendant, with respect to Plaintiff and the Class Members, *inter alia*, failed to
13 properly pay overtime and minimum wages, failed to provide compliant meal and
14 rest periods and to pay associated premium pay, failed to timely pay wages during
15 employment and upon termination of employment, failed to provide compliant
16 wage statements, failed to maintain requisite payroll records, and failed to
17 reimburse necessary business expenses, and thereby engaged in unfair business
18 practices and conduct giving rise to penalties recoverable under the Private
19 Attorneys General Act of 2004 (California Labor Code sections 2698, et seq.).
20 Plaintiff also asserted that Class Members were expected to perform similar job
21 duties and were subject to the same or similar operations and employment policies,
22 practices, and procedures. Additionally, Plaintiff asserted that Defendant's
23 recordkeeping practices with respect to Plaintiff and the Class Members were
24 substantially the same during the time period at issue. As a result of the alleged
25 uniform practices, Plaintiff claims that the Class Members were not paid all of the
26 compensation that was owed to them by Defendant since September 15, 2016.
27 Thus, in Class Counsel's view, it is clear that the outcome of this litigation would
28 be determined by Defendant's uniform operations and employment practices,

1 policies, and procedures that Plaintiff alleges applied across its hourly-paid or non-
2 exempt employees in California during the Class Period.

3 21. Class Counsel are aware of the defenses and position of Defendant,
4 but believe that Plaintiff could potentially obtain class certification despite many
5 obstacles. Plaintiff has also taken into account the uncertainty and risk of the
6 outcome of further litigation, and the difficulties and delays inherent in such
7 litigation, including those involved in class certification and/or representative
8 adjudication. Plaintiff further recognizes the possibility of bifurcation of
9 discovery and/or trial, risks of denial of class certification or de-certification after
10 certification, burdens of proof necessary to establish liability, Defendant's
11 defenses, the difficulties in establishing damages and entitlement to monetary
12 recovery, court's discretion with respect to assessment of civil penalties, and
13 potential for appeals. Plaintiff has also considered the Parties' settlement
14 discussions, as well as the evaluations of the mediator, who is experienced and
15 well-regarded in complex labor and employment matters.

16 22. Defendant, on the other hand, denied and continues to deny any
17 liability and wrongdoing of any kind associated with the claims alleged in the
18 lawsuit, and further denies that the lawsuit is appropriate for class treatment or
19 representative adjudication for any purpose other than the Settlement. Defendant
20 believes that it would ultimately succeed in the matter. Prior to and during the
21 mediation, Defendant provided information and data supporting its position that
22 its policies and practices fully complied with California and federal law.
23 Defendant argued that individual issues would predominate because its non-
24 exempt employees worked at different locations, in different positions, or during
25 different periods of time, and were therefore, subject to variant employment
26 policies, practices, and procedures, and the reasons why a Class Member failed to
27 receive a meal or rest break or worked off-the-clock would also raise individual
28 issues that cannot be certified.

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23. Both sides have also had the opportunity to interview witnesses and review documents and information relating to Plaintiff's and Class Members' employment with Defendant, and Defendant's operations and employment policies, practices, and procedures. The Parties also reviewed and analyzed a large volume of documents and data, including but not limited to a detailed sampling of Class Members' time and pay information, to determine the potential value and strength of the claims. The available information enabled Class Counsel to estimate the potential claims of the Class and prepare damages and penalties valuation models. Accordingly, the Parties have conducted adequate investigation and discovery to be sufficiently informed of the nature and extent of the Class and PAGA claims, and to enable both sides to fully evaluate the Settlement for its fairness, adequacy, and reasonableness. The Parties have agreed that the matter is well-suited for settlement given the legal issues relating to the claims, as well as the costs and risks to both sides that would attend further litigation. The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification, trial, and/or appeals.

24. The Settlement Agreement provides for Class Counsel to apply for Attorneys' Fees and Costs, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$875,000 if the Gross Settlement Amount is \$2,500,000) and reimbursement of litigation costs and expenses in an amount up to Twenty-Five Thousand Dollars (\$25,000), which will be paid out of the Gross Settlement Amount, subject to approval by the Court. It should be noted that Class Counsel have borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained. Pursuant to Federal Rule of Civil Procedure 23(h), Class Counsel will file a motion for attorneys' fees and costs prior to the Final Approval Hearing.

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25. The Settlement Agreement provides for payment of up to Seven Thousand Five Hundred Dollars (\$7,500.00) to Plaintiff as a Class Representative Service Award to be paid out of the Gross Settlement Amount subject to approval by the Court. The contemplated Class Representative Service Award is fair and appropriate. Plaintiff spent considerable time and effort to produce relevant documents and past employment records and to provide the facts and evidence necessary to attempt to prove the allegations. Plaintiff was available whenever Class Counsel needed him and actively tried to obtain information that would facilitate the prosecution of this matter. Accordingly, it is appropriate and just for Plaintiff to receive a reasonable Class Representative Service Award, in addition to his Individual Settlement Payment, for his services in this lawsuit.

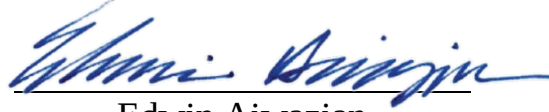
26. Class Counsel submit that the Settlement is fair, reasonable, and adequate, and is in the best interests of the Class and State of California. Class Counsel further submit that the Settlement is within an acceptable range of recovery for this type of litigation given the strengths and weaknesses of the case, the inherent costs and risks of further litigation, and the costs and risks associated with class certification, representative adjudication, trial, and/or appeals.

27. On January 21, 2022, the parties filed a Joint Stipulation Granting Plaintiff Leave to File Second Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“Joint Stipulation”), requesting the entry of an order from this Court granting Plaintiff leave to file the [Proposed] Second Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. attached as “Exhibit A” thereto. A true and correct copy of the same proposed Second Amended Complaint is attached as “**EXHIBIT 2**” hereto. The parties and their counsel have approved the proposed Second Amended Complaint and respectfully request that the Court approve the

1 joint stipulation and grant leave for Plaintiff to file the Second Amended
2 Complaint to facilitate the Settlement.

3 I declare under penalty of perjury under the laws of the United States of
4 America and the State of California that the foregoing is true and correct.

5 Executed on this 21st day of January 2022, at Glendale, California.

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8 Edwin Aiwarzian
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EXHIBIT 1

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Attorneys for Defendant
ARIZONA TILE, LLC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

EDGAR MARISCAL, individually,
and on behalf of other members of the
general public similarly situated,

Plaintiffs,

v.

ARIZONA TILE, LLC, an unknown
business entity; and DOES 1 through
100, inclusive,

Defendants.

Case No. 8:20-CV-02071-JLS-KES

**JOINT STIPULATION OF CLASS
ACTION AND PAGA SETTLEMENT
AND RELEASE OF CLAIMS**

Complaint Filed: September 15, 2020

Trial Date: N/A

District Judge: Hon. Josephine L.
Staton

Magistrate Judge: Hon. Karen E. Scott

1 This Joint Stipulation of Class Action and PAGA Settlement and Release of Claims
2 (“Settlement Agreement”) is entered into by and between Plaintiff EDGAR MARISCAL
3 (“Plaintiff”), individually and on behalf of the Class (as defined below) and on behalf of the State
4 of California (as a private attorney general pursuant to the Private Attorneys General Act, Cal.
5 Lab. Code § 2698, *et seq.*), on the one hand, and Defendant ARIZONA TILE, LLC (“Defendant”),
6 on the other hand.

7 Plaintiff, on behalf of himself and the Class Members, and Defendant agree as follows:

8 **I. DEFINITIONS**

9 **1. Action**

10 “Action” means the civil action filed in the Superior Court of the State of California for the
11 County of Orange, entitled *Edgar Mariscal, et al., v. Arizona Tile, LLC, et al.*, Case No. 30-2020-
12 01160477-CU-OE-CXC, removed to the United States District Court for the Central District of
13 California, Case No. 8:20-cv-02071-JLS-KES.

14 **2. Class Counsel**

15 “Class Counsel” means Edwin Aiwazian, Arby Aiwazian, and Joanna Ghosh of Lawyers
16 *for Justice*, PC.

17 **3. Attorneys’ Fees and Costs**

18 “Attorneys’ Fees and Costs” means attorneys’ fees agreed upon by the Parties and
19 approved by the Court for Class Counsel’s litigation and resolution of the Action, and all out-of-
20 pocket costs incurred and to be incurred by Class Counsel in the Action, including but not limited
21 to fees and expenses of experts, investigation expenses, postage, telephone, and photocopying
22 charges, costs associated with documenting the Settlement, providing any notices required as part
23 of the Settlement or Court order, securing the Court’s approval of the Settlement, administering
24 the Settlement, and obtaining entry of a judgment terminating the Action.

25 **4. Class Data**

26 “Class Data” means information regarding Class members that Defendant will in good faith
27 compile from their records and provide to the Settlement Administrator. It shall be formatted as a
28 Microsoft Excel spreadsheet and shall include: each Class Member’s full name; last known

address; last known home telephone number; social security number; and Compensable Workweeks.

5. Class or Class Members

“Class” or “Class Members” means all persons who are employed or have been employed by Arizona Tile, LLC as non-exempt, hourly employee in the State of California during the Class Period.

6. Class Period

“Class Period” means the period from September 15, 2016 to October 21, 2021.

7. Class Representative

“Class Representative” means Plaintiff Edgar Mariscal.

8. Class Representative Service Award

“Class Representative Service Award” means the amount that the Court authorizes to be paid to the Plaintiff, in addition to Plaintiff’s Individual Settlement Payment, in recognition of Plaintiff’s efforts and risks in assisting with the prosecution of the Action.

9. Compensable Workweeks

“Compensable Workweeks” means the number of weeks in which Class Member(s) performed work for Defendant in the State of California during the Class Period based on Defendant’s records.

10. Complaint

“Complaint” means the Class Action Complaint for Damages filed on September 15, 2020, in the Action, and any future amendments thereto as contemplated in this Settlement Agreement.

11. Court

“Court” means the United States District Court for the Central District of California.

12. Defendant

“Defendant” means ARIZONA TILE, LLC.

13. Effective Date

“Effective Date” of the Settlement means the date on which the Court’s order granting Final Approval of this Settlement Agreement becomes final. Such order becomes final upon the

1 following events: (i) upon the Court issuing the Final Approval Order granting approval of this
2 Settlement Agreement if no objections to the settlement are filed, or if an objection is filed but is
3 withdrawn prior to the Court's Final Approval Hearing; or (ii) in the event there are written
4 objections filed prior to the Final Approval Hearing which are not thereafter withdrawn prior to
5 the hearing, the later of the following events: (a) the day after the last day by which a notice of
6 appeal of the order may be timely filed with the United States Court of Appeals for the Ninth
7 Circuit, and none is filed; (b) if an appeal is filed and is finally disposed of by ruling, dismissal,
8 denial, or otherwise, the day after the last date for filing a request for further review of the Court
9 of Appeal's decision passes and no further review is requested; (c) if an appeal is filed and there
10 is a final disposition by ruling, dismissal, denial, or otherwise by the Court of Appeal, and further
11 review of the Court of Appeal's decision is requested, the day after the request for review is denied
12 with prejudice and/or no further review of the order can be requested; or (d) if review is accepted,
13 the day the Supreme Court of the United States of America affirms the Settlement.

14 **14. Final Approval Hearing**

15 "Final Approval Hearing" means the final hearing held to ascertain the fairness,
16 reasonableness, and adequacy of the Settlement.

17 **15. Final Approval Order**

18 "Final Approval Order" means the order granting final approval of the Settlement, in a
19 form to be jointly agreed upon by the Parties.

20 **16. Final Judgment**

21 "Final Judgment" means a judgment issued by the Court approving this Settlement
22 Agreement as binding upon the Parties.

23 **17. Gross Settlement Amount**

24 "Gross Settlement Amount" means the agreed upon settlement amount totaling
25 \$2,500,000.00 (Two Million Five Hundred Thousand Dollars) to be paid by Defendant in full
26 settlement of the Released Claims, and includes without limitation the Attorneys' Fees and Costs,
27 Class Representative Service Award, Individual Settlement Payments, LWDA Payment, and
28 Settlement Administrator Costs. The employer's share of payroll taxes due on the portion of the

Individual Settlement Payments that is allocated to wages shall be paid by Defendant separately and in addition to the Gross Settlement Amount.

18. Individual Settlement Payment

“Individual Settlement Payment” means the amount paid from the Net Settlement Amount to a Participating Class Member, based upon his/her Compensable Workweeks.

19. LWDA

“LWDA” means the California Labor and Workforce Development Agency.

20. Net Settlement Amount

“Net Settlement Amount” means the Gross Settlement Amount, less Court-approved Attorneys’ Fees and Costs, Class Representative Service Award, LWDA Payment, and Settlement Administration Costs.

21. Class Notice

“Class Notice” means the Notice of Pendency of Class Action Settlement and Hearing Date for Court Approval substantially in the form attached hereto as **Exhibit A**, which shall include an approximation of each Class Member’s anticipated Individual Settlement Payment. It is the notice approved by the Parties and subject to Court approval explaining the terms of this Settlement Agreement and the settlement process, which the Settlement Administrator will mail to each Class Member.

22. PAGA

“PAGA” refers to the Private Attorneys General Act of 2004, codified at California Labor Code § 2698, *et seq.*

23. PAGA Allocation

“PAGA Allocation” means the amount of One Hundred and Fifty Thousand Dollars (\$150,000) allocated from the Gross Settlement Amount as civil penalties recovered pursuant to PAGA, of which seventy-five percent (75%), or \$112,500, shall be paid to the LWDA (“LWDA Payment”), and twenty-five percent (25%), or \$37,500 will become part of the Net Settlement Amount.

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1 **24. Participating Class Members**

2 “Participating Class Members” means those Class Members who do not submit a valid and
3 timely Request for Exclusion pursuant to Paragraph III.11 of this Settlement Agreement.

4 **25. Parties**

5 “Parties” means Plaintiff and Defendant, collectively, and “Party” shall mean either
6 Plaintiff or Defendant, individually.

7 **26. Payment Ratio**

8 “Payment Ratio” means the respective Compensable Workweeks during which an
9 employee worked, in proportion to the aggregate number of Workweeks worked by all Class
10 members.

11 **27. Plaintiff**

12 “Plaintiff” means Plaintiff EDGAR MARISCAL.

13 **28. Preliminary Approval Date**

14 “Preliminary Approval Date” means the date on which the Court issues an order granting
15 preliminary approval of the Settlement, in a form to be jointly agreed upon by the Parties.

16 **29. Released Claims**

17 “Released Claims” means all causes of action and factual or legal theories that were alleged
18 in the operative complaint or reasonably could have been alleged based on the facts and legal
19 theories contained in the Operative Complaint, including all of the following claims for relief: (a)
20 failure to pay all regular wages, minimum wages and overtime wages due; (b) failure to properly
21 calculate the regular rate of pay for payment of overtime wages; (c) failure to provide proper meal
22 periods, and to properly provide premium pay in lieu thereof; (d) failure to provide proper rest
23 periods, and to properly provide premium pay in lieu thereof; (e) failure to pay all wages timely
24 during employment; (f) failure to pay all wages timely at the time of termination; (g) failure to
25 provide complete, accurate or properly formatted wage statements; (h) failure to keep required
26 payroll records; (i) failure to reimburse business expenses; (j) unfair business practices that could
27 have been premised on the claims, causes of action or legal theories of relief described above or
28 any of the claims, causes of action or legal theories of relief pleaded in the Operative Complaint;

(k) all claims under the California Labor Code Private Attorneys General Act of 2004 that could have been premised on the claims, causes of action or legal theories described above or any of the claims, causes of action or legal theories of relief pleaded in the Operative Complaint; (l) any other claims or penalties under the wage and hour laws pleaded in the Operative Complaint; and (m) all damages, penalties, interest and other amounts recoverable based on the claims, causes of action, or legal theories of relief pleaded in the Operative Complaint (collectively, the “Released Claims”).

30. Released Parties

“Released Parties” means Defendant and any of its past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.

31. Request for Exclusion

“Request for Exclusion” means a letter setting forth, *inter alia*, a Class Member’s full name, present address, telephone number, and a simple statement electing to be excluded from the Settlement, in conformity with the requirements of Paragraph III.11.

32. Response Deadline

“Response Deadline” means the date forty-five (45) days after the Settlement Administrator mails the Class Notice to Class Members, which is the last date on which Class Members may: (a) submit a Request for Exclusion; (b) file and serve objections to the Settlement; or (c) dispute the Compensable Workweeks credited to them as referenced in the Class Notice.

33. Settlement

“Settlement” means the disposition of the Action pursuant to this Joint Stipulation of Class Action and PAGA Settlement and Release of Claims.

34. Settlement Administrator

“Settlement Administrator” means Phoenix Class Action Administration Solutions, or any other third-party class action settlement administrator and approved by the Court for the purposes of administering the Settlement.

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1 **35. Settlement Administrator Costs**

2 “Settlement Administrator Costs” means the amount to be paid to the Settlement
3 Administrator from the Gross Settlement Amount for administration of this Settlement.

4 **II. RECITALS**

5 **1. Amendment of Complaint**

6 Prior to the filing of the motion for preliminary approval of the Settlement Agreement, the
7 Parties will stipulate to the filing of an amended complaint to add to the current complaint the
8 PAGA cause of action, so that the claims and causes of action in the Action fall within the
9 definition of Released Claims for purposes of settlement only (“Operative Complaint”). The
10 Court’s approval of the Parties’ stipulation to file an amended complaint is a material term of this
11 Settlement Agreement. If the Court does not grant leave to file the amended complaint, the Parties
12 shall work together in good faith to agree on a revised settlement agreement. If the Parties are
13 unable to reach agreement, this Settlement Agreement, and any documents generated to bring it
14 into effect, will be null and void. Any order or judgment entered by the Court in furtherance of
15 this Settlement Agreement will likewise be treated as void from the beginning.

16 **2. Class Certification.**

17 The Parties agree to certification of the Class for purposes of this Settlement only. If for
18 any reason the Settlement does not become effective, Defendant reserves the right to contest
19 certification of any class for any reason, and reserves all available defenses to the claims in the
20 Action.

21 **3. Procedural History.**

22 On September 15, 2020, Plaintiff filed a Class Action Complaint for Damages
23 (“Complaint”), thereby commencing a putative class action against Defendant in Orange County
24 Superior Court.

25 On October 26, 2020, Defendant removed Plaintiff’s Complaint to the United States
26 District Court for the Central District of California.

27 On April 14, 2021, the U.S. District Court denied Plaintiff’s Motion to Remand.

28 On May 28, 2021, Plaintiff filed a First Amended Class Action Complaint for Damages

1 (“FAC”). The FAC alleges claims for: failure to properly pay overtime wages, failure to pay meal
2 period premiums, failure to pay rest period premiums, failure to pay minimum wages, failure to
3 timely pay wages upon termination of employment, failure to timely pay wages during
4 employment, non-compliant wage statements, failure to keep requisite payroll records, failure to
5 reimburse business expenses, and violation of California Business and Professions Code § 17200,
6 *et seq.*

7 On June 11, 2021, Defendant filed an Answer to Plaintiff’s First Amended Class Action
8 Complaint for Damages.

9 The Parties began to engage in informal and formal discovery to understand the nature of
10 the allegations and the scope of potential liability. On March 18, 2021, Plaintiff served on
11 Defendant requests for production, two sets of special interrogatories, and a notice of rule 30(b)(6)
12 deposition of Defendant’s person most knowledgeable. On April 6, 2021, Defendant served a
13 notice of deposition of Plaintiff and requests for production. On April 18, 2021, Defendant
14 responded to Plaintiff’s discovery requests.

15 The Parties began to discuss the possibility of mediation and Defendant provided Plaintiff’s
16 counsel with pertinent data for the Class Members so that the Parties could fully-investigate the
17 claims at issue and understand their strengths and weaknesses.

18 On July 23, 2021, the Parties attended a full-day mediation with experienced mediator
19 Jeffrey Krivis (“Mediator”). After a full-day mediation, the Parties reached a settlement, as
20 provided herein, to settle Plaintiff’s claims on a class-wide and representative basis.

21 Plaintiff served a letter dated September 8, 2021, on the California Labor & Workforce
22 Development Agency and the Defendant, that provided notice of his intent to seek civil penalties
23 for alleged violations of the California Labor Code, under PAGA (the “PAGA Letter”).

24 Defendant denies any liability or wrongdoing of any kind associated with the claims
25 asserted in Plaintiff’s FAC, disputes the damages and penalties claimed by Plaintiff, and further
26 contends that, for any purpose other than settlement, Plaintiff’s claims are not appropriate for class
27 or representative action treatment. This Settlement Agreement is a compromise of disputed claims.
28 Nothing contained in this Settlement Agreement, no documents referred to herein, and no action

1 taken to carry out this Settlement Agreement, shall be construed or used as an admission by or
2 against Defendant as to the merits or lack thereof of the claims asserted in the Action. Defendant
3 contends, among other things, that, at all times, it has complied with all applicable state, federal
4 and local laws related to the Class Members' employment.

5 The Class Representative is represented by Class Counsel. Class Counsel conducted an
6 investigation into the facts relevant to the Action, including reviewing documents and information
7 provided by Defendant. Based on their own independent investigation and evaluation, Class
8 Counsel is of the opinion that the Settlement with Defendant is fair, reasonable and adequate, and
9 in the best interest of the Class and State of California in light of all known facts and circumstances,
10 including the risks of significant delay, defenses asserted by Defendant, uncertainties regarding a
11 class and representative action trial on the merits, and numerous potential appellate issues.
12 Although Defendant denies liability, Defendant is agreeing to this Settlement solely to avoid the
13 cost of further litigation. Accordingly, the Parties and their counsel desire to fully, finally, and
14 forever settle, compromise and discharge all disputes and claims arising from or relating to the
15 Action on the terms set forth herein.

16 **4. Benefits of Settlement to Class Members and State of California.**

17 Plaintiff and Class Counsel recognize the expense and length of continued proceedings
18 necessary to litigate their disputes through trial and through any possible appeals. Plaintiff has
19 also taken into account the uncertainty and risk of the outcome of further litigation, and the
20 difficulties and delays inherent in such litigation. Plaintiff and Class Counsel are also aware of
21 the burdens of proof necessary to establish liability for the claims asserted in the Action, both
22 generally and in response to Defendant's defenses thereto, and the difficulties in establishing
23 damages, penalties, and entitlement to monetary recovery for the Class Members and State of
24 California. Plaintiff and Class Counsel have also taken into account Defendant's agreement to
25 enter into a settlement that confers substantial relief upon the Class Members and State of
26 California. Based on the foregoing, Class Counsel have concluded that settlement for the
27 consideration and on the terms set forth in this Settlement Agreement, is fair, reasonable, and
28 adequate and is in the best interest of the putative class and State of California in light of all known

1 facts and circumstances, including the risk of significant delay, defenses asserted by Defendant,
2 numerous potential appellate issues, and other risks inherent in litigation.

3 **5. Defendant's Reasons for Settlement.**

4 Defendant has concluded that any further defense of this litigation would be protracted and
5 expensive for all Parties. Substantial amounts of Defendant's time, energy, and resources have
6 been and, unless this Settlement is completed, will continue to be devoted to, the defense of the
7 claims asserted by Plaintiff in the Action. Defendant has also taken into account the risks of further
8 litigation in reaching its decision to enter into this Settlement. Even though Defendant continues
9 to contend that it is not liable for any of the claims set forth by Plaintiff in the Action, Defendant
10 has agreed, nonetheless, to settle in the manner and upon the terms set forth in this Settlement
11 Agreement to put to rest the claims in the Action. Defendant contends that it has complied with
12 all applicable state, federal, and local laws.

13 **6. Settlement of Disputed Claims.**

14 This Settlement Agreement is a compromise of disputed claims. Defendant contends that
15 the Released Claims have no merit and do not give rise to liability. Plaintiff and Class Members
16 have claimed and continue to claim that the Released Claims have merit and give rise to liability
17 on the part of Defendant. This Settlement Agreement is a compromise of disputed claims. Nothing
18 contained in this Settlement Agreement, no documents referred to herein, and no action taken to
19 carry out this Settlement Agreement, may be construed or used as an admission by or against the
20 Class Members or Class Counsel as to the merits or lack thereof of the claims asserted in the
21 Action.

22 **III. TERMS OF AGREEMENT**

23 **1. Release as To All Participating Class Members.**

24 As of the Effective Date and full funding of the Gross Settlement Amount, the Participating
25 Class Members, including Plaintiff, release the Released Parties from the Released Claims for the
26 Class Period.

27 **2. Release of Claims by Plaintiff**

28 As of the Effective Date and full funding of the Gross Settlement Amount, Plaintiff releases

1 the Released Parties from all of the Released Claims during the Class Period. Plaintiff, for himself,
2 and his heirs, successors and assigns, further waives, releases, acquits and forever discharges the
3 Released Parties from any and all claims, actions, charges, complaints, grievances and causes of
4 action, of whatever nature, whether known or unknown, which exist or may exist on Plaintiff's
5 behalf as of the date of this Settlement Agreement, including, but not limited to, any and all tort
6 claims, contract claims, wage claims, wrongful termination claims, disability claims, benefit
7 claims, public policy claims, retaliation claims, statutory claims, personal injury claims, emotional
8 distress claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit
9 claims, and any and all claims arising under any federal, state or other governmental statute, law,
10 regulation or ordinance, including, but not limited to, claims for violation of the FLSA, the
11 California Labor Code, the Wage Orders of California's Industrial Welfare Commission, other
12 state wage and hour laws, the Americans with Disabilities Act, the Age Discrimination in
13 Employment Act (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil
14 Rights Act of 1964, the California Fair Employment and Housing Act, the California Family
15 Rights Act, the Family Medical Leave Act, California's Whistleblower Protection Act, California
16 Business & Professions Code §§17200 et seq., and any and all claims arising under any federal,
17 state or other governmental statute, law, regulation or ordinance.

18 Plaintiff's releases set forth herein include a waiver of all rights under California Civil
19 Code §1542, which provides:

20 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
21 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT**
22 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING**
23 **THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD**
24 **HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH**
25 **THE DEBTOR OR RELEASED PARTY.**

26 Plaintiff may hereafter discover claims or facts in addition to, or different from, those
27 which he now knows or believes to exist, but Plaintiff expressly agrees to fully, finally and forever
28 settle and release any and all claims against the Released Parties, known or unknown, suspected
or unsuspected, which exist or may exist on behalf of or against the other at the time of execution
of this Settlement Agreement, including, but not limited to, any and all claims relating to or arising

1 from Plaintiff's employment with Defendant.

2 **3. Tax Liability and Medicare.**

3 The Parties make no representations as to the tax treatment or legal effect of the payments
4 called for hereunder, and Class Members are not relying on any statement or representation by the
5 Parties in this regard. Participating Class Members understand and agree that they will be
6 responsible for the payment of taxes and penalties assessed on the payments described herein and
7 will hold the Parties free and harmless from and against any claims resulting from treatment of
8 such payments as non-taxable damages, including the treatment of such payment as not subject to
9 withholding or deduction for payroll and employment taxes. Moreover, this Settlement Agreement
10 is based upon a good faith determination of the Parties to resolve a disputed claim. The Parties
11 have not shifted responsibility of medical treatment to Medicare in contravention of 42 U.S.C. Sec.
12 1395y(b), especially since this is strictly a wage and hour case. The Parties resolved this matter in
13 compliance with both state and federal law. The Parties made every effort to adequately protect
14 Medicare's interest and incorporate such into the settlement terms. Plaintiff warrants that he is not
15 a Medicare beneficiary as of the date of this Settlement Agreement. As such, no conditional
16 payments have been made by Medicare.

17 **4. Circular 230 Disclaimer.**

18 Each Party to this Settlement Agreement (for purposes of this section, the "acknowledging
19 party" and each Party to this Settlement Agreement other than the acknowledging party, an "other
20 party") acknowledges and agrees that (1) no provision of this Settlement Agreement, and no
21 written communication or disclosure between or among the Parties or their attorneys and other
22 advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be
23 construed or be relied upon as, tax advice within the meaning of United States Treasury
24 Department Circular 230 (31 CFR Part 10, as amended); (2) the acknowledging party (a) has relied
25 exclusively upon his, her, or its own, independent legal and tax counsel for advice (including tax
26 advice) in connection with this Settlement Agreement, (b) has not entered into this Settlement
27 Agreement based upon the recommendation of any other party or any attorney or advisor to any
28 other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney

1 or adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging
2 party; and (3) no attorney or adviser to any other party has imposed any limitation that protects the
3 confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such
4 limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or
5 tax structure of any transaction, including any transaction contemplated by this Settlement
6 Agreement.

7 **5. Preliminary Approval of Settlement.**

8 Promptly upon execution of this Settlement Agreement, Plaintiff will move the Court to
9 grant preliminary approval of this Settlement, certifying the Class for settlement purposes only
10 and setting a date for a Final Approval Hearing. All Parties agree to work diligently and
11 cooperatively to have this Settlement presented to the Court for preliminary approval. Should the
12 Court decline to preliminarily approve material aspects of the Settlement (including but not limited
13 to the scope of release to be granted or the binding effect of the Settlement on Participating Class
14 Members), the Parties shall work together in good faith to address any concerns raised by the Court
15 and propose a revised Settlement for the Court's approval. If the Parties are unable to reach
16 agreement, this Settlement Agreement, and any documents generated to bring it into effect, will
17 be null and void. Any order or judgment entered by the Court in furtherance of this Settlement
18 Agreement will likewise be treated as void from the beginning. The proposed preliminary
19 approval order shall provide for the Class Notice to be sent to Class Members as specified herein.

20 **6. Settlement Administrator.**

21 Upon the Court granting preliminary approval of this Settlement Agreement, Defendant
22 shall provide the Settlement Administrator with the Class Data within fourteen (14) calendar days
23 for purposes of mailing the Class Notice to the Class Members. No later than three (3) days after
24 receipt of the Class Data, the Settlement Administrator shall notify counsel for the Parties that the
25 list has been received and state the number of Class Members included in the Class Data.

26 **7. Notice by First Class U.S. Mail.**

27 Upon receipt of the Class Data, the Settlement Administrator will perform a search based
28 on the National Change of Address Database to update and correct any known or identifiable

1 address changes. Within fourteen (14) days of receipt of the Class Data, the Settlement
2 Administrator shall mail copies of the Class Notice to all Class Members via regular First-Class
3 U.S. Mail. The Settlement Administrator shall exercise its best judgment to determine the current
4 mailing address for each Class Member, including performing a skip-trace to identify any updated
5 addresses. The address identified by the Settlement Administrator as the current mailing address
6 shall be presumed to be the best mailing address for each Settlement Class Member.

7 **8. Undeliverable Notices.**

8 Any Class Notice returned to the Settlement Administrator as undeliverable on or before
9 the Response Deadline shall be re-mailed once to the forwarding address affixed thereto. If no
10 forwarding address is provided, the Settlement Administrator shall promptly attempt to determine
11 a correct address by use of skip-tracing, or other search using the name, address and/or social
12 security number of the Class Member whose notice was undeliverable, and shall then re-mail all
13 returned, undelivered mail within ten (10) days of receiving notice that a notice was undeliverable.
14 Class Members who receive a re-mailed Class Notice shall have their Response Deadline extended
15 twenty (20) days from the original Response Deadline.

16 **9. Disputes Regarding Individual Settlement Payments.**

17 Class Members will have the opportunity, should they disagree with Defendant's records
18 regarding the Compensable Workweeks stated on their Class Notice, to submit a written dispute
19 letter that must: (1) contain the full name, address, and telephone number of the disputing Class
20 Member; (2) contain a statement expressing that the Class Member disputes the number of
21 Compensable Workweeks credited to him or her, and, if available, attach documentation and/or an
22 explanation to show contrary information; (3) be signed by the Class Member; and (4) be
23 postmarked or fax stamped by the Response Deadline and returned to the Settlement Administrator
24 at the specified address or fax number. If there is a dispute, the Settlement Administrator will
25 consult with the Parties to determine whether an adjustment is warranted. The Settlement
26 Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement
27 Payments under the terms of this Settlement Agreement. The Settlement Administrator's
28 determination of the eligibility for and amount of any Individual Settlement Payment shall be

1 binding upon the Class Members and the Parties. In the absence of circumstances indicating fraud,
2 manipulation or destruction, Defendant's records will be given a rebuttable presumption of
3 accuracy.

4 **10. Disputes Regarding Administration of Settlement.**

5 Any disputes not resolved by the Settlement Administrator concerning the administration
6 of the Settlement will be resolved by the Court, under the laws of the State of California. Prior to
7 any such involvement of the Court, counsel for the Parties will confer in good faith to resolve the
8 disputes without the necessity of involving the Court.

9 **11. Exclusions.**

10 The Class Notice shall state that Class Members who wish to exclude themselves from the
11 Settlement must submit a Request for Exclusion by the Response Deadline. The Request for
12 Exclusion must: (1) contain the full name, address, and telephone number of the Class Member
13 requesting exclusion; (2) contain a statement expressing that the Class Member elects to be
14 excluded from the Settlement; (3) be signed by the Class Member; and (4) be postmarked or fax
15 stamped by the Response Deadline and returned to the Settlement Administrator at the specified
16 address or fax number. The Request for Exclusion will be deemed invalid if it does not contain a
17 Class Member's full name, address, signature, and a statement requesting exclusion. The date of
18 the postmark on the return mailing envelope or fax stamp on the Request for Exclusion shall be
19 the exclusive means used to determine whether a Request for Exclusion has been timely submitted.
20 If the Settlement Administration is unsure of the validity of a Request for Exclusion, it must
21 provide a copy of the Request for Exclusion to the Parties to review and make a determination as
22 to its validity. Any Class Member who requests to be excluded from the Class will not be entitled
23 to any recovery under the Settlement and will not be bound by the terms of the Settlement or have
24 any right to object, appeal, or comment thereon. Class Members who fail to submit a valid and
25 timely Request for Exclusion on or before the Response Deadline shall be bound by all terms of
26 the Settlement and any Final Judgment entered in the Action if the Settlement is approved by the
27 Court. No later than seven (7) calendar days after the Response Deadline, the Settlement
28 Administrator shall provide counsel for the Parties with a complete list of all Class Members who

1 have timely submitted a Request for Exclusion.

2 **12. Objections.**

3 The Class Notice shall state that Class Members who wish to object to the Settlement may
4 do so in person at the Final Approval Hearing and/or in writing. Any written objection (“Notice of
5 Objection”) must be mailed to the Settlement Administrator by the Response Deadline. The date
6 of mailing on the envelope shall be deemed the exclusive means for determining that a Notice of
7 Objection was timely received. The Notice of Objection must be signed by the Class Member and
8 state: (1) the full name, present address, and telephone number of the Class Member; (2) the basis
9 for the objection; and (3) if the Class Member intends to appear at the Final Approval Hearing.
10 The Settlement Administration must provide a copy of written objections to the Parties within
11 three (3) days of receipt. Counsel will ensure that any Notice of Objection received by the
12 Settlement Administrator by the Response Deadline are filed with the Court along with the Motion
13 for Final Approval. Either of the Parties may file a responsive document to any objection before
14 the Final Approval Hearing. Any attorney who will represent an individual objecting to this
15 Settlement who has not filed a written objection must file a notice of appearance with the Court
16 and serve Class Counsel and counsel for Defendant no later than the Response Period Deadline.
17 Class Counsel shall not represent any Class Members with respect to any such objections.

18 Any Class Member who fails to submit a timely written objection or to present an objection
19 in person at the Final Approval Hearing shall be deemed to have waived any objections and shall
20 be foreclosed from making any objection to the Settlement whether by appeal or otherwise.

21 An individual who submits a valid Request for Exclusion may not object to the Settlement.

22 **13. No Solicitation of Settlement Objections or Exclusions.**

23 The Parties agree to use their best efforts to carry out the terms of this Settlement. At no
24 time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members
25 to submit either written objections to the Settlement or requests for exclusion from the Settlement,
26 or to appeal from the Court’s Final Judgment.

27 **14. Funding and Allocation of Gross Settlement Amount.**

28 No later than twenty (20) days after the Effective Date, Defendant shall provide the Gross

Settlement Amount to the Settlement Administrator to fund the Settlement, as set forth in this Settlement Agreement, and the employer's share of payroll taxes due on the portion of the Individual Settlement Payments that is allocated to wages. Defendant will not be obligated to make any payments contemplated by this Settlement Agreement unless and until the Court enters the Final Approval Order and Final Judgment, and after the Effective Date of the Agreement.

15. Net Settlement Amount.

The Net Settlement Amount will be determined by the Settlement Administrator by subtracting the Court-approved Attorneys' Fees and Costs, Class Representative Service Award, LWDA Payment, and Settlement Administrator Costs from the Gross Settlement Amount. The anticipated Net Settlement Amount is \$1,465,000. The Parties estimate the amount of the Net Settlement Amount as follows:

Gross Settlement Amount:	\$ 2,500,000
Class Representative Service Award:	\$ 7,500
Class Counsel Fees:	\$ 875,000
Class Counsel Costs:	\$ 25,000
LWDA Payment	\$ 112,500
Settlement Administrator Costs:	\$ 15,000

Anticipated Net Settlement Amount \$ 1,465,000

This is a non-reversionary Settlement in which Defendant is required to pay the entire Gross Settlement Amount, which includes, the Attorneys' Fees and Costs, Class Representative Service Award, Individual Settlement Payments, LWDA Payment, and Settlement Administrator Costs. No portion of the Gross Settlement Amount will revert to Defendant.

Defendant's share of payroll taxes due on the portion of the Individual Settlement Payments allocated to wages, including but not limited to Defendant's FICA and FUTA contributions, shall be paid separately from, and in addition to, the Gross Settlement Amount.

16. Individual Settlement Payments.

Individual Settlement Payments will be paid from the Net Settlement Amount and shall be paid pursuant to the settlement formula set forth herein. Individual Settlement Payments shall be

1 mailed by regular First-Class U.S. Mail to each Participating Class Member's last known mailing
2 address within seven calendar days after Defendant makes the final settlement payment. All
3 Individual Settlement Payments will be allocated as follows: twenty percent (20%) as wages and
4 eighty percent (80%) as interest, penalties, and non-wage damages.

5 **17. Class Member's Payment Ratio.**

6 Participating Class Members will be paid on a pro-rata basis. A Participating Class
7 Member's Individual Settlement Payment will be based on the number of Compensable
8 Workweeks during which s/he worked in proportion to the aggregate number of Compensable
9 Workweeks worked by all Participating Class Members.

10 **18. Payment to Class Member.**

11 Checks shall be made payable to each Participating Class Members for payment of each
12 Participating Class Member's Individual Settlement Payment as set forth in Paragraph III.16 of
13 this Settlement Agreement.

14 **19. Form of Payment to Class Member.**

15 The Individual Settlement Payment amount due to each Participating Class Member shall
16 be paid in the form of a check to each Participating Class Member.

17 **20. Unclaimed Settlement Payment(s).**

18 After one hundred and sixty (160) days of the mailing of the Individual Settlement Payment
19 checks, funds attributable to unclaimed, undeliverable, or expired Individual Settlement Payment
20 checks will be transmitted to the State of California Office of the Controller Unclaimed Property
21 Fund in the name of the Participating Class Members who did not cash his/her Settlement check.
22 The Parties agree to coordinate their efforts to seek Court approval for such an escheatment process
23 of uncashed funds. If, for some reason, the Court does not approve the escheatment of uncashed
24 funds, the Parties agree to proceed pursuant to California Code of Civil Procedure section 384,
25 distribute uncashed funds as described therein, and agreed upon the non-profit Bet Tzedek Legal
26 Services as the *cy pres* designee pursuant to Code of Civil Procedure section 384(b)(3)(C).

27 **21. Class Representative Service Award.**

28 Plaintiff will request that the Court approve a Class Representative Service Award of up to

1 \$7,500. The Class Representative Service Award shall be paid to Plaintiff from the Gross
2 Settlement Amount within ten (10) calendar days after Defendant provides the Gross Settlement
3 Amount to the Settlement Administrator. The Settlement Administrator shall issue an IRS Form
4 1099 – MISC to Plaintiff for his Class Representative Service Award. Plaintiff shall be solely and
5 legally responsible to pay any and all applicable taxes on his Class Representative Service Award
6 and shall hold harmless Defendant and Class Counsel from any claim or liability for taxes,
7 penalties, or interest arising as a result of the Class Representative Service Award. The Class
8 Representative Service Award shall be in addition to the Plaintiff's Individual Settlement Payment
9 as a Settlement Class Member. Any amount requested by Plaintiff for the Class Representative
10 Service Award and not granted by the Court shall return to the Net Settlement Amount and be
11 distributed to Participating Class Members as provided in this Settlement Agreement.

12 **22. Attorneys' Fees and Costs.**

13 Class Counsel will request that the Court approve attorneys' fees in the amount of up to
14 thirty-five percent (35%) of the Gross Settlement Amount ("Class Counsel Fees"). This amount
15 is currently anticipated to be \$875,000.00. Class Counsel will request that the Court approve the
16 reimbursement of any litigation costs or expenses associated with Class Counsel's prosecution of
17 this matter from the Gross Settlement Amount not to exceed \$25,000 ("Class Counsel Costs," and
18 together with Class Counsel Fees, "Attorneys' Fees and Costs"). Court-approved Attorneys' Fees
19 and Costs shall be payable to Class Counsel no later than ten (10) days after Defendant provides
20 the Gross Settlement Amount to the Settlement Administrator. With respect to the Attorneys' Fees
21 and Costs awarded to Class Counsel, the Settlement Administrator may purchase an annuity to
22 utilize United States Treasuries and bonds or other attorney fee deferral vehicles on behalf of Class
23 Counsel; any costs associated with the use of attorney fee deferral vehicles will be the
24 responsibility of Class Counsel. Class Counsel shall be solely and legally responsible to pay all
25 applicable taxes on the payment made pursuant to this paragraph. The Settlement Administrator
26 shall issue an IRS Form 1099 – MISC to Class Counsel for the payments made pursuant to this
27 paragraph. This Settlement is not contingent upon the Court awarding Class Counsel any
28 particular amount in Attorneys' Fees and Costs. Any amount requested by Class Counsel for

Attorneys' Fees and Costs and not granted by the Court shall return to the Net Settlement Amount and be distributed to Participating Class Members as provided in this Settlement Agreement.

23. Settlement Administrator Costs.

The Parties agree to allocate up to \$15,000 of the Gross Settlement Amount for Settlement Administrator Costs. The Settlement Administrator shall have the authority and obligation to make payments, credits and disbursements to Participating Class Members in the manner set forth herein, calculated in accordance with the methodology set out in this Settlement Agreement and orders of the Court. The Parties agree to cooperate in the Settlement administration process and to make all reasonable efforts to control and minimize the cost and expenses incurred in administration of the Settlement.

24. Responsibilities of the Settlement Administrator.

The Settlement Administrator shall be responsible for the following: processing and mailing payments to Plaintiff, Class Counsel, and Participating Class Members; printing, and mailing the Class Notice and tax forms to the Participating Class Members as directed by the Court; receiving and reporting the requests for exclusion and objections submitted by Class Members; providing declaration(s) as necessary in support of preliminary and/or final approval of this Settlement; and other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform. The Settlement Administrator shall keep the Parties timely apprised of the performance of all Settlement Administrator responsibilities.

25. Settlement Administrator Fees.

The Settlement Administrator shall be paid the Settlement Administrator Costs within ten (10) calendar days after Defendant provides the Gross Settlement Amount to the Settlement Administrator.

26. Payment to the LWDA.

A total payment of \$150,000 from the Gross Settlement Amount will be allocated as civil penalties recovered pursuant to PAGA, the PAGA Allocation. Seventy-five percent (75%) of the PAGA Allocation, or \$112,500, will be paid to the LWDA and the remaining twenty-five percent (25%), or \$37,500, shall be included in the Net Settlement Amount to be distributed to

1 Participating Class Members.

2 **27. Final Approval Hearing and Entry of Final Judgment.**

3 Upon expiration of the Response Deadline, with the Court's permission, a Final Approval
4 Hearing shall be conducted to determine final approval of the Settlement along with the amount
5 properly payable for: (i) Attorneys' Fees and Costs; (ii) Class Representative Service Award; (iii)
6 Individual Settlement Payments; (iv) the Settlement Administrator Costs; and (v) LWDA
7 Payment.

8 **28. Final Approval Order.**

9 Plaintiff will request that the Court enter, after the Final Approval Hearing, a Final
10 Approval Order in a form to be jointly agreed upon by the Parties. Plaintiff will request that the
11 Final Approval Order certify the Class; find that this Settlement Agreement is fair, just, adequate,
12 and in the best interests of the Class; and require the Parties to carry out the provisions of this
13 Settlement Agreement.

14 **29. Nullification of Settlement Agreement.**

15 In the event: (i) the Court denies final approval of the Settlement; (ii) the Court refuses to
16 enter a Final Judgement as provided herein; or (iii) the Settlement does not become final for any
17 other reason, and the Parties are unable to reach agreement on a revised settlement that addresses
18 the Court's concerns, this Settlement Agreement shall be null and void and any order or judgement
19 entered by the Court in furtherance of this Settlement shall be treated as void from the beginning.
20 To the extent the total number of opt outs exceed 10%, Defendant has the option to nullify this
21 Settlement within ten (10) court days of the last day of the response period via a written notice to
22 Class Counsel. If one or more of such events occur causing the Settlement Agreement to become
23 null and void, the Parties shall proceed in all respects as if this Settlement Agreement had not been
24 executed, except that any fees already incurred by the Settlement Administrator shall be paid by
25 the party terminating the Settlement or Defendant will be solely responsible for the costs incurred
26 for the settlement administration should it exercise its option to nullify this Settlement Agreement.
27 The return of any paid Settlement funds to Defendant shall occur no later than five (5) business
28 days after one or more of the triggering events leading to nullification occurs. In the event an

1 appeal is filed from the Court's Final Judgment, or any other appellate review is sought,
2 administration of the Settlement shall be stayed pending final resolution of the appeal or other
3 appellate review, but any fees incurred by the Settlement Administrator prior to it being notified
4 of the filing of an appeal from the Court's Final Judgment, or any other appellate review, shall be
5 paid to the Settlement Administrator by Defendant within thirty (30) days of said notification.

6 **30. Increase in Compensable Workweeks**

7 It was represented to Class Counsel that the Class is estimated to consist of approximately
8 415 persons and to include 50,649 Compensable Workweeks. Upon receipt of the Class Data, the
9 Settlement Administrator shall confirm to Class Counsel that the Class Data is consistent with
10 these representations. To the extent the number of Compensable Workweeks increases beyond
11 50,649 by more than 10%, the Gross Settlement Amount shall increase 1% for each 1% increase
12 over 10%. If the increase causes an increase of the cost of Settlement Administration beyond the
13 amount that has been approved by the Court, Defendant shall separately bear the increased cost of
14 Settlement Administration outside of the Gross Settlement Amount.

15 **31. No Effect on Employee Benefits.**

16 Amounts paid to Plaintiff or other Participating Class Members pursuant to this Settlement
17 Agreement shall be deemed not to be pensionable earnings and shall not have any effect on the
18 eligibility for, or calculation of, any of the employee benefits (e.g., vacations, holiday pay,
19 retirement plans, etc.) of Plaintiff or Participating Class Members.

20 **32. No Admission by Defendant.**

21 Defendant denies any and all claims alleged in the Action and deny all wrongdoing
22 whatsoever. This Settlement Agreement is not a concession or admission, and shall not be used
23 against Defendant as an admission or indication with respect to any claim of any fault, concession,
24 or omission by Defendant.

25 **33. Exhibits and Headings.**

26 The terms of this Settlement Agreement include the terms set forth in any attached Exhibits,
27 which are incorporated by this reference as though fully set forth herein. Any Exhibits to this
28 Settlement Agreement are an integral part of the Settlement. The descriptive headings of any

1 paragraphs or sections of this Settlement Agreement are inserted for convenience of reference only
2 and do not constitute a part of this Settlement Agreement.

3 **34. Interim Stay of Proceedings.**

4 Upon full execution of this Settlement Agreement, the Parties agree that based upon Code
5 of Civil Procedure § 583.310 (“the 5 year rule”), the Action shall be stayed in its entirety except
6 for the proceedings necessary to implement and complete the Settlement.

7 **35. Amendment or Modification.**

8 This Settlement Agreement may be amended or modified only by a written instrument
9 signed by counsel for all Parties or their successors-in-interest.

10 **36. Entire Agreement.**

11 This Settlement Agreement and any attached Exhibits constitute the entire Agreement
12 among these Parties, and no oral or written representations, warranties, or inducements have been
13 made to any Party concerning this Settlement Agreement or its Exhibits other than the
14 representations, warranties, and covenants contained and memorialized in the Agreement and its
15 Exhibits. The Parties are entering into this Settlement Agreement based solely on the
16 representations and warranties herein and not based on any promises, representation, and/or
17 warranties not found herein.

18 **37. Authorization to Enter into Settlement Agreement.**

19 Counsel for all Parties warrant and represent they are expressly authorized by the Parties
20 whom they represent to negotiate this Settlement Agreement and to take all appropriate actions
21 required or permitted to be taken by such Parties pursuant to this Settlement Agreement to
22 effectuate its terms, and to execute any other documents required to effectuate the terms of this
23 Settlement Agreement. The Parties and their counsel will cooperate with each other and use their
24 best efforts to effect the implementation of the Settlement. In the event the Parties are unable to
25 reach agreement on the form or content of any document needed to implement the Settlement, or
26 on any supplemental provisions that may become necessary to effectuate the terms of this
27 Settlement, the Parties may seek the assistance of the Court or Mediator to resolve such
28 disagreement. The persons signing this Settlement Agreement on behalf of Defendant represent

1 and warrant that they are authorized to sign this Settlement Agreement on behalf of Defendant.
2 Plaintiff represents and warrants that he is authorized to sign this Settlement Agreement and that
3 he has not assigned any claim, or part of a claim, covered by this Settlement to a third-party.

4 **38. Binding on Successors and Assigns.**

5 This Settlement Agreement shall be binding upon, and inure to the benefit of, the
6 successors or assigns of the Parties hereto, as previously defined.

7 **39. California Law Governs.**

8 All terms of this Settlement Agreement and the Exhibits hereto shall be governed by and
9 interpreted according to the laws of the State of California.

10 **40. Counterparts.**

11 This Settlement Agreement may be executed in one or more counterparts. All executed
12 counterparts and each of them shall be deemed to be one and the same instrument.

13 **41. Jurisdiction of the Court.**

14 The Court shall retain jurisdiction with respect to the interpretation, implementation, and
15 enforcement of the terms of this Settlement Agreement and all orders and judgments entered in
16 connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the
17 Court for purposes of interpreting, implementing, and enforcing the settlement embodied in this
18 Settlement Agreement and all orders and judgments entered in connection therewith. All terms of
19 this Settlement Agreement are subject to approval by the Court.

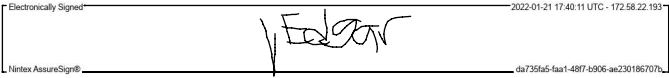
20 **42. Invalidity of Any Provision.**

21 Before declaring any provision of this Settlement Agreement invalid, the Court shall first
22 attempt to construe the provisions valid to the fullest extent possible consistent with applicable
23 precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

24 01/21/2022

25 Dated: January __, 2022

EDGAR MARISCAL
Plaintiff and Proposed Class Representative

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28
A rectangular box containing an electronic signature. The signature is written in black ink and appears to be 'Edgar'. Above the signature, the text 'Electronically Signed' is visible. Below the signature, the text 'Nitex AssureSign®' is visible. To the right of the signature, there is a timestamp: '2022-01-21 17:40:11 UTC - 172.58.22.193' and a long alphanumeric string: 'da735fa5-faa1-4887-b906-ae230186707b'.

1 Dated: January __, 2022

ARIZONA TILE, LLC
Defendant

3
4 By: _____

Sonya Cathey
Senior Director of Human Resources

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7 **APPROVED AS TO FORM:**

8 Dated: January 21, 2022

LAWYERS FOR JUSTICE PC

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10 By: _____


Edwin Aiwarzian
Attorneys for Plaintiff and the Proposed Class

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14 Dated: January __, 2022

**OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.**

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16 By: _____

Evan R. Moses
Aaron H. Cole
Andrew B. Levin
Attorneys for Defendant ARIZONA TILE, LLC

1 Dated: January 20, 2022

ARIZONA TILE, LLC
Defendant

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4 By: _____

Sonya Cathey
Senior Director of Human Resources

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7 **APPROVED AS TO FORM:**

8 Dated: January __, 2022

LAWYERS FOR JUSTICE PC

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10 By: _____

Edwin Aiwarzian
Attorneys for Plaintiff and the Proposed Class

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14 Dated: January 20, 2022

**OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.**

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16 By: _____

Evan R. Moses
Aaron H. Cole
Andrew B. Levin
Attorneys for Defendant ARIZONA TILE, LLC

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EXHIBIT “A”

[CLASS MEMBER NAME]

EDGAR MARISCAL v. ARIZONA TILE, LLC

**United States District Court for the Central District of California
Case No.: 8:20-cv-02071-JLS-KES**

If you are a current or former employee of ARIZONA TILE, LLC (“Defendant”), a class action lawsuit may affect your rights and you may be entitled to benefits under the proposed settlement.

You are not being sued. A court authorized this notice. This is not a solicitation from a lawyer.

**PLEASE READ THIS NOTICE CAREFULLY. IT CONTAINS IMPORTANT
INFORMATION ABOUT YOUR RIGHTS.**

- This lawsuit involves a class defined as:

All persons who are employed or have been employed by Arizona Tile, LLC as non-exempt, hourly employees in the State of California during the Class Period.

These individuals are referred to as “Class Members”.

The “Class Period” means the time period from September 15, 2016 to October 21, 2021.

- You are receiving this Notice because the Defendant’s records reflect that you may be a Class Member.
- Plaintiff in this class action alleges claims against Arizona Tile, LLC for failure to properly pay regular, minimum, and overtime wages, failure to provide proper meal periods and to pay meal period premiums, failure to provide proper rest periods and pay rest period premiums, failure to timely pay wages upon termination of employment, failure to timely pay wages during employment, failure to provide compliant wage statements, failure to keep requisite payroll records, failure to reimburse business expenses, unfair business practices violation of California Business and Professions Code § 17200 *et seq.*, and civil penalties under the Labor Code Private Attorneys General Act of 2004 based on these alleged violations of the Labor Code and Wage Order.
- Arizona Tile, LLC denies these allegations and contends that it has complied with the requirements of California law.
- There has been a settlement that affects your rights. Although the Court has authorized the Parties to provide this notice of the proposed settlement, the Court has expressed no opinion on the merits of Plaintiff’s claims or Arizona Tile LLC’s defenses.
- You will not be penalized or retaliated against by Arizona Tile, LLC for participating in this class action settlement. If you are currently employed by Arizona Tile, LLC, your employment will not be affected in any way. Current employees of Arizona Tile, LLC who choose to participate in the settlement will not be required to resign and can continue to work for Arizona Tile, LLC.

- You have several options available to you:

DO NOTHING	By doing nothing, you <u>will</u> receive a share of the settlement proceeds, and you will give up any rights to sue for Released Claims (defined below).
ASK TO BE EXCLUDED (OPT OUT)	Exclude yourself from the settlement. Keep your rights to file a separate claim against Arizona Tile, LLC. If you ask to be excluded, you <u>will not</u> receive a share of the settlement proceeds, but you keep any rights you may have to bring your own suit against Defendant.
OBJECT	Object to the terms of the proposed settlement.

Your options are explained in this notice.
To opt out or object, you must act by **XXXX.**

1. Why did I get this notice?

A proposed settlement has been reached in a class action lawsuit that was brought on behalf of Arizona Tile, LLC's employees. You have received this notice because Arizona Tile, LLC's records indicate that you are a Class Member. This means you are eligible to participate in and receive a payment from this settlement.

2. What is this lawsuit about?

This lawsuit was filed September 15, 2020 on behalf of all persons who are employed or have been employed as an hourly employee by Arizona Tile, LLC in the State of California. The Second Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, Cal. Labor Code § 2698, et seq. ("Operative Complaint") asserts the following allegations on behalf of all proposed class members: failure to properly pay regular, minimum, and overtime wages, failure to provide proper meal periods and to pay meal period premiums, failure to provide proper rest periods and pay rest period premiums, failure to timely pay wages upon termination of employment, failure to timely pay wages during employment, failure to provide compliant wage statements, failure to keep requisite payroll records, failure to reimburse business expenses, unfair business practices violation of California Business and Professions Code § 17200 *et seq.*, and civil penalties under the Labor Code Private Attorneys General Act of 2004 based on these alleged violations of the Labor Code and Wage Order.

3. Has the Court decided who is right?

No. The Court has made no decision regarding the merits of Plaintiff's allegations or Arizona Tile, LLC's defenses.

4. Why did this case settle?

The Parties reached a settlement in order to avoid the risk and expense of further litigation. Plaintiff and his attorneys believe the proposed settlement is fair, adequate and in the best interest of all Class Members given the outcome of their investigation, the time and resources required in connection with further litigation, the risks as to the outcome, and the uncertainty in the law governing some of the claims presented. Although Arizona Tile, LLC disputes Plaintiff's claims and maintains that it has complied with all of its legal obligations toward its employees, Arizona Tile, LLC has also concluded that further litigation would be protracted and expensive and would also divert management and employee time.

5. What are the terms of the settlement and how much will I receive?

The Gross Settlement Amount to be paid by Defendant under the proposed settlement is \$2,500,000. Under the proposed settlement, the following amounts will be deducted before any payments are made to Class Members, subject to final approval by the Court:

Class Representative Service Award:	\$7,500
Class Counsel Fees:	\$875,000
Class Counsel Costs:	\$25,000
LWDA Payment:	\$112,500
<u>Settlement Administrator Costs:</u>	<u>\$15,000</u>

Anticipated Net Settlement Amount	\$1,465,000
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After these deductions, it is anticipated that there will be \$1,465,000 available to be divided amongst the Class Members receiving this notice ("Net Settlement Amount"). Only those Class Members who do not submit a valid and timely Request for Exclusion ("Participating Class Members") will be entitled to payment of a *pro rata* rate of the Net Settlement Amount.

Each Participating Class Member's Individual Settlement Payment shall be determined on a *pro rata* basis based upon the number of workweeks during which he or she performed worked for Defendant during the Class Period ("Compensable Workweeks") in proportion to the aggregate number of workweeks worked by all Class members during the Class Period. This means that your anticipated payment is "*pro rata*" and will be based upon the number of Compensable Workweeks you worked for Arizona Tile during the time period from September 15, 2016 to October 21, 2021.

All Individual Settlement Payments will be allocated as follows: 20% wages and 80% interest, penalties, and non-wage damages.

According to Arizona Tile, LLC's records, the total number of Compensable Workweeks that you worked for Defendant *during the relevant time period* is [REDACTED]. If you disagree with this information and would like someone to look into the matter, please follow the procedure below. Based on these Compensable Workweeks, your estimated settlement amount is [REDACTED].

6. What if I disagree with the number of workweeks shown above?

If you believe the information in this notice is incorrect regarding the number of Compensable Workweeks attributed to you, you will need to write a letter setting forth the number of Compensable Workweeks that you believe are correct. You must mail your letter to:

Settlement Administrator
c/o Phoenix Class Action Administration Solutions

The letter disputing the number of Compensable Workweeks must: (1) contain your full name, address, and telephone number; (2) contain a statement expressing that you dispute the number of Compensable Workweeks credited to you, and, if available, to attach documentation and/or an explanation to show contrary information; (3) be signed by you; and (4) be postmarked or fax stamped by XXXX and returned to the Settlement Administrator at the specified address or fax number above.

Class Counsel and the Settlement Administrator will work together in good faith and do their best to promptly resolve the dispute based on available records. In the event they are unable to resolve any dispute, the Settlement Administrator shall review all information, material and documents and make a decision regarding the dispute.

7. What do I have to do to receive a share of the settlement?

If you wish to receive an award under the terms of this settlement, you do not have to do anything. However, please make sure the Settlement Administrator always has your current home address on file to ensure you receive your settlement share. If you move, call the Settlement Administrator to provide your new address.

8. What rights am I giving up?

The claims you will Release by doing nothing are: All causes of action and factual or legal theories that were alleged in the Operative Complaint or reasonably could have been alleged based on the facts and legal theories contained in the Operative Complaint, including all of the following claims for relief: (a) failure to pay all regular wages, minimum wages and overtime wages due; (b) failure to properly calculate the regular rate of pay for payment of overtime wages; (c) failure to provide proper meal periods, and to properly provide premium pay in lieu thereof; (d) failure to provide proper rest periods, and to properly provide premium pay in lieu thereof; (e) failure to pay all wages timely during employment; (f) failure to pay all wages timely at the time of termination; (g) failure to provide complete, accurate or properly formatted wage statements; (h) failure to keep required payroll records; (i) failure to reimburse business expenses; (j) unfair business practices that could have been premised on the claims, causes of action or legal theories of relief described above or any of the claims, causes of action or legal theories of relief pleaded in the operative complaint; (k) all claims under the California Labor Code Private Attorneys General Act of 2004 that could have been premised on the claims, causes of action or legal theories described above or any of the claims, causes of action or legal theories of relief pleaded in the Operative Complaint; (l) any other claims or penalties under the wage and hour laws pleaded in the Operative Complaint; and (m) all damages, penalties, interest and other amounts recoverable based on the claims, causes of action, or legal theories of relief pleaded in the Operative Complaint (collectively, the “Released Claims”).

9. What if I do not wish to be involved?

Anyone not wishing to participate in the settlement may exclude himself or herself (“opt out”) by completing, signing, and mailing a letter indicating that they do not want to participate in the settlement to the Settlement Administrator, Phoenix Class Action Administration Solutions, by XXXX (“Request for Exclusion”).

Settlement Administrator
c/o Phoenix Class Action Administration Solutions

The Request for Exclusion must: (1) contain your full name, address, and telephone number; (2) contain a statement expressing that you want to be excluded from the settlement; (3) be signed by you; and (4) be postmarked or fax stamped by XXXX and returned to the Settlement Administrator at the specified address or fax number above. The Request for Exclusion will be deemed invalid if it does not contain your name, address, signature, and a statement requesting exclusion.

Anyone who submits a timely and valid Request for Exclusion shall not be deemed a Participating Class Member and will not receive any payment as part of the settlement. Such persons will keep any rights to sue Arizona Tile, LLC separately about the claims made in this lawsuit. An individual who submits a valid Request for Exclusion may not object to the settlement.

10. What if I have an objection to the settlement?

A class member may object to the settlement in writing or in person. Written objections and all supporting briefs or other materials must be submitted to the Settlement Administrator no later than XXXX.

The Notice of Objection must be signed by you and state: (1) your full name, present address, and telephone number; (2) the basis for your objection; and (3) if you intend to appear at the Final Approval Hearing. The Settlement Administration must provide a copy of written objections to the Parties within three (3) days of receipt.

Any Class Member may make an objection at the Final Approval Hearing with or without filing or serving any written objection. The Class Member may appear personally or through an attorney, at his or her own expense, at the Final Approval Hearing to present his or her objection directly to the Court. The Final Approval Hearing will be held in Courtroom [REDACTED] of the United States District Court for the Central District of California, located at [REDACTED] on _____, 2022, at XX (a.m./p.m.) (Pacific Time).

Any attorney who will represent an individual objecting to this settlement who has not filed a written objection must file a notice of appearance with the Court and serve Class Counsel and counsel for Arizona Tile, LLC no later than the [Response Deadline].

Any Class Member who fails to submit a timely written objection or to present an objection in person at the Final Approval Hearing shall be deemed to have waived any objections and shall be foreclosed from making any objection to the settlement whether by appeal or otherwise.

11. Do I need a lawyer? Who are the lawyers in this case?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. However, if you want your own lawyer, you are free to hire one at your own expense.

The below are Class Counsel and Defendant's Counsel in this case:

<u>Class Counsel:</u>	<u>Counsel for ARIZONA TILE, LLC</u>
LAWYERS for JUSTICE, PC Edwin Aiwarzian edwin@calljustice.com Arby Aiwarzian arby@calljustice.com Joanna Ghosh joanna@calljustice.com 410 West Arden Avenue, Suite 203 Glendale, California 91203 Telephone: (818) 265-1020 Facsimile: (818) 265-1021	OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C. EVAN R. MOSES evan.moses@ogletree.com AARON H. COLE aaron.cole@ogletree.com ANDREW B. LEVIN andrew.levin@ogletree.com 400 South Hope Street, Suite 1200 Los Angeles, CA 90071 Telephone: 213.239.9800 Facsimile: 213.239.9045

12. What happens next in the case?

The settlement has only been preliminarily approved. The Court will hold a hearing in Courtroom [REDACTED] of the United States District Court for the Central District of California, located at [REDACTED] on [REDACTED], 2022, at XX (a.m./p.m.) (Pacific Time), to consider any objections and determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for Attorneys' Fees and Costs, Plaintiff's Service Award, the LWDA Payment, and the Settlement Administrator Costs. The hearing may be continued without further notice to you. It is not necessary for you to appear at this hearing.

13. How can I receive more information?

This notice is a summary of the basic terms of the settlement. For further information, you may also telephone the Settlement Administrator, Phoenix Class Action Administration Solutions (listed above), or Class Counsel (listed above). You may also visit the following website at which you can access certain documents relating to the settlement by entering the name of this lawsuit: [insert URL].

Please do not telephone the Court, the Office of the Clerk, or Arizona Tile, LLC's counsel for information regarding this settlement.

EXHIBIT 2

LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

EDGAR MARISCAL, individually,
and on behalf of other members of the
general public similarly situated and
on behalf of other aggrieved
employees pursuant to the California
Private Attorneys General Act;

Plaintiff,

vs.

ARIZONA TILE, LLC, an unknown
business entity; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 8:20-cv-02070-JLS-KES

**[PROPOSED] SECOND AMENDED
CLASS ACTION COMPLAINT FOR
DAMAGES & ENFORCEMENT
UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §
2698, ET SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment);
- (7) Violation of California Labor Code § 226(a) (Non-

- Compliant Wage Statements);
- (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records);
- (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (10) Violation of California Business & Professions Code §§ 17200, et seq.
- (11) Violation of California Labor Code § 2698, et seq. (California Labor Code Private Attorneys General Act of 2004);

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff EDGAR MARISCAL (“Plaintiff”), individually, and on behalf of other members of the general public similarly situated, and on behalf of other aggrieved employees pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698, et seq. (“PAGA”), and alleges as follows:

JURISDICTION AND VENUE

1. This class action was originally brought in the Superior Court for the County of Orange pursuant to California Code of Civil Procedure section 382.

2. This Court has asserted jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d).

3. The Superior Court of the County of Orange had jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

4. The Superior Court of the County of Orange had jurisdiction over Defendant because, upon information and belief, Defendant is a citizen of California, has sufficient minimum contacts in California, or otherwise

1 intentionally avails itself of the California market so as to render the exercise of
2 jurisdiction over it by California courts consistent with traditional notions of fair
3 play and substantial justice.

4 5. Venue was proper in the Superior Court of the County of Orange this
5 Court because, upon information and belief, Defendant maintains offices, has
6 agents, employs individuals, and/or transacts business in the State of California,
7 County of Orange. The majority of acts and omissions alleged herein relating to
8 Plaintiff and the other class members took place in the State of California,
9 including the County of Orange.

10 6. Upon information and belief, Defendant ARIZONA TILE, LLC does
11 business in California, and at all times hereinafter mentioned, an employer whose
12 employees are engaged throughout this District and throughout the State of
13 California. Upon information and belief, ARIZONA TILE, LLC maintains offices,
14 has agents, and/or transacts business in this District.

15 **PARTIES**

16 7. Plaintiff EDGAR MARISCAL is an individual residing in the State of
17 California, County of Orange.

18 8. Defendant ARIZONA TILE, LLC, at all times herein mentioned, was
19 and is, upon information and belief, an employer whose employees are engaged
20 throughout the State of California, including the County of Orange.

21 9. At all relevant times, Defendant ARIZONA TILE, LLC was the
22 “employer” of Plaintiff within the meaning of all applicable California laws and
23 statutes whose employees are engaged throughout the State of California,
24 including the County of Orange.

25 10. At all times herein relevant, Defendants ARIZONA TILE, LLC, and
26 DOES 1 through 100, and each of them, were the agents, partners, joint venturers,
27 joint employers, representatives, servants, employees, successors-in-interest, co-
28 conspirators and/or assigns, each of the other, and at all times relevant hereto

1 were acting within the course and scope of their authority as such agents,
2 partners, joint venturers, joint employers, representatives, servants, employees,
3 successors, co-conspirators and/or assigns, and all acts or omissions alleged
4 herein were duly committed with the ratification, knowledge, permission,
5 encouragement, authorization and/or consent of each defendant designated as a
6 DOE herein.

7 11. The true names and capacities, whether corporate, associate,
8 individual or otherwise, of defendants DOES 1 through 100, inclusive, are
9 unknown to Plaintiff who sue said defendants by such fictitious names. Plaintiff
10 is informed and believes, and based on that information and belief alleges, that
11 each of the defendants designated as a DOE is legally responsible for the events
12 and happenings referred to in this Complaint, and unlawfully caused the injuries
13 and damages to Plaintiff and the other class members as alleged in this
14 Complaint. Plaintiff will seek leave of court to amend this Complaint to show the
15 true names and capacities when the same have been ascertained.

16 12. Defendant ARIZONA TILE, LLC and DOES 1 through 100 will
17 hereinafter collectively be referred to as “Defendants.”

18 13. Plaintiff further alleges that Defendants directly or indirectly
19 controlled or affected the working conditions, wages, working hours, and
20 conditions of employment of Plaintiff and the other class members so as to make
21 each of said Defendants employers liable under the statutory provisions set forth
22 herein.

23 **CLASS ACTION ALLEGATIONS**

24 14. Plaintiff brings this action on his own behalf and on behalf of all
25 other members of the general public similarly situated, and, thus, seeks class
26 certification under Rule 23(a) and 23(b)(3) of the Federal Rules of Civil
27 Procedure.
28

15. The proposed class is defined as follows:

All current and former hourly-paid or non-exempt employees who worked for any of the Defendants within the State of California at any time during the period from September 15, 2016 to final judgment and who reside in California.

(subclass A) All class members who were required to remain on premises during their breaks; and

(Subclass B) All class members who received overtime compensation at a rate lower than their respective regular rate of pay because defendant failed to include all non-discretionary compensation in the regular rate of pay calculation for overtime pay purposes.

16. Plaintiff reserves the right to establish other subclasses as appropriate.

17. The class is ascertainable and there is a well-defined community of interest in the litigation:

a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

b. Typicality: Plaintiff's claims are typical of all other class members' as demonstrated herein. Plaintiff will fairly and adequately protect the interests of the other class members with whom she has a well-defined community of interest.

c. Adequacy: Plaintiff will fairly and adequately protect the interests of each class member, with whom she has a well-

1 defined community of interest and typicality of claims, as
2 demonstrated herein. Plaintiff has no interest that is
3 antagonistic to the other class members. Plaintiff's attorneys,
4 the proposed class counsel, are versed in the rules governing
5 class action discovery, certification, and settlement. Plaintiff
6 has incurred, and during the pendency of this action will
7 continue to incur, costs and attorneys' fees, that have been,
8 are, and will be necessarily expended for the prosecution of
9 this action for the substantial benefit of each class member.

- 10 d. Superiority: A class action is superior to other available
11 methods for the fair and efficient adjudication of this litigation
12 because individual joinder of all class members is impractical.
13 e. Public Policy Considerations: Certification of this lawsuit as a
14 class action will advance public policy objectives. Employers
15 of this great state violate employment and labor laws every
16 day. Current employees are often afraid to assert their rights
17 out of fear of direct or indirect retaliation. However, class
18 actions provide the class members who are not named in the
19 complaint anonymity that allows for the vindication of their
20 rights.

21 18. There are common questions of law and fact as to the class members
22 that predominate over questions affecting only individual members. The
23 following common questions of law or fact, among others, exist as to the
24 members of the class:

- 25 a. Whether Defendants' failure to pay wages, without abatement
26 or reduction, in accordance with the California Labor Code,
27 was willful;
28

- 1 b. Whether Defendants' had a corporate policy and practice of
2 failing to pay their hourly-paid or non-exempt employees
3 within the State of California for all hours worked and missed
4 (short, late, interrupted, and/or missed altogether) meal periods
5 and rest breaks in violation of California law;
6 c. Whether Defendants required Plaintiff and the other class
7 members to work over eight (8) hours per day, over forty (40)
8 hours per week, and/or over six (6) days per workweek and
9 failed to pay the legally required overtime compensation to
10 Plaintiff and the other class members;
11 d. Whether Defendants failed to use all non-discretionary
12 compensation, e.g., earned commissions, non-discretionary
13 bonuses, non-discretionary monetary and non-monetary
14 incentives, non-discretionary production and/or performance
15 pay, and/or shift differentials to calculate the regular rate of
16 pay used to calculate the overtime rate for the payment of
17 overtime wages where Plaintiff and the other class members
18 earned commissions, non-discretionary bonuses, non-
19 discretionary monetary and non-monetary incentives, non-
20 discretionary production and/or performance pay, and/or shift
21 differentials and overtime wages in the same workweek;
22 e. Whether Defendants deprived Plaintiff and the other class
23 members of meal and/or rest periods or required Plaintiff and
24 the other class members to work during meal and/or rest
25 periods without compensation;
26 f. Whether Defendants failed to pay minimum wages to Plaintiff
27 and the other class members for all hours worked;
28 g. Whether Defendants failed to pay all wages due to Plaintiff

- 1 and the other class members within the required time upon
2 their discharge or resignation;
- 3 h. Whether Defendants failed to timely pay all wages due to
4 Plaintiff and the other class members during their
5 employment;
- 6 i. Whether Defendants complied with wage reporting as required
7 by the California Labor Code; including, *inter alia*,
8 section 226;
- 9 j. Whether Defendants kept complete and accurate payroll
10 records as required by the California Labor Code, including,
11 *inter alia*, section 1174(d);
- 12 k. Whether Defendants failed to reimburse Plaintiff and the other
13 class members for necessary business-related expenses and
14 costs;
- 15 l. Whether Defendants' conduct was willful or reckless;
- 16 m. Whether Defendants engaged in unfair business practices in
17 violation of California Business & Professions Code section
18 17200, et seq.;
- 19 n. The appropriate amount of damages, restitution, and/or
20 monetary penalties resulting from Defendants' violation of
21 California law; and
- 22 o. Whether Plaintiff and the other class members are entitled to
23 compensatory damages pursuant to the California Labor Code.

24 **PAGA ALLEGATIONS**

25 19. At all times herein set forth, PAGA was applicable to Plaintiff's
26 employment by Defendants.

27 20. At all times herein set forth, PAGA provides that any provision of law
28 under the California Labor Code that provides for a civil penalty, including unpaid

1 wages and premium wages, to be assessed and collected by the California Labor &
2 Workforce Development Agency (“LWDA”) for violations of the California Labor
3 Code may, as an alternative, be recovered through a civil action brought by an
4 aggrieved employee on behalf of himself and other current or former employees
5 pursuant to procedures outlined in California Labor Code section 2699.3.

6 21. Pursuant to PAGA, a civil action under PAGA may be brought by an
7 “aggrieved employee,” who is any person that was employed by the alleged violator
8 and against whom one or more of the alleged violations was committed.

9 22. Plaintiff was employed by Defendants and the alleged violations were
10 committed against him during his time of employment and he is, therefore, an
11 aggrieved employee. Plaintiff and the other employees are “aggrieved employees” as
12 defined by California Labor Code section 2699© in that they are current or former
13 employees of Defendants, and one or more of the alleged violations were committed
14 against them.

15 23. Pursuant to California Labor Code sections 2699.3 and 2699.5, an
16 aggrieved employee, including Plaintiff, may pursue a civil action arising under PAGA
17 after the following requirements have been met:

- 18 a. The aggrieved employee shall give written notice by certified mail
19 (hereinafter “Employee’s Notice”) to the LWDA and the employer
20 of the specific provisions of the California Labor Code alleged to
21 have been violated, including the facts and theories to support the
22 alleged violations.
- 23 b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to
24 the employer and the aggrieved employee by certified mail that it
25 does not intend to investigate the alleged violation within sixty (60)
26 calendar days of the postmark date of the Employee’s Notice.
27 Upon receipt of the LWDA Notice, or if the LWDA Notice is not
28 provided within sixty-five (65) calendar days of the postmark date

of the Employee's Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

24. On September 8, 2021, Plaintiff provided written notice by online submission to the LWDA and by certified mail to Defendant ARIZONA TILE, LLC of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

25. Plaintiff did not receive a response from the LWDA within sixty-five (65) days of the date of the submission of Plaintiff's notice.

26. Therefore, the administrative prerequisites under California Labor Code section 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 551, 552, 558, 1174, 1194, 1197, 1197.1, 1198, 2800, and 2802 and Industrial Welfare Commission Wage Orders, have been satisfied.

GENERAL ALLEGATIONS

27. At all relevant times set forth herein, Defendants employed Plaintiff and other persons as hourly-paid or non-exempt employees within the State of California, including the County of Orange.

28. Defendants, jointly and severally, employed Plaintiff as an hourly-paid, non-exempt employee, from approximately February 2013 to approximately July 2018, in the State of California, County of Orange.

29. Defendants hired Plaintiff and the other class members, classified them as hourly-paid or non-exempt employees, and failed to compensate them for all hours worked and missed, late, short, and/or interrupted meal periods and/or rest breaks.

30. Defendants had the authority to hire and terminate Plaintiff and the other class members, to set work rules and conditions governing Plaintiff's and

1 the other class members' employment, and to supervise their daily employment
2 activities.

3 31. Defendants exercised sufficient authority over the terms and
4 conditions of Plaintiff's and the other class members' employment for them to be
5 joint employers of Plaintiff and the other class members.

6 32. Defendants directly hired and paid wages and benefits to Plaintiff
7 and the other class members.

8 33. Defendants continue to employ hourly-paid or non-exempt
9 employees within the State of California.

10 34. Plaintiff and the other class members worked over eight (8) hours in
11 a day, forty (40) hours in a week, and/or over six (6) days in a workweek during
12 their employment with Defendants. For example, Plaintiff worked over eight (8)
13 hours in a day on numerous occasions including but not limited to January 4,
14 2018 and April 27, 2018.

15 35. Plaintiff is informed and believes, and based thereon alleges, that
16 Defendants engaged in a pattern and practice of wage abuse against their hourly-
17 paid or non-exempt employees within the State of California. This pattern and
18 practice involved, *inter alia*, failing to pay them for all regular and/or overtime
19 wages earned and for missed, shortened, late, and/or interrupted meal periods and
20 rest breaks in violation of California law.

21 36. Plaintiff is informed and believes, and based thereon alleges, that
22 Defendants failed to use earned commissions, non-discretionary bonuses, non-
23 discretionary monetary and non-monetary incentives, non-discretionary production
24 and/or performance pay, and/or shift differentials to calculate the regular rate of
25 pay used to calculate the overtime rate for the payment of overtime wages where
26 Plaintiff and the other class members earned commissions, non-discretionary
27 bonuses, non-discretionary monetary and non-monetary incentives, non-
28 discretionary production and/or performance pay, and/or shift differentials and

1 overtime wages in the same workweek.

2 37. Plaintiff is informed and believes, and based thereon alleges, that
3 Defendants knew or should have known that Plaintiff and the other class
4 members were entitled to receive certain wages for overtime compensation and
5 that they were not receiving accurate overtime compensation for all overtime
6 hours worked. Defendant failed to, inter alia, compensate Plaintiff and the other
7 class members for job duties performed before and/or after their scheduled shifts
8 and during meal periods such as waiting in line to clock-in as ten (10) to twelve
9 (12) other employees attempted to clock-in at the same time, receiving work
10 instruction and answering work related questions from supervisors and managers.

11 38. Plaintiff is informed and believes, and based thereon alleges, that
12 Defendants failed to provide Plaintiff and the other class members all required
13 rest and meal periods during the relevant time period as required under the
14 Industrial Welfare Commission Wage Orders and thus they are entitled to any
15 and all applicable penalties. Plaintiff experienced numerous violations of this
16 type including but not limited to: working over six (6) hours and receiving a meal
17 break of only 28 minutes on February 12, 2018 and working over six (6) hours
18 and receiving a meal break of only 28 minutes on March 29, 2018. Additionally,
19 individually Plaintiff worked Over six (6) hours on each of these among many
20 other days and was not provided a second rest break.

21 39. Plaintiff is informed and believes, and based thereon alleges, that
22 Defendants failed to relieve Plaintiff and the other class members of all duties,
23 failed to relinquish control over Plaintiff and the other class members' activities,
24 failed to permit Plaintiff and the other class members a reasonable opportunity to
25 take, and impeded or discouraged them from taking, thirty (30) minute
26 uninterrupted meal breaks no later than the end of their fifth hour of work for shifts
27 lasting at least six (6) hours, and/or to take second thirty (30) minute uninterrupted
28 meal breaks no later than their tenth hour of work for shifts lasting more than ten

1 (10) hours.

2 40. Plaintiff is informed and believes, and based thereon alleges, that
3 Defendants knew or should have known that Plaintiff and the other class
4 members were entitled to receive all meal periods or payment of one additional
5 hour of pay at Plaintiff's and the other class member's regular rate of pay when a
6 meal period was missed, shortened, late, and/or interrupted and they did not
7 receive all meal periods or payment of one additional hour of pay at Plaintiff's
8 and the other class member's regular rate of pay when a meal period was missed,
9 shortened, late, and/or interrupted.

10 41. Plaintiff is informed and believes, and based thereon alleges, that
11 Defendants failed to provide, authorize, and permit Plaintiff and other class
12 members to take full, uninterrupted, off-duty rest periods for every shift lasting
13 three and one-half (3.5) to six (6) hours and/or two full, uninterrupted, off-duty rest
14 periods for every shift lasting six (6) to ten (10) hours, and failed to make a good
15 faith effort to authorize, permit, and provide such rest breaks in the middle of each
16 work period.

17 42. Plaintiff is informed and believes, and based thereon alleges, that
18 Defendants knew or should have known that Plaintiff and the other class
19 members were entitled to receive all rest periods or payment of one additional
20 hour of pay at Plaintiff's and the other class member's regular rate of pay when a
21 rest period was missed, shortened, late, and/or interrupted, and they did not
22 receive all rest periods or payment of one additional hour of pay at Plaintiff's and
23 the other class members' regular rate of pay when a rest period was missed,
24 shortened, late, and/or interrupted.

25 43. Plaintiff is informed and believes, and based thereon alleges, that
26 Defendants knew or should have known that Plaintiff and the other class
27 members were entitled to receive at least minimum wages for compensation and
28 that they were not receiving at least minimum wages for all hours worked.

1 Defendant's failure to pay minimum wages included, *inter alia*, Defendants'
2 effective payment of zero dollars per hour for time Plaintiff and the other class
3 members worked off the clock performing work duties as alleged herein. Plaintiff
4 experienced this violation on numerous occasions including but not limited to
5 January 2, 2018 and February 10, 2018. Plaintiff is informed and believes and
6 based thereon alleges that he was not paid minimum wage for an average of at least
7 one tenth of one hour worked, each day worked.

8 44. Plaintiff is informed and believes, and based thereon alleges, that
9 Defendants knew or should have known that Plaintiff and the other class
10 members were entitled to receive all wages owed to them upon discharge or
11 resignation, including overtime and minimum wages and meal and rest period
12 premiums, and they did not, in fact, receive all such wages owed to them at the
13 time of their discharge or resignation. As previously alleged these unpaid wages
14 included but were not limited to unpaid overtime and minimum wages for time
15 worked before clocking-in, after clocking-out or performed during meal breaks,
16 as well as unpaid premium wages for missed, short, late or interrupted meal or
17 rest breaks.

18 45. Plaintiff is informed and believes, and based thereon alleges, that
19 Defendants knew or should have known that Plaintiff and the other class
20 members were entitled to receive all wages owed to them during their
21 employment. Plaintiff and the other class members did not receive payment of all
22 wages, including overtime and minimum wages and meal and rest period
23 premiums as alleged herein, within any time permissible under California Labor
24 Code section 204.

25 46. Plaintiff is informed and believes, and based thereon alleges, that
26 Defendants knew or should have known that Plaintiff and the other class
27 members were entitled to receive complete and accurate wage statements in
28 accordance with California law, but, in fact, they did not receive complete and

1 accurate wage statements from Defendants. The deficiencies included, *inter alia*,
2 the failure to list all applicable hourly rates and to include the accurate total
3 number of hours worked by Plaintiff and the other class members and the
4 accurate total amount of wages earned by Plaintiff and the other class members as
5 alleged herein. This injured Plaintiff and other class members by depriving them
6 of records reflecting the actual wages they were owed.

7 47. Plaintiff is informed and believes, and based thereon alleges, that
8 Defendants knew or should have known that Defendants had to keep complete
9 and accurate payroll records for Plaintiff and the other class members in
10 accordance with California law, but, in fact, did not keep complete and accurate
11 payroll records. Defendants' failure included, *inter alia*, the failure to keep
12 accurate records of the hours worked by Plaintiff and the other class members.

13 48. Plaintiff is informed and believes, and based thereon alleges, that
14 Defendants knew or should have known that Plaintiff and the other class
15 members were entitled to reimbursement for necessary business-related expenses.
16 Plaintiff and other class members incurred business related expenses for, among
17 other things, to purchase and/or maintain boots, gloves, safety glasses, and attire
18 to comply with Defendants' dress code.

19 49. Plaintiff is informed and believes, and based thereon alleges, that
20 Defendants knew or should have known that they had a duty to compensate
21 Plaintiff and the other class members pursuant to California law, and that
22 Defendants had the financial ability to pay such compensation, but willfully,
23 knowingly, and intentionally failed to do so, and falsely represented to Plaintiff
24 and the other class members that they were properly denied wages, all in order to
25 increase Defendants' profits.

26 50. During the relevant time period, Defendants failed to pay overtime
27 wages to Plaintiff and the other class members for all overtime hours worked.
28 Plaintiff and the other class members were required to work more than eight (8)

1 hours per day, forty (40) hours per week, and/or six (6) consecutive days in a
2 workweek without overtime compensation for all overtime hours worked.

3 51. During the relevant time period, Defendants failed to provide all
4 requisite uninterrupted meal and rest periods to Plaintiff and the other class
5 members.

6 52. During the relevant time period, Defendants failed to pay Plaintiff
7 and the other class members at least minimum wages for all hours worked.

8 53. During the relevant time period, Defendants failed to pay Plaintiff
9 and the other class members all wages owed to them upon discharge or
10 resignation.

11 54. During the relevant time period, Defendants failed to pay Plaintiff
12 and the other class members all wages within any time permissible under
13 California law, including, *inter alia*, California Labor Code section 204.

14 55. During the relevant time period, Defendants failed to provide
15 complete or accurate wage statements to Plaintiff and the other class members.

16 56. During the relevant time period, Defendants failed to keep complete
17 or accurate payroll records for Plaintiff and the other class members.

18 57. During the relevant time period, Defendants failed to reimburse
19 Plaintiff and the other class members for all necessary business-related expenses
20 and costs.

21 58. During the relevant time period, Defendants failed to properly
22 compensate Plaintiff and the other class members pursuant to California law in
23 order to increase Defendants' profits.

24 59. California Labor Code section 218 states that nothing in Article 1 of
25 the Labor Code shall limit the right of any wage claimant to "sue directly . . . for
26 any wages or penalty due to him [or her] under this article."

27 ///

28 ///

FIRST CAUSE OF ACTION

(Violation of California Labor Code §§ 510 and 1198)

(Against ARIZONA TILE, LLC and DOES 1 through 100)

60. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 59, and each and every part thereof with the same force and effect as though fully set forth herein.

61. California Labor Code section 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

62. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and the other class members employed by Defendants, and working more than eight (8) hours in a day, more than forty (40) hours in a week, and/or more than six (6) consecutive days in a workweek, at the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day, more than forty (40) hours in a week, or for the first eight (8) hours worked on the seventh day of work in a workweek.

63. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and the other class members overtime compensation at a rate of two times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

64. California Labor Code section 510 codifies the right to overtime compensation at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

65. During the relevant time period, Plaintiff and the other class members worked in excess of eight (8) hours in a day, forty (40) hours in a week, and/or six (6) consecutive days in a workweek, performing work duties off-the-clock such as waiting in line to clock-in as ten (10) to twelve (12) other employees attempted to clock-in at the same time, receiving work instruction and answering work related questions from supervisors and managers. By way of example, during the period of approximately January 2018 to February 2018, Plaintiff was not compensated at an overtime rate for all time worked in excess of eight (8) hours per day.

66. During the relevant time period, Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiff and the other class members. Plaintiffs and the other class members did not receive overtime compensation at one and one-half times their regular hourly rate of pay for all hours spent performing job duties in excess of eight (8) hours in a day, forty (40) hours in a week, or for the first eight (8) hours worked on the seventh day of work

67. Defendants' failure to pay Plaintiff and the other class members the unpaid balance of overtime compensation, as required by California laws, violates the provisions of California Labor Code sections 510 and 1198, and is therefore unlawful.

68. Pursuant to California Labor Code section 1194, Plaintiff and the other class members are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

(Violation of California Labor Code §§ 226.7 and 512(a)) (Against ARIZONA TILE, LLC and DOES 1 through 100)

69. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 68, and each and every part thereof with the same force and effect as though fully set forth herein.

1 70. At all relevant times, the IWC Order and California Labor Code
2 sections 226.7 and 512(a) were applicable to Plaintiff's and the other class
3 members' employment by Defendants.

4 71. At all relevant times, California Labor Code section 226.7 provides
5 that no employer shall require an employee to work during any meal or rest
6 period mandated by an applicable order of the California IWC.

7 72. At all relevant times, the applicable IWC Wage Order and California
8 Labor Code section 512(a) provide that an employer may not require, cause or
9 permit an employee to work for a work period of more than five (5) hours per day
10 without providing the employee with a meal period of not less than thirty (30)
11 minutes, except that if the total work period per day of the employee is no more
12 than six (6) hours, the meal period may be waived by mutual consent of both the
13 employer and employee.

14 73. At all relevant times, the applicable IWC Wage Order and California
15 Labor Code section 512(a) further provide that an employer may not require,
16 cause or permit an employee to work for a work period of more than ten (10)
17 hours per day without providing the employee with a second uninterrupted meal
18 period of not less than thirty (30) minutes, except that if the total hours worked is
19 no more than twelve (12) hours, the second meal period may be waived by
20 mutual consent of the employer and the employee only if the first meal period
21 was not waived.

22 74. During the relevant time period, Plaintiff and the other class
23 members who were scheduled to work for a period of time no longer than six (6)
24 hours, and who did not waive their legally-mandated meal periods by mutual
25 consent, were required to work for periods longer than five (5) hours without an
26 uninterrupted meal period of not less than thirty (30) minutes and/or rest period.

27 75. During the relevant time period, Plaintiff and the other class
28 members who were scheduled to work for a period of time in excess of six (6)

1 hours were required to work for periods longer than five (5) hours without an
2 uninterrupted meal period of not less than thirty (30) minutes and/or rest period.

3 76. During the relevant time period Plaintiff and the other class
4 members' meal periods were missed, shortened, taken late, and/or were
5 interrupted because Defendant required them to perform work duties including
6 but not limited to waiting in line to clock-in as ten (10) to twelve (12) other
7 employees attempted to clock-in at the same time, receiving work instruction and
8 answering work related questions from supervisors and managers. Plaintiff and
9 the other class members were instructed by Defendants when to start and end their
10 meal periods which often resulted in late, missed, shortened, or interrupted meal
11 periods.

12 77. As a result, Defendant failed to relieve Plaintiff and the other class
13 members of all duties, failed to relinquish control over Plaintiff and the other class
14 members' activities, failed to permit Plaintiff and the other class members a
15 reasonable opportunity to take, and impeded or discouraged them from taking
16 thirty (30) minute uninterrupted meal periods no later than the end of their fifth
17 hour of work for shifts lasting at least six (6) hours, and/or to take second thirty
18 (30) minute uninterrupted meal periods no later than their tenth hour of work for
19 shifts lasting more than ten (10) hours.

20 78. During the relevant time period, Defendants intentionally and
21 willfully required Plaintiff and the other class members to work during meal
22 periods and failed to compensate Plaintiff and the other class members the full
23 meal period premium for work performed during meal periods.

24 79. During the relevant time period, Defendants failed to pay Plaintiff
25 and the other class members the full meal period premium due pursuant to
26 California Labor Code section 226.7.

27 80. Defendants' conduct violates applicable IWC Wage Order and
28 California Labor Code sections 226.7 and 512(a).

81. Pursuant to applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.

THIRD CAUSE OF ACTION

(Violation of California Labor Code § 226.7)

(Against ARIZONA TILE, LLC and DOES 1 through 100)

82. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 81, and each and every part thereof with the same force and effect as though fully set forth herein.

83. At all times herein set forth, the applicable IWC Wage Order and California Labor Code section 226.7 were applicable to Plaintiff's and the other class members' employment by Defendants.

84. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

85. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

86. During the relevant time period, Plaintiff and the other class members' rest periods were missed, shortened, late, and/or interrupted because Defendants required them to perform work duties including but not limited to filling orders and moving inventory around the warehouse. Plaintiff and the other class members were discouraged from taking rest breaks by Defendants, even when it resulted in late, missed, shortened, or interrupted rest periods. By way of

1 example, Plaintiff was not provided with an uninterrupted ten (10) minute rest
2 period for every major fraction of four (4) hours approximately five to six times
3 per work week during the entire time he was employed with Defendants.

4 87. During the relevant time period, Defendants willfully required
5 Plaintiff and the other class members to remain on premises during rest periods
6 and/or to work during rest periods, and failed to pay Plaintiff and the other class
7 members the full rest period premium for work performed during rest periods.

8 88. As a result, Defendant failed to provide, authorize, and/or permit
9 Plaintiff and other class members to take full, uninterrupted, off-duty rest periods
10 for every shift lasting three and one-half (3½) to six (6) hours and/or two full,
11 uninterrupted, off-duty rest periods for every shift lasting six (6) to ten (10) hours,
12 and/or three full, uninterrupted, off-duty rest periods for every shift lasting ten (10)
13 to fourteen (14) hours and failed to make a good faith effort to authorize, permit,
14 and provide such rest breaks in the middle of each work period.

15 89. During the relevant time period, Defendants failed to pay Plaintiff
16 and the other class members the full rest period premium due pursuant to
17 California Labor Code section 226.7

18 90. Defendants' conduct violates applicable IWC Wage Orders and
19 California Labor Code section 226.7.

20 91. Pursuant to the applicable IWC Wage Orders and California Labor
21 Code section 226.7(c), Plaintiff and the other class members are entitled to
22 recover from Defendants one additional hour of pay at the employees' regular
23 hourly rate of compensation for each workday that the rest period was not
24 provided.

25 **FOURTH CAUSE OF ACTION**

26 **(Violation of California Labor Code §§ 1194, 1197, and 1197.1)**

27 **(Against ARIZONA TILE, LLC and DOES 1 through 100)**

28 92. Plaintiff incorporates by reference the allegations contained in

1 paragraphs 1 through 91, and each and every part thereof with the same force and
2 effect as though fully set forth herein.

3 93. At all relevant times, California Labor Code sections 1194, 1197,
4 and 1197.1 provide that the minimum wage to be paid to employees, and the
5 payment of a lesser wage than the minimum so fixed is unlawful.

6 94. During the relevant time period, Defendants failed to pay all required
7 wages to Plaintiff and the other class members as required, pursuant to California
8 Labor Code sections 1194, 1197, and 1197.1. Defendants' failure to pay wages
9 included, *inter alia*, Defendants' effective payment of zero dollars per hour for
10 time Plaintiff and the other class members worked off the clock performing work
11 duties. For example, Defendants failed to pay Plaintiff for all overtime hours
12 worked during the period of approximately January 2018 to February 2018.

13 95. Defendants' failure to pay Plaintiff and the other class members the
14 minimum, regular, and overtime wages as required violates California Labor
15 Code sections 1194, 1197, and 1197.1. Pursuant to those sections Plaintiff and
16 the other class members are entitled to recover the unpaid balance of their wage
17 compensation as well as interest, costs, and attorney's fees, and liquidated
18 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

19 96. Pursuant to California Labor Code section 1197.1, Plaintiff and the
20 other class members are entitled to recover a penalty of \$100.00 for the initial
21 failure to timely pay each employee minimum wages, and \$250.00 for each
22 subsequent failure to pay each employee minimum wages.

23 97. Pursuant to California Labor Code section 1194.2, Plaintiff and the
24 other class members are entitled to recover liquidated damages in an amount
25 equal to the wages unlawfully unpaid and interest thereon.

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FIFTH CAUSE OF ACTION

(Violation of California Labor Code §§ 201 and 202)

(Against ARIZONA TILE, LLC and DOES 1 through 100)

98. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 97, and each and every part thereof with the same force and effect as though fully set forth herein.

99. At all relevant times herein set forth, California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

100. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and the other class members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

101. Plaintiff was not paid at the time of his discharge wages earned and unpaid throughout his employment, including but not limited to, minimum wages and overtime wages for time worked off-the-clock and meal and rest period premium payments.

102. Defendants' failure to pay Plaintiff and the other class members who are no longer employed by Defendants' their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

103. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date thereof at

1 the same rate until paid or until an action is commenced; but the wages shall not
2 continue for more than thirty (30) days.

3 104. Plaintiff and the other class members are entitled to recover from
4 Defendants the statutory penalty wages for each day they were not paid, up to a
5 thirty (30) day maximum pursuant to California Labor Code section 203.

6 **SIXTH CAUSE OF ACTION**

7 **(Violation of California Labor Code § 204)**

8 **(Against ARIZONA TILE, LLC and DOES 1 through 100)**

9 105. Plaintiff incorporates by reference the allegations contained in
10 paragraphs 1 through 104, and each and every part thereof with the same force
11 and effect as though fully set forth herein.

12 106. At all times herein set forth, California Labor Code section 204
13 provides that all wages earned by any person in any employment between the 1st
14 and 15th days, inclusive, of any calendar month, other than those wages due upon
15 termination of an employee, are due and payable between the 16th and the 26th
16 day of the month during which the labor was performed.

17 107. At all times herein set forth, California Labor Code section 204
18 provides that all wages earned by any person in any employment between the
19 16th and the last day, inclusive, of any calendar month, other than those wages
20 due upon termination of an employee, are due and payable between the 1st and
21 the 10th day of the following month.

22 108. At all times herein set forth, California Labor Code section 204
23 provides that all wages earned for labor in excess of the normal work period shall
24 be paid no later than the payday for the next regular payroll period.

25 109. During the relevant time period, Defendants intentionally and
26 willfully failed to pay Plaintiff and the other class members all wages due
27 (including but not limited to minimum wages, overtime wages and meal and rest
28 period violation premium wages) to them, within any time period permissible

1 under California Labor Code section 204.

2 110. Plaintiff and the other class members are entitled to recover all
3 remedies available for violations of California Labor Code section 204.

4 **SEVENTH CAUSE OF ACTION**

5 **(Violation of California Labor Code § 226(a))**

6 **(Against ARIZONA TILE, LLC and DOES 1 through 100)**

7 111. Plaintiff incorporates by reference the allegations contained in
8 paragraphs 1 through 110, and each and every part thereof with the same force
9 and effect as though fully set forth herein.

10 112. At all material times set forth herein, California Labor Code section
11 226(a) provides that every employer shall furnish each of his or her employees an
12 accurate itemized statement in writing showing (1) gross wages earned, (2) total
13 hours worked by the employee, (3) the number of piece-rate units earned and any
14 applicable piece rate if the employee is paid on a piece-rate basis, (4) all
15 deductions, provided that all deductions made on written orders of the employee
16 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
17 dates of the period for which the employee is paid, (7) the name of the employee
18 and his or her social security number, (8) the name and address of the legal entity
19 that is the employer, and (9) all applicable hourly rates in effect during the pay
20 period and the corresponding number of hours worked at each hourly rate by the
21 employee. The deductions made from payments of wages shall be recorded in
22 ink or other indelible form, properly dated, showing the month, day, and year,
23 and a copy of the statement or a record of the deductions shall be kept on file by
24 the employer for at least three years at the place of employment or at a central
25 location within the State of California.

26 113. Defendants have intentionally and willfully failed to provide Plaintiff
27 and the other class members with complete and accurate wage statements. The
28 deficiencies include, but are not limited to: the failure to include the accurate total

1 number of hours worked by Plaintiff and the other class members.

2 114. As a result of Defendants' violation of California Labor Code section
3 226(a), Plaintiff and the other class members have suffered injury and damage to
4 their statutorily-protected rights. Because Plaintiff and the putative class
5 members' wage statements did not reflect the accurate total number of regular and
6 hours worked, Plaintiff and the putative class members were unable to determine
7 the total amount of hours they worked, were unable to determine the total amount
8 of compensation they were owed, and were unable to verify they were paid the
9 proper amount. In order to determine how much Plaintiff and the putative class
10 members should have been paid, Plaintiff and the putative class members would
11 have had to engage in discovery and mathematical computations in order to
12 reconstruct the missing information.

13 115. More specifically, Plaintiff and the other class members have been
14 injured by Defendants' intentional and willful violation of California Labor Code
15 section 226(a) because they were denied both their legal right to receive, and their
16 protected interest in receiving, accurate and itemized wage statements pursuant to
17 California Labor Code section 226(a).

18 116. California Labor Code section 226(e) provides that an employee
19 suffering injury as a result of a knowing and intentional failure by an employer to
20 comply with California Labor Code section 226(a) is entitled to recover the greater
21 of all actual damages or fifty dollars (\$50) for the initial pay period in which a
22 violation occurs and one hundred dollars (\$100) per employee for each violation in
23 a subsequent pay period, not to exceed an aggregate penalty of four thousand
24 dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

25 117. California Code of Civil Procedure section 338(a) provides a three
26 year statute of limitations for an action upon a liability created by statute.
27 Therefore, pursuant to California Labor Code section 226(e) Plaintiff is entitled to
28 seek his actual damages caused by Defendants' failure to comply with California

1 Labor Code section 226(a). Plaintiff's claim for damages is timely because it is
2 brought within the three year statute of limitations.

3 118. The other class members who were employed by Defendants during
4 the applicable statute of limitations period for Labor Code section 226(e) penalties
5 are entitled to recover from Defendants the greater of their actual damages caused
6 by Defendants' failure to comply with California Labor Code section 226(a), or an
7 aggregate penalty not exceeding four thousand dollars per employee.

8 119. Plaintiff and the other class members are entitled to recover from
9 Defendants the greater of their actual damages caused by Defendants' failure to
10 comply with California Labor Code section 226(a), or an aggregate penalty not
11 exceeding four thousand dollars per employee.

12 120. Plaintiff and the other class members are also entitled to injunctive
13 relief to ensure compliance with this section, pursuant to California Labor Code
14 section 226(h).

15 **EIGHTH CAUSE OF ACTION**

16 **(Violation of California Labor Code § 1174(d))**

17 **(Against ARIZONA TILE, LLC and DOES 1 through 100)**

18 121. Plaintiff incorporates by reference the allegations contained in
19 paragraphs 1 through 120, and each and every part thereof with the same force
20 and effect as though fully set forth herein.

21 122. Pursuant to California Labor Code section 1174(d), an employer
22 shall keep, at a central location in the state or at the plants or establishments at
23 which employees are employed, payroll records showing the hours worked daily
24 by and the wages paid to, and the number of piece-rate units earned by and any
25 applicable piece rate paid to, employees employed at the respective plants or
26 establishments. These records shall be kept in accordance with rules established
27 for this purpose by the commission, but in any case shall be kept on file for not
28 less than two years.

123. Defendants have intentionally and willfully failed to keep accurate and complete payroll records showing the total number of hours worked daily and the wages paid, to Plaintiff and the other class members.

124. As a result of Defendants' violation of California Labor Code section 1174(d), Plaintiff and the other class members have suffered injury and damage to their statutorily-protected rights.

125. More specifically, Plaintiff and the other class members have been injured by Defendants' intentional and willful violation of California Labor Code section 1174(d) because they were denied both their legal right and protected interest, in having available, accurate and complete payroll records pursuant to California Labor Code section 1174(d).

NINTH CAUSE OF ACTION

(Violation of California Labor Code §§ 2800 and 2802)

(Against ARIZONA TILE, LLC and DOES 1 through 100)

126. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 125, and each and every part thereof with the same force and effect as though fully set forth herein.

127. Pursuant to California Labor Code sections 2800 and 2802, an employer must reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

128. Plaintiff and the other class members incurred necessary business-related expenses and costs that were not fully reimbursed by Defendants, including but not limited to the costs incurred to purchase and/or maintain boots, gloves, safety glasses, and attire to comply with Defendant's dress code, for business-related purposes.

129. Defendants have intentionally and willfully failed to reimburse Plaintiff and the other class members for all necessary business-related expenses

1 and costs.

2 130. Plaintiff and the other class members are entitled to recover from
3 Defendants their business-related expenses and costs incurred during the course
4 and scope of their employment, plus interest accrued from the date on which the
5 employee incurred the necessary expenditures at the same rate as judgments in
6 civil actions in the State of California.

7 **TENTH CAUSE OF ACTION**

8 **(Violation of California Business & Professions Code §§ 17200, et seq.)**

9 **(Against ARIZONA TILE, LLC and DOES 1 through 100)**

10 131. Plaintiff incorporates by reference the allegations contained in
11 paragraphs 1 through 130, and each and every part thereof with the same force
12 and effect as though fully set forth herein.

13 132. Defendants' conduct, as alleged herein, has been, and continues to
14 be, unfair, unlawful and harmful to Plaintiff, other class members, to the general
15 public, and Defendants' competitors. Accordingly, Plaintiff seek to enforce
16 important rights affecting the public interest within the meaning of Code of Civil
17 Procedure section 1021.5.

18 133. Defendants' activities as alleged herein are violations of California
19 law, and constitute unlawful business acts and practices in violation of California
20 Business & Professions Code section 17200, et seq.

21 134. A violation of California Business & Professions Code section
22 17200, et seq. may be predicated on the violation of any state or federal law. In
23 this instant case, Defendants' policies and practices of requiring employees,
24 including Plaintiff and the other class members, to work overtime without paying
25 them proper compensation violate California Labor Code sections 510 and 1198.
26 Additionally, Defendants' policies and practices of requiring employees,
27 including Plaintiff and the other class members, to work through their meal and
28 rest periods without paying them proper compensation violate California Labor

Code sections 226.7 and 512(a). Defendants' policies and practices of failing to provide a day of rest violate California Labor Code sections 551 and 552. Defendants' policies and practices of failing to pay minimum, regular, and overtime wages violate California Labor Code sections 1194, 1197, and 1197.1. Moreover, Defendants' policies and practices of failing to timely pay wages to Plaintiff and the other class members violate California Labor Code sections 201, 202 and 204. Defendants also violated California Labor Code sections 226(a), 1174(d), 2800 and 2802.

135. As a result of the herein described violations of California law, Defendants unlawfully gained an unfair advantage over other businesses.

136. Plaintiff and the other class members have been personally injured by Defendants' unlawful business acts and practices as alleged herein, including but not necessarily limited to the loss of money and/or property.

137. Pursuant to California Business & Professions Code sections 17200, et seq., Plaintiff and the other class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences September 15, 2016; an award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other applicable laws; and an award of costs.

ELEVENTH CAUSE OF ACTION

(Violation of California Labor Code § 2698, et seq.)

(Against ARIZONA TILE, LLC and DOES 1 through 100)

138. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 137, and each and every part thereof with the same force and effect as though fully set forth herein.

139. PAGA expressly establishes that any provision of the California Labor Code which 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 a violation of the California Labor Code, may be recovered through a civil action brought

1 by an aggrieved employee on behalf of himself or herself, and other current or former
2 employees.

3 140. Whenever the LWDA, or any of its departments, divisions, commissions,
4 boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil
5 action is authorized to exercise the same discretion, subject to the same limitations and
6 conditions, to assess a civil penalty.

7 141. Plaintiff and the other hourly-paid or non-exempt employees, are
8 “aggrieved employees” as defined by California Labor Code section 2699(c) in that
9 they are all current or former employees of Defendants, and one or more of the alleged
10 violations was committed against them.

11 **Failure to Pay Overtime**

12 142. Defendants’ failure to pay overtime in violation of the Wage Orders and
13 California Labor Code sections 510 and 1198, as alleged above, constitutes unlawful
14 and/or unfair activity prohibited by California Labor Code sections 510 and 1198.

15 **Failing to Provide Meal Periods**

16 143. Defendants’ failure to provide legally required meal periods in violation
17 of the Wage Orders and California Labor Code sections 226.7 and 512(a), as alleged
18 above, constitutes unlawful and/or unfair activity prohibited by California Labor Code
19 sections 226.7 and 512(a).

20 **Failure to Provide Rest Periods**

21 144. Defendants’ failure to provide legally required rest periods in violation of
22 the Wage Orders and California Labor Code section 226.7, as alleged above, constitutes
23 unlawful and/or unfair activity prohibited by California Labor Code section 226.7.

24 **Failure to Pay Minimum Wages**

25 145. Defendants’ failure to pay wages required by law in violation of the Wage
26 Orders and California Labor Code sections 1194, 1197 and 1197.1, as alleged above,
27 constitutes unlawful and/or unfair activity prohibited by California Labor Code sections
28 1194, 1197 and 1197.1.

Failure to Timely Pay Wages Upon Termination

146. Defendants' failure to timely pay wages upon termination in violation of California Labor Code sections 201 and 202, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 201 and 202.

Failure to Timely Pay Wages During Employment

147. Defendants' failure to timely pay wages during employment in violation of California Labor Code section 204, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code section 204.

Failure to Provide Compliant Wage Statements

148. Defendants' failure to provide compliant wage statements in violation of California Labor Code section 226(a), as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code section 226(a).

Failure to Keep Complete or Accurate Payroll Records

149. Defendants' failure to keep complete or accurate payroll records in violation of California Labor Code section 1174(d), as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code section 1174(d).

Failure to Reimburse Necessary Business-Related Expenses and Costs

150. Defendants' failure to reimburse all necessary business-related expenses and costs in violation of California Labor Code sections 2800 and 2802, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 2800 and 2802.

151. Pursuant to California Labor Code section 2699, Plaintiff, individually, and on behalf of all aggrieved employees, requests and is entitled to recover from Defendants and each of them, business expenses, unpaid wages, and/or untimely wages according to proof, interest, attorneys' fees and costs pursuant to California Labor Code section 218.5, as well as all penalties against Defendants, and each of them, including but not limited to:

- a. Penalties under California Labor Code section 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- b. Penalties under California Code of Regulations Title 8 section 11010, et seq. in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;
- c. Penalties under California Labor Code section 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation; and
- d. Any and all additional penalties and sums as provided by the California Labor Code and/or other statutes.

152. Pursuant to California Labor Code section 2699(i), civil penalties recovered by aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and Workforce Development Agency for the enforcement of labor laws and education of employers and employees about their rights and responsibilities and twenty-five percent (25%) to the aggrieved employees.

153. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and costs pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable statute.

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DEMAND FOR JURY TRIAL

Plaintiff, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to PAGA, requests a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to PAGA, prays for relief and judgment against Defendants, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action as to the first ten causes of action;
2. That Plaintiff be appointed as the representative of the Class as to the first ten causes of action;
3. That counsel for Plaintiff be appointed as Class Counsel; and
4. That Defendants provide to Class Counsel immediately the names and most current/last known contact information (address, e-mail and telephone numbers) of all class members.

As to the First Cause of Action

5. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiff and the other class members;
6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;
7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;
8. For reasonable attorneys' fees and costs of suit incurred herein

pursuant to California Labor Code section 1194; and

9. For such other and further relief as the Court may deem just and proper.

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods) to Plaintiff and the other class members;

11. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

12. For all actual, consequential, and incidental losses and damages, according to proof;

13. For premium wages pursuant to California Labor Code section 226.7(c);

14. For pre-judgment interest on any unpaid wages from the date such amounts were due;

15. For reasonable attorneys' fees and costs of suit incurred herein; and

16. For such other and further relief as the Court may deem just and proper.

As to the Third Cause of Action

17. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and the other class members;

18. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

19. For all actual, consequential, and incidental losses and damages, according to proof;

20. For premium wages pursuant to California Labor Code section 226.7(c);

21. For pre-judgment interest on any unpaid wages from the date such amounts were due; and

22. For such other and further relief as the Court may deem just and proper.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiff and the other class members;

24. For general unpaid wages and such general and special damages as may be appropriate;

25. For statutory wage penalties pursuant to California Labor Code section 1197.1 for Plaintiff and the other class members in the amount as may be established according to proof at trial;

26. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

27. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194(a);

28. For liquidated damages pursuant to California Labor Code section 1194.2; and

29. For such other and further relief as the Court may deem just and proper.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all

1 compensation owed at the time of termination of the employment of Plaintiff and
2 the other class members no longer employed by Defendants;

3 31. For all actual, consequential, and incidental losses and damages,
4 according to proof;

5 32. For statutory wage penalties pursuant to California Labor Code
6 section 203 for Plaintiff and the other class members who have left Defendants'
7 employ;

8 33. For pre-judgment interest on any unpaid compensation from the date
9 such amounts were due; and

10 34. For such other and further relief as the Court may deem just and
11 proper.

12 **As to the Sixth Cause of Action**

13 35. That the Court declare, adjudge and decree that Defendants violated
14 California Labor Code section 204 by willfully failing to pay all compensation
15 owed at the time required by California Labor Code section 204 to Plaintiff and
16 the other class members;

17 36. For all actual, consequential, and incidental losses and damages,
18 according to proof;

19 37. For pre-judgment interest on any unpaid compensation from the date
20 such amounts were due; and

21 38. For such other and further relief as the Court may deem just and
22 proper.

23 **As to the Seventh Cause of Action**

24 39. That the Court declare, adjudge and decree that Defendants violated
25 the record keeping provisions of California Labor Code section 226(a) and
26 applicable IWC Wage Orders as to Plaintiff and the other class members, and
27 willfully failed to provide accurate itemized wage statements thereto;

28 40. For actual, consequential and incidental losses and damages,

1 according to proof for Plaintiff and the other class members;

2 41. For statutory penalties pursuant to California Labor Code section
3 226(e);

4 42. For injunctive relief to ensure compliance with this section, pursuant
5 to California Labor Code section 226(h); and

6 43. For such other and further relief as the Court may deem just and
7 proper.

8 **As to the Eighth Cause of Action**

9 44. That the Court declare, adjudge and decree that Defendants violated
10 California Labor Code section 1174(d) by willfully failing to keep accurate and
11 complete payroll records for Plaintiff and the other class members as required by
12 California Labor Code section 1174(d);

13 45. For actual, consequential and incidental losses and damages,
14 according to proof;

15 46. For statutory penalties pursuant to California Labor Code section
16 1174.5; and

17 47. For such other and further relief as the Court may deem just and
18 proper.

19 **As to the Ninth Cause of Action**

20 48. That the Court declare, adjudge and decree that Defendants violated
21 California Labor Code sections 2800 and 2802 by willfully failing to reimburse
22 Plaintiff and the other class members for all necessary business-related expenses
23 as required by California Labor Code sections 2800 and 2802;

24 49. For actual, consequential and incidental losses and damages,
25 according to proof;

26 50. For the imposition of civil penalties and/or statutory penalties;

27 51. For reasonable attorneys' fees and costs of suit incurred herein; and

28 52. For such other and further relief as the Court may deem just and

proper.

As to the Tenth Cause of Action

53. That the Court decree, adjudge and decree that Defendants violated California Business and Professions Code sections 17200, et seq. by failing to provide Plaintiff and the other class members all overtime compensation due to them, failing to provide all meal and rest periods to Plaintiff and the other class members, failing to pay at least minimum wages to Plaintiff and the other class members, failing to pay Plaintiff's and the other class members' wages timely as required by California Labor Code section 201, 202 and 204 and by violating California Labor Code sections 226(a), 1174(d), 2800 and 2802.

54. For restitution of unpaid wages to Plaintiff and all the other class members and all pre-judgment interest from the day such amounts were due and payable;

55. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violation of California Business and Professions Code sections 17200, et seq.;

56. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5;

57. For injunctive relief to ensure compliance with this section, pursuant to California Business and Professions Code sections 17200, et seq.; and

58. For such other and further relief as the Court may deem just and proper.

As to the Eleventh Cause of Action

59. For civil penalties and wages pursuant to California Labor Code sections 2699(a), (f) and (g) plus costs and attorneys' fees for violation of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802; and

60. For such other and further relief as the Court may deem equitable and appropriate.

Dated: January 21, 2022

LAWYERS *for* JUSTICE, PC

By: /s/ Edwin Aiwazian

Edwin Aiwazian

Attorneys for Plaintiff

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