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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

AUG 19 2022

Paola Iniguez
BY: PAOLA INIGUEZ, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

DAVIS ALLEN, and on behalf of all others
similarly situated,

Plaintiff,

vs.

CREATIVE STONE MFG. INC., dba
CORONADO STONE PRODUCTS, INC., a
California Corporation; and DOES 1-10,
inclusive,

Defendants.

Case No.: CIVSB2201498

Assigned For All Purposes To:
Judge: Hon. David Cohn
Dept.: S26

**DECLARATION OF PAUL K. HAINES
IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: December 13, 2022
Time: 10:00 a.m.
Dept.: S-26

Action Filed: June 29, 2021
Trial Date: None Set

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I, Paul K. Haines, declare as follows:

1. I am the principal of Haines Law Group, APC, and along with my co-counsel, Hawkins APLC, am counsel for the named Plaintiff Davis Allen (“Plaintiff”) and the Settlement Class in the above-captioned matter. I am a member in good standing of the State of California and am admitted to practice in this Court. I have personal knowledge of the facts stated in this declaration and could testify competently to them if called upon to do so.

2. I am a 2006 graduate of Pepperdine University School of Law, where I graduated *ude*. During law school, I worked as a law clerk for the appellate firm of Horvitz & Levy, in Encino, California. I also spent a semester in law school working as an extern for the Honorable Edward Rafeedie, District Judge for the United States District Court for the Central District of California.

3. Since graduating from law school, my practice has focused almost exclusively on employment litigation. In September 2007, I began working as an associate attorney at the national law firm of Littler Mendelson, P.C. at its Los Angeles office, which according to its website is the “largest U.S.-based law firm exclusively devoted to representing management in all aspects of labor and employment law.” While at Littler Mendelson, I was primarily staffed on wage and hour class actions in both state and federal courts, and I also worked on a number of individual and multi-plaintiff wage and hour matters as well.

4. During my employment at Littler Mendelson, I played a significant role in the class that I was staffed on, as I was often the only associate staffed on such cases. In particular, I gained a wide array of wage and hour class action experience performing the following types of work: drafting demurrers, motions to strike, and motions to dismiss; removing actions from state court to federal court; drafting and responding to written discovery; drafting and opposing summary judgment motions; arguing discovery related motions; drafting motions to consolidate or sever matters; interviewing putative class members and obtaining declarations in connection with class certification; drafting oppositions to motions for class certification; drafting motions for class certification following class certification; conducting exposure analyses to assess the

1 strengths and weaknesses of asserted claims, the likelihood of prevailing at class certification, and
2 potential damages resulting from such claims; drafting mediation briefs; serving as the primary
3 contact to in-house counsel; deposing named plaintiffs and putative class members; deposing
4 retained expert witnesses; and defending the depositions of corporate witnesses. In short, I played
5 an integral role in all aspects of litigation from the inception of a matter through and beyond class
6 certification. I also supervised the work of several junior attorneys who were staffed on the same
7 wage and hour class actions.

8 5. In June 2011, I voluntarily resigned from Littler Mendelson in order to accept an
9 associate attorney position with the international law firm of Morgan, Lewis & Bockius LLP at
10 its Los Angeles office, where I began working in July 2011. During my employment at Morgan,
11 Lewis & Bockius LLP, I worked exclusively on the defense of wage and hour class and collective
12 actions. For the vast majority of these cases, I was the only associate staffed on the matters, and I
13 performed the same job duties as described in the immediately preceding paragraph. In addition
14 to working on wage and hour class actions, at Morgan, Lewis & Bockius I also worked on a
15 number of “hybrid” actions asserting nationwide wage and hour claims under the Fair Labor
16 Standards Act, as well as California-specific claims under Rule 23 of the Rules of Civil Procedure.

17 6. In July 2012, I transitioned into litigating wage and hour class actions from the
18 Plaintiff’s side, first as a Partner with the law firm of Boren, Osher & Luftman, LLP, and since
19 February 2016 as a Shareholder of Haines Law Group, APC. Currently, over ninety percent (90%)
20 of my practice is dedicated exclusively to the prosecution of wage and hour class actions, and my
21 law firm is currently responsible for prosecuting over fifty (50) wage and hour class actions filed
22 in both State and Federal courts throughout California. I have been appointed as Class Counsel in
23 over one hundred (100) wage and hour class action settlements in state and federal courts within
24 California. Some examples of the matters in which I have been appointed as Class Counsel, all of
25 which have been granted final approval, include the following: *Shaw v. Conant Auto Retail, San*
26 *Diego*, Case No. 37-2014-00044052-CU-OE-CTL, California Superior Court, County of San
27 Diego, Hon. Judge Joan M. Lewis, presiding; *Tirado v. Ricon Corp.*, Case No. BC537042,
28 California Superior Court, County of Los Angeles, Hon. John S. Wiley, presiding; *Horta v.*

1 *Searles Valley Minerals, Inc.*, Case No. CIVDS 1507615, California Superior Court, County of
2 San Bernardino, Hon. Donald Alvarez presiding; *Rodriguez v. Spartan, Inc.*, Case No. BCV-15-
3 100007-DRL, California Superior Court, County of Kern, Hon. David R. Lampe presiding;
4 *Kostyuk, et al. v. Golden State Overnight Delivery Service, Inc.*, Case No. RG14727191,
5 California Superior Court, Alameda County, Hon. Winifred Y. Smith presiding; *Leverage, et al*
6 *v. Traeger Pellet Grills, LLC, et al*, Case No. 16-cv-00784-KAW, United States District Court for
7 the Northern district of California, Hon. Kandis A. Westmore presiding; *Nunez v. CompuCom*
8 *Systems, Inc.*, Case No. BC618385, California Superior Court, County of Los Angeles, Hon. John
9 Shepard Wiley, Jr., presiding; *Morales v. Caremeridian, LLC, et al.*, Case No. BC593191,
10 California Superior Court, County of Los Angeles, Hon. William F. Highberger presiding;
11 *Rodrigues v. CP Kelco U.S., Inc.*, Case No. 37-2017-00004339-CU-OE-CTL, California Superior
12 Court, County of San Diego, Hon. Joel R. Wohlfeil, presiding; *Beach-Barrow, et al v. The Hertz*
13 *Corp.*, Case No. RG17848833, California Superior Court, County of Alameda, Hon. Ioana Petrou
14 presiding; *Gooding v. Vita-Mix Corp., et al*, Case No. 2:16-cv-03898-ODW (JEMx), United States
15 District Court for the Central District of California, Hon. Otis D. Wright II presiding; *Afa, et al v.*
16 *Alliance Ground Int'l, LLC*, Case No. BC661449, California Superior Court, County of Los
17 Angeles, Hon. William F. Highberger presiding.

18 7. I have also moved to certify and have received an order certifying a class action
19 and/or conditionally certifying a collective action in the following cases:

- 20 • *Medeiros v. Vortex Financial Management Inc.*, Case No. 30-2013-00644741-CU-OE-
21 CXC, California Superior Court, County of Orange, Honorable Judge Gail A. Andler,
22 presiding (certifying a class of employees who were misclassified as independent
23 contractors);
- 24 • *Javine v. San Luis Ambulance Service, Inc.*, Case No. CV13-07480 BRO (SSx), United
25 States District Court, Central District of California, Honorable Judge Beverly Reid
26 O'Connell, presiding (conditionally certifying an unpaid FLSA overtime wage class);
- 27 • *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States
28 District Court, Central District of California, Honorable Judge John F. Walter, presiding

- (certifying rest period class and conditionally certifying FLSA unpaid overtime class);
- *Bower v. Cycle Gear, Inc.*, Case No. CV14-2712 HSG, United States District Court, Northern District of California, Honorable Judge Haywood S. Gilliam, Jr., presiding (conditionally certifying an unpaid FLSA overtime wage class);
 - *Vega v. Weatherford U.S., Limited Partnership*, Case No. CV14-1790-JLT, United States District Court, Eastern District of California, Honorable Jennifer L. Thurston, presiding (conditionally certifying an unpaid FLSA overtime wage class);
 - *Galvan v. AMVAC Chemical Corporation*, Case No. 30-2014-00716103-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge William Claster, presiding (certifying unpaid overtime wage class and waiting time penalty class);
 - *Camacho v. Residential Fire Systems, Inc.*, Case No. 30-2015-775372-CU-OE-CXC, California Superior Court, County of Orange, Honorable Glenda Sanders, presiding (certifying piece rate pay plan classes, expense reimbursement class, wage statement class, and waiting time penalties class);
 - *Ontiveros v. Safelite Fulfillment, Inc., et al*, Case No. CV 15-7118-DMG (RAOx), United States District Court, Central District of California, Honorable Dolly M. Gee presiding (certifying six classes of employees for rest period violations, wage statement violations, meal period violations, and overtime and double-time violations);
 - *Vazquez, et al v. Kraft Heinz Foods Company*, Case No. 16-cv-2749-WQH-BLM, United States District Court, Southern District of California, Honorable William Q. Hayes presiding (certifying six classes of employees for unpaid wages, meal period violations, wage statement violations, and waiting time penalties);
 - *Caudle, et al. v. Sprint/United Management Company, et al.* Case No. C 17-06874-WHA, United States District Court, Northern District of California, Honorable William H. Alsup presiding (certifying three classes of employees for unlawful wage deduction violations, wage statement violations, and waiting time violations);

- 1 • *Staublein v. Wells Fargo Bank, N.A.*, Case No. CIVDS1712267, California Superior
2 Court, County of San Bernardino, Honorable David Cohn presiding (certifying a wage
3 statement class);
- 4 • *Perez v Sunbelt Rentals, Inc.*, Case No. Case No. 37-2018-00026405-CU-OE-CTL,
5 California Superior Court, County of San Diego, Honorable Eddie C. Sturgeon, presiding
6 (certifying wage statement class); and
- 7 • *Bowlin-Burdick et al v. Life Care Centers of America*, Case No. BC657139, Los Angeles
8 County Superior Court, Hon. Maren E. Nelson (certifying four classes for meal period
9 violations, rest period violations, wage statement violations, and waiting time penalties).

10 8. In 2015, 2016, and 2017, Thomson Reuters recognized me as a top young attorney
11 in Southern California in the annual Rising Stars Edition of Super Lawyer. This is an honor
12 awarded to no more than two-and-a-half percent of attorneys under the age of forty in Southern
13 California each year. In 2018, 2019, 2020, and 2021, Thomson Reuters recognized me as a “Super
14 Lawyer” in the annual Super Lawyer magazine, an honor awarded to no more than five percent
15 of all attorneys in Southern California each year.

16 9. As counsel for Plaintiff and the proposed Settlement Class, I am familiar with all
17 aspects of this litigation, and I believe that the proposed Settlement is a favorable result for the
18 Settlement Class. Attached hereto as **Exhibit A** is a true and correct copy of the fully-executed
19 Stipulation of Settlement (“Settlement Agreement”). The proposed Class Notice and Notice of
20 Estimated Settlement Award (together, the “Notice Packet”) are attached to the Settlement as
21 **Exhibits 1, and 2**, respectively.

22 10. Defendant Creative Stone Mfg, Inc. dba Coronado Stone Products, Inc. (“Creative
23 Stone”) is a manufacturer of stone veneer, thin brick, and other stone products, and has operated
24 facilities in Fontana, Lodi and Perris, California during the Class Period.

25 11. On June 29, 2021, Plaintiff filed his Class Action Complaint in Riverside County
26 Superior Court, alleging causes of actions for: (i) failure to pay all wages; (ii) failure to provide
27 meal periods; (iii) failure to provide rest periods; (iv) failure to pay timely wages; (v) failure to
28 provide accurate itemized wage statements; and (vi) unfair competition in violation of California

Business & Professions Code § 17200 *et seq.* On or about February 17, 2022, this action was transferred from Riverside Superior Court to this Court. Thereafter, Plaintiff filed the First Amended Class and Representative Action Complaint (“FAC”) which added causes of action for Failure to Maintain Accurate Payroll Records and Penalties Under the Private Attorney Generals Act (“PAGA”). As part of this Motion and pursuant to the Settlement, Plaintiff respectfully requests that the Court approve the filing of a Second Amended Class and Representative Action Complaint adding a cause of action for Unlawful Deductions From Earned Wages. Attached hereto as **Exhibit B** is a true and correct copy of Plaintiff’s proposed Second Amended Class and Representative Action Complaint (“SAC”). Defendant does not oppose Plaintiff’s request to file the proposed SAC.

12. Plaintiff alleges Creative Stone failed to provide legally-compliant first meal periods such that first meal periods were regularly late and/or less than 30-minutes. Specifically, Plaintiff alleges that while Settlement Class members clock in and out for their work shifts by using a timecard, Settlement Class members did not clock out/in for their meal periods, rather, Creative Stone automatically deducted 30 minutes for a purported meal period from their daily hours worked, irrespective of whether a compliant, timely 30-minute meal period was actually taken. Plaintiff alleges that due to work demands imposed by Creative Stone and business operations, Settlement Class members were routinely provided with late and/or short first meal periods. Based on Plaintiff’s review and extrapolation of Creative Stone’s “Meal Period Sign-In Sheets,” there were approximately 125,121 shifts with a “late” meal period (commencing after the end of the fifth hour of work), and approximately 96,247 shifts evidencing a “short” meal period (less than 30 full minutes). Plaintiff further calculated that the average rate of pay for putative class members during the Class Period at approximately \$13.49. Therefore, Plaintiff estimated total maximum damages for first meal period violations at approximately \$2,986,254 (221,368 first meal period violations * \$13.49 premium). Creative Stone counters it has maintained compliant written meal period policies throughout the Class Period. Creative Stone also produced “Meal Period Sign-In Sheets” showing Plaintiff and other non-exempt employees were required to record their meal periods each workday on written time sheets, and which demonstrate that

1 Settlement Class members regularly took compliant meal periods. Creative Stone further contends
2 that it always *provided* employees the opportunity to take meal periods and is not required to
3 *ensure* they are taken. Thus, Creative Stone argues any missed or short meal periods were the
4 result of lawful employee choice, rather than any policy and/or practice of Creative Stone. Finally,
5 Creative Stone maintains Plaintiff's meal period claim is not suited for class certification, since
6 individual inquiries would be needed to assess which employees, if any, took non-compliant or
7 missed meal periods, how many meal periods were non-compliant or missed, the reasons why a
8 particular employee did not take a meal period on a particular shift, and (for second meals)
9 whether they waived the meal period. Based on these defenses, Plaintiff discounted the maximum
10 amount by 30% for risk of non-certification and an additional 35% for risk of losing on the merits
11 or failing to recover the full amount sought, to arrive at an estimated exposure of approximately
12 \$1,358,746.

13 13. Plaintiff further alleges that Settlement Class members were not provided with
14 second meal periods when they worked shifts in excess of 10.0 hours in a workday. Plaintiff's
15 analysis and extrapolation of the timekeeping data showed that during the Class Period there were
16 approximately 31,692 shifts worked in excess of 10.0 hours that did not reflect a compliant second
17 meal period. Therefore, Plaintiff calculates Creative Stone's maximum exposure for second meal
18 period violations at approximately \$427,525 (31,692 second meal period violations * \$13.49
19 premium). In addition to the defenses asserted in the immediately preceding paragraph, Creative
20 Stone asserts many employees choose to waive their second meal periods, as they may do under
21 Labor Code § 512(a), so that they do not need to stay at work for an extra unpaid 30 minutes.
22 Further, and as stated above, Creative Stone argues this claim is not suited for class certification,
23 since individual inquiries would be needed to assess which employees, if any, took non-compliant
24 or missed meal periods, how many meal periods were non-compliant or missed, the reasons why
25 a particular employee did not take a meal period on a particular shift, and whether they waived
26 the meal period. In light of these risks, Plaintiff discounted the maximum amount that the class
27 could potentially recover for second meal periods by 30% for a risk of non-certification, and an
28 additional 35% for a risk of losing on the merits, or having exposure reduced due to Creative

Stone's waiver argument, to arrive at an estimated exposure amount of approximately \$194,525.

14. Plaintiff alleges that Creative Stone pays its employees in quarter-hour increments, and that its time-rounding policy/practice has resulted in a systemic underpayment of minimum and overtime wages to Settlement Class members. Based on Plaintiff's expert's analysis and extrapolation of Creative Stone's time and payroll records, Plaintiff estimated that Creative Stone's timekeeping policies/practices resulted in approximately 12,571 hours in unpaid wages over the Class Period. The average minimum wage during the Class Period was approximately \$11.54. Therefore, Plaintiff estimates Creative Stone's maximum exposure for this claim at approximately \$290,139 (12,571 hours * \$11.54 min. wage * 2 [liquidated damages per Labor Code § 1194.2]). Creative Stone counters that it utilizes a neutral time-rounding mechanism that results, over time, in employees being paid for all hours worked. Creative Stone also argues that any unpaid time could have only amounted to a few minutes per day, at most, and was thus *de minimis*. While Plaintiff points to *Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018), where the California Supreme Court held California's labor laws generally do not recognize a *de minimis* defense, Creative Stone argues *Troester* should be limited to its facts. Finally, Creative Stone asserts that Plaintiff would be unable to certify this claim since its rounding policy is facially neutral and some employees were overpaid due to rounding, and individualized inquiries would be necessary as to whether employees were in fact underpaid or overpaid for each workday in question (including whether they were actually working when they were clocked in), resulting in an unmanageable series of mini-trials. Based on these defenses, Plaintiff discounted the estimated maximum amount by 30% for risk of non-certification, and by an additional 35% to account for risk of losing on the merits or failure to recover the maximal amount sought, to arrive at an estimated exposure of approximately \$132,014.

15. Plaintiff further alleges that Creative Stone failed to authorize and permit all legally-compliant off-duty rest periods. Specifically, Plaintiff alleges that Creative Stone only authorized and permitted a single 20-minute combined rest period in the morning, and failed to authorize and permit a second rest period in the afternoon during shifts of at least eight (8) hours. Plaintiff further alleges that Creative Stone failed to authorize and permit a third rest period when

employees worked shifts in excess of 10.0 hours. Creative Stone produced its written rest period policies during the Class Period which provided for one 20-minute rest period in the morning, and an additional 10-minute rest period in the afternoon. Therefore, Plaintiff focused his rest period analysis on shifts over 10.0 hours, in which Plaintiff argued that Creative Stone failed to authorize and permit a third rest period. Based on Plaintiff's analysis and extrapolation of Creative Stone's timekeeping records, Plaintiff estimated there were approximately 31,692 shifts over 10.0 hours during the Class Period. Therefore, Plaintiff estimated Creative Stone's maximum potential exposure for rest period violations at approximately \$427,525 (31,692 rest period violations * \$13.49 premium). Creative Stone counters that it has maintained compliant written rest period policies and has always authorized and permitted employees a 10-minute rest period for each 4 hours worked, or major fraction thereof, as required under the Wage Order, and that any failure to take rest periods was as a result of employee choice, rather than any Creative Stone policy and/or practice. With respect to Plaintiff's allegation that Creative Stone only provided one 20-minute combined rest period during the morning of an 8-hour shift, Creative Stone produced its written rest period policies which provide for a morning rest period of 20 minutes, followed by an afternoon rest period of 10 minutes. Creative Stone further argues that Plaintiff's rest period claim is not amenable to class treatment, since individual inquiries would be required to determine which employees failed to take rest periods, how many rest periods they failed to take, and the reasons why each employee failed to take rest period(s) on a particular shift. These manageability concerns are especially present with respect to rest period claims, Creative Stone argues, given that rest periods are not recorded. Given these defenses, Plaintiff discounted this maximum amount by 30% for risk of non-certification and an additional 30% for a risk of being unsuccessful on the merits or of failing to recover the full amount sought, to arrive at an estimated realistic exposure of approximately \$209,488.

16. As a result of its alleged failure to pay all wages and all meal and rest period premiums, Plaintiff asserts Creative Stone failed to comply with its final payment obligations set forth in Labor Code § 203. Creative Stone's records reflected approximately 1,927 former Settlement Class members who separated from their employment with Creative Stone and are

1 therefore eligible for waiting time penalties. Based on an hourly rate of \$13.49, Plaintiff estimated
2 the average waiting time penalty per former employee to be \$3,237 ($\$13.49 \times 8 \text{ hours per day} \times$
3 30 days). Therefore, Plaintiff calculated Creative Stone's maximum exposure for potential waiting
4 time penalties to be approximately \$6,237,699 ($1,927 \text{ former employees} \times \$3,237 \text{ average}$
5 penalty). Creative Stone asserts it has strong, good-faith defenses to Plaintiff's underlying claims,
6 precluding the imposition of waiting time penalties. Moreover, because the waiting time claim is
7 derivative of Plaintiff's underlying wage claims, Plaintiff would need to overcome Creative
8 Stone's defenses, both as to class certification and on the merits, as to his underlying claims.
9 Creative Stone further asserts Plaintiff's waiting time penalty exposure was grossly inflated as not
10 every former employee experienced the alleged Labor Code violations. Creative Stone further
11 argued at the time of mediation that Plaintiff's meal and rest period claims cannot support a claim
12 for waiting time or wage statement penalties. To account for Creative Stone's defenses, Plaintiff
13 discounted the maximum exposure by 50% for the risk of non-certification, and an additional 85%
14 for risk of losing on the merits, and/or not receiving the maximum penalties sought, to arrive at
15 an estimated exposure of approximately \$467,827.

16 17. As a further result of its alleged failure to pay all wages and all meal and rest period
17 premiums, Plaintiff asserts Creative Stone failed to issue accurate and compliant wage statements
18 in violation of Labor Code § 226. Plaintiff's analysis reflected that there were approximately 970
19 unique employees and approximately 37,468 pay periods worked during the liability period
20 applicable to Plaintiff's wage statement claim. In calculating Creative Stone's exposure, Plaintiff
21 gave Creative Stone the benefit of assuming that Plaintiff could only obtain the "initial" wage
22 statement violation rate of \$50 per pay period, for a total of approximately \$1,873,400 ($37,468$
23 $\text{pay periods} \times \$50 \text{ "initial" penalty}$) in potential penalties. Creative Stone contends any alleged
24 wage statement violations could not be shown to be "knowing and intentional" given its good-
25 faith defenses, and that Plaintiff cannot show he or other employees "suffer[ed] injury," as
26 required by Labor Code § 226(e) for the imposition of penalties. Creative Stone further argues
27 that wage statements always accurately reflected hours worked and amounts paid to employees.
28 In light of these defenses, Plaintiff discounted the maximum exposure by 50% for risk of non-

1 certification, and by an additional 60% for risk of being unsuccessful on the merits, for an
2 estimated realistic exposure of approximately \$374,680.

3 18. As a result of the foregoing Labor Code violations, Plaintiff alleges that Creative
4 Stone is liable for civil penalties under the PAGA. Plaintiff estimated a maximum total PAGA
5 exposure at \$3,746,800 (37,468 pay periods * \$100 “initial” penalty). Since Plaintiff’s PAGA
6 claim is derivative of Plaintiff’s underlying wage claims, Creative Stone asserts the PAGA claim
7 would fail with those claims. Creative Stone further maintains that, given its good faith defenses,
8 this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to
9 find Creative Stone liable for any of Plaintiff’s claims. Therefore, Plaintiff discounted the
10 maximum figure by 60% for risk of losing on the merits and/or not recovering a PAGA penalty
11 for every pay period, and an additional 80% to account for the possibility of this Court reducing
12 penalties, to arrive at an estimated exposure of approximately \$299,744.

13 19. Using these estimated figures for each of the claims described above, Plaintiff
14 calculates a maximum potential recovery to be approximately \$3,037,024. The proposed
15 settlement of \$2,850,000.00 therefore represents approximately 93.8% of the reasonably
16 forecasted recovery for the Settlement Class. Preliminary approval is appropriate since the
17 Settlement will provide significant monetary relief to the Settlement Class, which is consistent
18 with what Plaintiff’s counsel believes could have been recovered had the case proceeded through
19 trial.

20 20. On August 20, 2020, Plaintiff Victor Negrete filed a Class Action Complaint
21 against Creative Stone in San Bernardino County Superior Court, Case No. CIVDS2018095,
22 alleging causes of actions for: (i) failure to pay all overtime wages; (ii) minimum wage violations;
23 (iii) meal period violations; (iv) rest period violations; (v) unlawful deductions from earned wages;
24 (vi) wage statement violations; and (vii) unfair competition in violation of California Business &
25 Professions Code § 17200 *et seq.* (the “Negrete Action”). On October 27, 2020, Plaintiff Negrete
26 filed a First Amended Class and Representative Action Complaint, adding causes of action for
27 waiting time penalties pursuant to Labor Code §§ 201-203 and for civil penalties under the PAGA.
28 Thereafter, the Parties in the *Negrete* Action agreed to attend a private mediation. In connection

1 with this mediation, the Parties in the *Negrete* Action engaged in extensive informal discovery.
2 Creative Stone produced timekeeping and payroll records for a sampling of putative class
3 members, including actual time punches and rounded time punches, which allowed Plaintiff
4 Negrete’s Counsel to conduct a rounding analysis. Creative Stone also produced a sampling of
5 putative class member “Meal Period Sign-In Sheets” as well as its relevant written wage and hour
6 policies, and data regarding the number of putative class members, number of workweeks worked,
7 and other relevant data and information. Plaintiff’s Counsel in the *Negrete* Action hired a labor
8 economist with a Ph.D. in economics to analyze and extrapolate the data produced by Creative
9 Stone to calculate Creative Stone’s potential exposure for each of Plaintiff Negrete’s claims.
10 Creative Stone represents that it also hired a labor economist to perform a similar analysis and
11 extrapolation of the relevant data. This discovery allowed the Parties to assess the merits and
12 value of Plaintiff’s claims, the chances of certification of Plaintiff’s claims, and Creative Stone’s
13 potential defenses.

14 21. On April 6, 2021, the Parties in the *Negrete* Action participated in a full-day
15 mediation with Steven G. Mehta, Esq., a well-respected wage and hour class action mediator.
16 During mediation in the *Negrete* Action, the parties vigorously debated their opposing legal
17 positions, the likelihood of certification of Plaintiff’s claims, and the legal basis for the claims and
18 defenses. At the conclusion of mediation, Mr. Mehta issued a mediator’s proposal for a classwide
19 settlement, which was ultimately accepted by both sides in the days following mediation. During
20 the months that followed the mediation in the *Negrete* Action, counsel for Plaintiff Negrete
21 experienced great difficulties communicating with Plaintiff Negrete regarding the tentative
22 settlement and his pending case against Creative Stone, which culminated in Plaintiff Negrete
23 terminating the attorney-client relationship with his counsel. On June 14, 2022, Counsel for
24 Plaintiff Negrete filed a Motion to Be Relieved as Counsel, and on July 13, 2022, the Court granted
25 Counsel’s Motion to Be Relieved as Counsel.

26 22. After my office was informed of this instant Action, which was filed in June 2021,
27 my office shared the informal discovery exchanged in the *Negrete* Action, the exposure analysis
28 conducted in connection with the April 2021 mediation, as well as the mediation brief exchanged

1 in the *Negrete* Action, with Plaintiff Allen and his Counsel. After reviewing the informal
2 discovery, exposure analysis, and the tentative terms of the proposed classwide settlement,
3 Plaintiff Allen and his Counsel agreed that the proposed Settlement reached in the *Negrete* Action
4 was fair, adequate and reasonable and in the best interests of the putative class and indicated its
5 willingness to move forward with the proposed classwide settlement. Thereafter, the Parties in
6 this Action negotiated the finer points of the Settlement, and executed the long-form Settlement
7 now before the Court.

8 23. According to Creative Stone, there are approximately 2,808 Settlement Class
9 members. Therefore, the average Individual Settlement Payment is projected to be approximately
10 \$613.43 (this does not include any additional amount from the PAGA Amount).

11 24. Class Counsel will also apply for an attorneys' fees award of one-third of the
12 Maximum Settlement Amount, which is currently estimated to be \$950,000.00, and up to
13 \$30,000.00 in verified costs reimbursement. Plaintiff submits the requested fee is fair
14 compensation for undertaking complex, risky, expensive, and time-consuming litigation on a
15 purely contingent fee basis. Class Counsel has incurred substantial attorneys' fees conducting pre-
16 filing investigation, analyzing Plaintiff's claims, conducting legal research, conducting extensive
17 informal discovery, interviewing Settlement Class members regarding their work experiences at
18 Creative Stone, analyzing Settlement Class members' timekeeping and payroll records, creating
19 a comprehensive damages model, preparing for and attending mediation, negotiating and
20 preparing the long-form Settlement Agreement, preparing this Motion, and otherwise litigating
21 the case. Class Counsel expect to expend additional attorney time in attending the hearing on this
22 Motion, overseeing the Notice process and fielding questions from Settlement Class members,
23 preparing the final approval papers and attending the Final Approval hearing.

24 25. Plaintiff will apply for Class Representative Service Award at the time of seeking
25 final approval of the proposed class action settlement in the amount of \$7,500, for his service to
26 the Settlement Class. I believe this is reasonable given Plaintiff's effort in this case as well as the
27 significant risks Plaintiff undertook by agreeing to serve as the named Plaintiff in this case and
28 agreeing to a general release of all claims subject to a waiver of California Civil Code section

1 1542. Plaintiff was integral in the prosecution of this action, by, among other things, providing
2 substantial factual information and documents to Class Counsel, attending multiple meetings with
3 Class Counsel to discuss the claims and theories at issue in the litigation, and otherwise actively
4 participating in the prosecution of his claims.

5 26. Although the parties engaged in significant discovery in advance of mediation, the
6 parties still had significant formal discovery to complete in formal litigation had the matter not
7 settled. This would have required expenditure of substantial time and resources by both parties
8 that would have very likely spanned several years. Even if Plaintiff was to certify the classes, the
9 parties would incur considerably more attorneys' fees and costs through a possible decertification
10 motion, trial, and possible appeal. This Settlement avoids those risks and the accompanying
11 expense.

12 I declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct. Executed on August 19, 2022, at El Segundo, California.

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15 _____
16 Paul K. Haines
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EXHIBIT *A*

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiff Davis Allen (“Plaintiff”), individually and on behalf of all members of the Settlement Class, defined below, and Defendant Creative Stone Mfg., Inc. (“Defendant”) (Plaintiff and Defendant are referred to herein collectively as the “Parties”). Plaintiff and the Settlement Class are represented by Paul K. Haines, Sean M. Blakely, and Alexandra R. McIntosh of Haines Law Group, APC and James R. Hawkins and Christina Lucio of James Hawkins APLC (“Class Counsel”). Defendant is represented by Mary E. Lynch of the Law Offices of Mary E. Lynch.

This settlement resolves a lawsuit that was filed by Plaintiff against Defendant on June 29, 2021, in Riverside County Superior Court, Case No. CVRI2103180, and which was subsequently transferred to the San Bernardino County Superior Court and assigned case number CIVSB2201498 (the “Action”). As part of the settlement, the Parties stipulate to the filing of a Second Amended Class and Representative Action Complaint (“SAC”) in this Action, which will add a cause of action for unlawful deductions from earned wages. The SAC alleges that Defendant: (a) failed to pay all overtime wages; (b) failed to pay all minimum wages; (c) failed to provide proper meal periods, or premium pay for non-compliant meal periods; (d) failed to authorize and permit all rest periods, or premium pay for non-compliant rest periods; (e) made unlawful deductions from earned wages; (f) failed to issue accurate and complete itemized wage statements; (g) failed to maintain accurate payroll records; (h) failed to timely pay all final wages at the time of separation of employment; (i) is liable for Labor Code Private Attorneys General Act of 2004, California Labor section 2698 *et seq.* (“PAGA”) civil penalties based on the foregoing Labor Code Violations; and (i) is liable for unfair business practices that could have been premised on the facts, claims, causes of action, or legal theories described above.

Given the uncertainty of litigation, Plaintiff and Defendant wish to settle both individually and on behalf of the Settlement Class. Accordingly, Plaintiff and Defendant agree as follows:

1. **Settlement Class.** For the purposes of this Settlement Agreement only, Plaintiff and Defendant stipulate to certification of the following Settlement Class:

All current and former non-exempt employees of Defendant Creative Stone Mfg., Inc. employed in the State of California between April 6, 2016, through June 22, 2021 (the “Class Period”).

The Parties agree that certification for purposes of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure or an admission of liability regarding the allegations and/or claims included in the FAC. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

2. **Releases by Settlement Class.** As of the date that (i) the Effective Date (as defined below) occurs and (ii) the settlement is fully funded, every member of the Settlement Class

(except those who opt out) will fully release and discharge Defendant and all of its past and present parent companies, affiliates, controlling persons, subsidiaries, directors, officers, shareholders and investors, agents, attorneys, employees, and benefit plans sponsored by any such entities (collectively the “Released Parties”), as follows:

- A. Settlement Class members will release all claims and causes of action, alleged or which could have reasonably been alleged based on the allegations in the SAC during the Class Period, including claims for: (a) failure to pay overtime wages; (b) failure to pay minimum wages; (c) failure to provide all meal periods, or premium pay in lieu thereof; (d) failure to authorize and permit all rest periods, or premium pay in lieu thereof; (e) unlawful deductions from earned wages; (f) failure to provide complete and accurate wage statements; (g) all claims for waiting time penalties; (h) all claims for unfair business practices that could have been premised on the claims, causes of action or legal theories pled in the operative SAC; (i) all claims under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”) that could have been premised on the claims, causes of action, or legal theories pled in the SAC; and (j) all damages, penalties, interest, costs (including attorneys’ fees) and other amounts recoverable under said claims or causes of action as to the facts and/or legal theories alleged in the SAC (collectively, “Class Member Released Claims”). In addition, all Settlement Class members (regardless whether they opt out) who worked for Defendant at any time from August 20, 2019 through the end of the Class Period (the “PAGA Period”) shall release Defendant from all claims for civil penalties under PAGA based on the above-mentioned violations, arising from their employment with Defendant during the PAGA Period (the “PAGA Released Claims”). The released claims include all claims for legal or equitable relief, compensatory and statutory damages, all penalties, including statutory and civil penalties, restitution, injunctive relief, pre and post-judgment interest, attorneys’ fees, and costs of the lawsuit based on the claims and causes of action alleged or which could have reasonably been alleged based on the allegations in the SAC during the Class Period. The Parties, including Plaintiff and the Settlement Class members, acknowledge that the wages Defendant is paying as part of this settlement are genuinely disputed. The Parties, including Plaintiff and the Settlement Class members, further acknowledge that as a result of this bona fide dispute, Labor Code, § 206.5(a) is not applicable to the settlement set forth in this Settlement Agreement.

3. **Release by Named Plaintiff:** As of the date that (i) the Effective Date (as defined below) occurs and (ii) the settlement is fully funded, Plaintiff and his agents, attorneys, representative, heirs, successors, assigns, and each and all of them, hereby release, acquit, and forever discharge Defendant, its parents, subsidiaries and affiliates, and each of them, and their respective agents, general agents, insurers, reinsurers, payroll companies, attorneys, representatives, owners, stockholders, policyholders, principals, partners, employees, officers, directors, trustees, heirs,

successors, predecessors, assigns, parent corporations, subsidiaries, affiliated companies , and each and all of them, of and from any and all obligations, debts, claims, liabilities, demands, and causes of action of every kind, nature and description whatsoever, whether or not now known, suspected or claimed, which they ever had, now have, or may hereafter acquire by reason of employment with Defendant, accruing from the beginning of time until the date that the final approval of the Settlement is granted, including all claims, known or unknown. The foregoing release shall be effective as a bar to any and all claims of any character, nature or kind, known or unknown, suspected or unsuspected specified herein. Plaintiff expressly waives any and all rights and benefits conferred upon them by the provisions of Section 1542 of the California Civil Code or similar provisions of applicable law which are as follows:

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

Specifically excluded from Plaintiff’s Released Claims are any claims for workers’ compensation benefits, which cannot be released as a matter of law.

4. **Maximum Settlement Amount.** As consideration, Defendant agrees to pay a non-reversionary maximum amount (“Maximum Settlement Amount”) of Two Million Eight Hundred Fifty Thousand Dollars and Zero Cents (\$2,850,000.00) in full and complete settlement of this matter, as follows:

- A. The Parties have agreed to engage Phoenix Settlement Administrators as the “Settlement Administrator” to administer this Settlement.
- B. The Maximum Settlement Amount shall be deposited with the Settlement Administrator into an interest-bearing Qualified Settlement Fund (“QSF”) for the benefit of the Settlement Class members .by the earlier of: (i) five (5) business days of the Effective Date; or (ii) by December 31, 2022. The term “Effective Date” shall be defined as the date on which the Court enters an Order granting Final Approval, or, solely in the event that there are any objections to the settlement (the filing of an objection being a prerequisite to the filing of an appeal), the later of: (1) the last date on which any appeal might be filed or (2) the successful resolution of any appeal(s) – including expiration of any time to seek reconsideration or further review. In the event that the Settlement Agreement is not granted Final Approval, or does not become final, any funds deposited into the QSF by Defendant shall be returned within fifteen (15) days of a Court Order or other decision denying final approval of the Settlement Agreement.
- C. This is a non-reversionary settlement. The Maximum Settlement Amount includes:
 - (1) All payments (including interest) to the Settlement Class;

- (2) All costs of the Settlement Administrator and settlement administration, which are anticipated to be no greater than Forty Thousand Dollars and Zero Cents (\$40,000.00);
- (3) Up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) for Plaintiff's Class Representative Service Award in recognition of Plaintiff's contributions to the Action and his services to the Settlement Class. In the event that the Court reduces or does not approve the requested Class Representative Service Award, Plaintiff shall not have the right to revoke this settlement, and it will remain binding;
- (4) Up to one-third of the Maximum Settlement Amount in attorneys' fees, plus actual costs and expenses related to the Action as supported by declaration, which are not to exceed Thirty Thousand Dollars and Zero Cents (\$30,000.00). In the event that the Court reduces or does not approve the requested Class Counsel Award and costs, Plaintiff's counsel shall not have the right to revoke this settlement, and it will remain binding; and
- (5) One Hundred Thousand Dollars and Zero Cents (\$100,000.00) of the Maximum Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or Seventy-Five Thousand Dollars and Zero Cents (\$75,000.00) will be payable to the Labor & Workforce Development Agency ("LWDA"), and the remaining twenty-five percent (25%), or Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00), will be payable to certain Settlement Class members as the "PAGA Amount," as described below.

D. Defendant's share of employer payroll taxes shall be paid by Defendant separately from, and in addition to, the Maximum Settlement Amount.

5. **Payments to the Settlement Class.** Settlement Class members are not required to submit a claim form to receive a payment ("Individual Settlement Payment") from the Settlement. Individual Settlement Payments will be determined and paid as follows:

- A. The Settlement Administrator shall first deduct from the Maximum Settlement Amount the amounts approved by the Court for Class Counsel's attorneys' fees, Class Counsel's costs and expenses, Plaintiff's Class Representative Service Award, the Settlement Administrator's fees and expenses for administration, and the amount designated as PAGA civil penalties. The remaining amount shall be known as the "Net Settlement Fund" ("NSF").
- B. From the Net Settlement Fund, the Settlement Administrator will calculate each Settlement Class member's Individual Settlement Payment based on the following formula:

- i. Payments to all participating Settlement Class members: Seventy-Five percent (75%) of the NSF will be distributed to all participating Settlement Class members based on each participating Settlement Class member's proportionate workweeks worked during the Class Period, by multiplying 75% of the NSF by a fraction, the numerator of which is the participating Settlement Class member's number of workweeks worked during the Class Period, and the denominator of which is the total workweeks worked by all participating Settlement Class members during the Class Period.
- ii. Waiting Time Amount: Fifteen percent (15%) of the NSF shall be designated as the "Waiting Time Amount." Each participating Settlement Class member whose employment with Defendant ended at any time from April 6, 2017, through the end of the Class Period (the "Waiting Time Period") shall receive an equal share of the Waiting Time Amount. In other words, the Waiting Time Amount will be divided equally among all participating Settlement Class members whose employment with Defendant ended during the Waiting Time Period.
- iii. Wage Statement Amount: Ten percent (10%) of the NSF shall be designated as the "Wage Statement Amount." Each participating Settlement Class member who was employed by Defendant at any time from April 6, 2019, through the end of the Class Period ("Wage Statement Period"), shall receive a portion of the Wage Statement Amount proportionate to the number of workweeks worked by that participating Settlement Class member during the Wage Statement Period, and which will be calculated by multiplying 10% of the NSF by a fraction, the numerator of which is the participating Settlement Class member's number of workweeks worked during the Wage Statement Period, and the denominator of which is the total number of workweeks worked by all participating Settlement Class members during the Wage Statement Period.
- iv. PAGA Amount: In addition to the NSF, Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00), of the Maximum Settlement Amount has been designated as the "PAGA Amount" as described above. Each Settlement Class member who was employed by Defendant at any time from August 20, 2019 through the end of the Class Period ("PAGA Period") (including those who submit a valid and timely Request for Exclusion from the class action settlement) shall receive a portion of the PAGA Amount proportionate to the number of workweeks worked during the PAGA Period, and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the Settlement Class member's gross number of workweeks worked during the PAGA Period, and the denominator of which is the total number of workweeks worked by all Settlement Class members during the PAGA Period (including those who submit a valid and timely Request for Exclusion from the class action settlement).

- C. Within ten (10) calendar days following the deposit of the Maximum Settlement Amount with the Settlement Administrator by Defendant, the Settlement Administrator will calculate Individual Settlement Payment amounts, as well as the amount of the employer's share of payroll taxes due on the wage portion of the Individual Settlement Payments, and provide the same to counsel for review and approval. Within seven (7) calendar days of approval by counsel, the Settlement Administrator will prepare and mail Individual Settlement Payments, less applicable taxes and withholdings, to participating Settlement Class members. The Settlement Administrator shall simultaneously pay the withholdings to the applicable authorities with the necessary reports, submitting copies to Defendant's counsel.
- D. For purposes of calculating applicable taxes and withholdings for the Settlement Class members, each Individual Settlement Payment made from the Net Settlement Fund shall be allocated as follows: fifteen percent (15%) as wages and eighty-five percent (85%) as penalties and interest. Any payment made from the PAGA Amount shall be treated 100% penalties. The wages allocation will be minus legally mandated payroll withholdings. The Settlement Administrator will be responsible for issuing to participating Settlement Class members an IRS Form W-2 for amounts deemed "wages" and an IRS Form 1099 for the portions allocated as penalties and interest. Notwithstanding the treatment of the payments to each Settlement Class member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay, or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans.
- E. Each member of the Settlement Class who receives an Individual Settlement Payment must cash that check within 180 days from the date the Settlement Administrator mails it. Any funds payable to Settlement Class members whose checks were not cashed within 180 days after mailing shall be distributed to Legal Aid Society of San Bernardino, as a *cy pres* beneficiary.
- F. Neither Plaintiff nor Defendant shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

6. **Attorneys' Fees and Costs.** Defendant will not object to a request for a total award of attorneys' fees of one-third of the Maximum Settlement Amount, which is currently estimated to be Nine Hundred Fifty Thousand Dollars and Zero Cents (\$950,000.00), plus actual costs and expenses as supported by declaration, in an amount not to exceed Thirty Thousand Dollars and Zero Cents (\$30,000.00). These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued

an IRS Form 1099 by the Settlement Administrator when it pays the fee award allowed by the Court.

7. **Class Representative Service Award.** Defendant will not object to a request for a Class Representative Service Award of up to Seven Thousand Five Hundred Dollars and Zero Cents to Plaintiff (\$7,500.00) for his time and risks in prosecuting this case and for his service to the Settlement Class. This award will be in addition to Plaintiff's Individual Settlement Payment as a Settlement Class member and shall be reported on an IRS Form 1099 by the Settlement Administrator. In exchange for the Representative Service Award, Class Representative will sign a General Release, including a Civil Code Section 1542 waiver, releasing all the Released Parties.

8. **Settlement Administrator.** Defendant will not object to the appointment of Phoenix Settlement Administrators as Settlement Administrator nor to Class Counsel seeking permission to pay up to Forty Thousand Dollars and Zero Cents (\$40,000.00) for its services from the Maximum Settlement Amount. The Settlement Administrator shall be responsible for sending notices and for calculating Individual Settlement Payments and preparing all checks and mailings. The Settlement Administrator shall be authorized to pay itself from the Maximum Settlement Amount by Class Counsel only after checks have been mailed to all participating Settlement Class members.

9. **Preliminary Approval.** Upon execution of this Settlement Agreement, Plaintiff shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;
- B. Appointing Paul K. Haines, Sean M. Blakely, and Alexandra R. McIntosh of Haines Law Group, APC and James R. Hawkins and Christina Lucio of James Hawkins APLC, as Class Counsel;
- C. Appointing Davis Allen as Class Representative for the Settlement Class;
- D. Approving Phoenix Settlement Administrators as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Packet (which is comprised of the Class Notice and the Notice of Estimated Settlement Award, attached hereto as **Exhibits 1 and 2**, respectively), and directing the mailing of same; and
- G. Scheduling a Final Approval hearing.

10. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within ten (10) business days after entry of an order preliminarily approving this Agreement, Defendant will provide the Settlement Administrator with the names, last known addresses, and social security numbers (in electronic format) of the members of the Settlement Class, including the dates of employment and the workweeks worked by each Settlement Class member while employed in a position covered by the Settlement Class definition during the Class Period.
- B. Within ten (10) business days from receipt of this information, the Settlement Administrator shall: (i) run the names of all Settlement Class members through the National Change of Address ("NCOA") database to determine any updated addresses for Settlement Class members; (ii) update the addresses of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Individual Settlement Payment for each Settlement Class member; (iv) provide its calculations to Counsel for approval; and (v) mail the Notice Packet (in English and Spanish) to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. Requests for Exclusion. Any Settlement Class member who wishes to opt out of the settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within forty-five (45) calendar days of the date of the initial mailing of the Notice Packets (the "Response Deadline").
 - i. The Notice Packet shall state that Settlement Class members who wish to exclude themselves from the settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion: (1) must contain the name, address, telephone number, and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) must be signed by the Settlement Class member; and (4) must be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from this settlement, except a Request for Exclusion not containing a Settlement Class member's telephone number and/or last four digits of the Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement (except for any amount due to him or her from the PAGA Amount, if applicable) and will not be bound by the terms of the Settlement (except for the PAGA release, if applicable) or have any right to object, appeal or comment thereon.
 - ii. Should more than five (5) percent of the Settlement Class Members opt out of the settlement, the Parties agree that Defendant, in its sole and complete discretion, has the option to void this Settlement Agreement. Should the

settlement become void, it will remain protected by California Evidence Code Section 1152. However, should Defendant elect to void this Settlement Agreement, Defendant will be solely responsible for any costs and fees incurred by the Settlement Administrator.

- iii. The Parties agree not to encourage or discourage any Settlement Class Member from excluding herself/himself from this settlement.
- D. Escalator Clause. Defendant represents there are approximately 75,000 workweeks worked by Settlement Class members during the Class Period. If the number of workweeks at Preliminary Approval has increased by 5% or more (i.e., if there are 78,751 or more workweeks at issue), then Defendant agrees to increase the Maximum Settlement Amount on a proportional basis (e.g., if the number of workweeks at issue is 20% greater than 78,751 workweeks, Defendant agrees to increase the Maximum Settlement Amount by 20%).
- E. Objections. Members of the Settlement Class who do not request exclusion may object to this Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendant's counsel, who shall then promptly file all such objections with the Court). Defendant's counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval, unless an objection is filed within ten (10) days of the Motion for Final Approval filing deadline, in which case Defendant's counsel and Class Counsel shall have ten (10) days to respond. To be valid, any objection should: (1) contain the objecting Settlement Class member's full name and current address, as well as contact information for any attorney representing the objecting Settlement Class member for purposes of the objection; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) be postmarked no later than the Response Deadline. Members of the Settlement Class who do not request exclusion may also object to the Settlement by appearing at the Final Approval Hearing. The Parties agree not to encourage or discourage any Settlement Class Member from objecting to this settlement.
- F. Notification Reports Regarding Requests for Exclusion and Objections. The Settlement Administrator shall provide Defendant's Counsel and Class Counsel a weekly report showing at a minimum: (i) the number of Settlement Class Members who have submitted timely, valid Requests for Exclusion and/or Objections; (ii) whether any Settlement Class Member has submitted a challenge to the employment dates identified in their Notice, or any other information contained in the Notice; and (iii) statistics showing which disputes that have been resolved and which have not been resolved. Additionally, the Settlement Administrator will provide to counsel for both Parties any updated reports as needed or requested.

- G. Notice of Settlement Award/Disputes. Each Notice Packet mailed to a Settlement Class member shall contain a Notice of Estimated Settlement Award, in which shall be disclosed the amount of the Settlement Class member's estimated Individual Settlement Payment as well as all of the information that was used from Defendant's records in order to calculate the Individual Settlement Payment, including the Settlement Class member's workweeks worked during the Class Period, whether the Settlement Class member separated employment during the Waiting Time Period, and the number of workweeks worked by the Settlement Class member during the Wage Statement Period and PAGA Period. Settlement Class members will have the opportunity, should they disagree with Defendant's records regarding the information stated in their Notice of Estimated Settlement Award, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this Agreement. The Settlement Administrator's determination of the eligibility for and amount of any Individual Settlement Payment shall be based on authentic documentation and shall be binding upon the Settlement Class member and the Parties.
- H. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall re-send the Notice Packet to the Settlement Class member immediately, and in any event within three (3) business days of obtaining the updated address. Settlement Class members to whom Notice Packets are re-sent after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to mail a Request for Exclusion or Objection or dispute. Notice Packets that are re-sent shall inform the recipient of this adjusted deadline. If a Settlement Class member's Notice Packet is returned to the Settlement Administrator more than once as non-deliverable, then an additional Notice Packet shall not be mailed. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Defendant's Counsel to provide notice of the proposed settlement.

11. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;

- B. Approving Plaintiff's and Class Counsel's application for attorneys' fees, costs, Class Representative Service Award, and Settlement Administration costs; and
- C. Entering judgment pursuant to California Rule of Court 3.769. Said judgment shall be posted on the Settlement Administrator's website.

12. **Non-Admission of Liability.** Nothing in this Agreement shall operate or be construed as an admission of any liability by the Released Parties or that class certification is appropriate in any context other than this settlement. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.

13. **Nondisclosure and Nonpublication.** Plaintiff and Class Counsel agree not to disclose or publicize the Settlement Agreement among the parties contemplated herein, the fact of the Settlement Agreement, its terms or contents, and the negotiations underlying the Settlement Agreement, in any manner or form, directly or indirectly, to any person or entity, except Settlement Class members and as shall be contractually required to effectuate the terms of the Settlement Agreement as set forth herein. However, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions, Class Counsel may disclose the names of the Parties in this action and the venue/case number of this action for such purposes.

14. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

15. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Defendant: Mary E. Lynch, Law Offices of Mary E. Lynch, 5 Corporate Park, Suite 260, Irvine, California 92606, mary@marylynch.com.

if to Plaintiff: Paul K. Haines, Haines Law Group, APC, 2155 Campus Drive, Suite 180, El Segundo, California 90245, phaines@haineslawgroup.com.

James Hawkins, James Hawkins, APLC, 9880 Research Dr., Suite 200, Irvine, California 92618, james@jameshawkinsaplc.com.

16. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

17. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

18. **Enforcement and Continuing Jurisdiction of the Court.** To the extent consistent with class action procedure, this Settlement Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6. The Court shall retain continuing jurisdiction over this Lawsuit and over all Parties and Settlement Class members, to the fullest extent to enforce and effectuate the terms and intent of this Settlement Agreement, and to adjudicate any claimed breaches of this Settlement Agreement. The Court may award reasonable attorneys' fees and costs to the prevailing party in any motion or action taken based on an alleged violation of any material term of this Settlement Agreement.

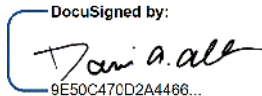
DATED: Defendant CREATIVE STONE MFG., INC.

By: _____

Its: _____

DATED: 8/10/2022

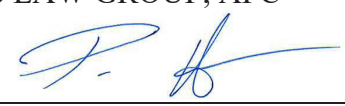
Plaintiff DAVIS ALLEN

By:  _____
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Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

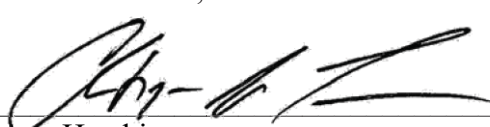
DATED: August 10, 2022

HAINES LAW GROUP, APC

By:  _____
Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff

DATED: August 10, 2022

JAMES HAWKINS, APLC

By:  _____
James Hawkins
Christina Lucio
Attorneys for Plaintiff

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DATED:

Defendant CREATIVE STONE MFG., INC.

By: 

Its: 

DATED:

Plaintiff DAVIS ALLEN

By: _____

Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED:

HAINES LAW GROUP, APC

By: _____

Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff

DATED:

JAMES HAWKINS, APLC

By: _____

James Hawkins
Christina Lucio
Attorneys for Plaintiff

EXHIBIT 1

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

DAVIS ALLEN, individually and on behalf of all
others similarly situated,

Plaintiff,

vs.

CREATIVE STONE MFG. INC., dba CORONADO
STONE PRODUCTS, INC., a California Corporation;
and DOES 1-10, inclusive,

Defendants.

Case No. CIVSB2201498

**NOTICE OF PENDENCY OF CLASS
ACTION AND PROPOSED SETTLEMENT**

To: All current and former non-exempt employees of Defendant Creative Stone Mfg., Inc. employed in the State of California between April 6, 2016, through June 22, 2021. Collectively, these employees will be referred to as "Settlement Class members."

**PLEASE READ THIS NOTICE CAREFULLY
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT
THIS NOTICE IS BEING SENT IN ENGLISH AND SPANISH**

Why should you read this notice?

The Court has granted preliminary approval of a proposed class action settlement (the "Settlement") in *Davis Allen v. Creative Stone Mfg., Inc.*, San Bernardino Superior Court Case No. CIVSB2201498 (the "Action"). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

You may be entitled to money from this Settlement. Creative Stone Mfg., Inc.'s ("Creative Stone") records show that you were employed at Creative Stone as a non-exempt employee in the State of California between April 6, 2016, and June 22, 2021 (the "Class Period"). The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this notice is to provide you with a brief description of the Action, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment. If final judgment is entered in this case, it will be posted to the Settlement Administrator's website, www.phoenixclassaction.com.

What is this case about?

Plaintiff Davis Allen ("Plaintiff") brought this Action against Creative Stone, seeking to assert claims on behalf of a class of current and former non-exempt employees who worked for Creative Stone in the State of California at any time between April 6, 2016 and June 22, 2021. Plaintiff is known as the "Class Representative," and his attorneys, who also represent the interests of all Settlement Class members, are known as "Class Counsel."

The Action alleges that Creative Stone failed to pay Settlement Class members for all earned minimum and overtime wages, and failed to provide all required meal and rest periods to Settlement Class members. The Action also alleges that Creative Stone failed to provide Settlement Class members with accurate and complete wage statements, failed to timely pay all final wages at the time of separation of employment,

unlawfully deducted earned wages from Settlement Class members, and as a result of the foregoing alleged violations, engaged in unfair business practices and is liable for civil penalties under the Labor Code Private Attorneys General Act (“PAGA”).

Creative Stone denies that it has done anything wrong and believes it properly complied with all applicable wage and hour laws. Creative Stone denies that it owes Settlement Class members any wages, restitution, penalties, or other damages. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Creative Stone, which expressly denies all liability.

The Court has not ruled on the merits of Plaintiff’s claims. However, to avoid additional expense, inconvenience, and interference with its business operations, Creative Stone has concluded that it is in its best interests and the interests of Settlement Class members to settle the Action on the terms summarized in this Notice. Creative Stone provided relevant information to Class Counsel and the Settlement was reached after mediation and arm’s-length negotiations between the parties.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Creative Stone, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still employed by Creative Stone, your decision about whether to participate in the Settlement will not affect your employment. California law and Creative Stone’s policy strictly prohibit unlawful retaliation. Creative Stone will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class member because of the Settlement Class member’s decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for the Plaintiff/Settlement Class members: JAMES HAWKINS APLC James R. Hawkins James@jameshawkinsaplc.com Christina M. Lucio Christina@jameshawkinsaplc.com 9880 Research Drive, Suite 200 Irvine, California 92618 Telephone: (949) 387-7200 Facsimile: (949) 387-6676 HAINES LAW GROUP, APC Paul K. Haines phaines@haineslawgroup.com Sean M. Blakely sblakely@haineslawgroup.com Alexandra R. McIntosh amcintosh@haineslawgroup.com 2155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 haineslawgroup.com	Attorneys for Defendant Creative Stone: LAW OFFICES OF MARY E. LYNCH Mary E. Lynch mary@marylynchlaw.com 2875 Michelle Dr., Suite 200 Irvine, California 92606 Tel: (949) 229-5529 marylynchlaw.com
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What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court preliminarily certified a class, for settlement purposes only, of all current and former non-exempt employees who worked for Creative Stone in the State of California between April 6, 2016, and June 22, 2021. Settlement Class members who do not opt out of the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Creative Stone as described below.

Creative Stone has agreed to pay \$2,850,000 (the “Maximum Settlement Amount”) to fully resolve all claims in the Action, including payments to Settlement Class members, attorneys’ fees and expenses, Settlement Administration costs, PAGA civil penalties, and the Class Representative’s Service Award.

The following deductions from the Maximum Settlement Amount will be requested by the parties:

Settlement Administration Costs. The Court has approved Phoenix Settlement Administrators to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$40,000 from the Maximum Settlement Amount to pay the Settlement Administration costs.

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the Action on behalf of the Settlement Class members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Maximum Settlement Amount. Settlement Class members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for fees of up to one-third of the Maximum Settlement Amount, which is currently estimated to be \$950,000, as reasonable compensation for the work Class Counsel performed and will continue to perform in this Action through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$30,000 for verified costs Class Counsel incurred in connection with the Action.

Service Award to Class Representative. Class Counsel will ask the Court to award the Class Representative a service award in the amount of \$7,500 to compensate him for his service and extra work provided on behalf of the Settlement Class members.

PAGA Civil Penalties. The parties have agreed to allocate \$100,000 of the Maximum Settlement Amount as alleged civil penalties for the settlement of Plaintiff’s PAGA claim. Pursuant to the requirements of the PAGA, 75% of that amount, or \$75,000, will be paid to the California Labor & Workforce Development Agency (“LWDA”). The remaining \$25,000 has been designated as the “PAGA Amount” and will be paid to certain Settlement Class members as described below.

Calculation of Settlement Class Members’ Individual Settlement Payments. After deducting the Court-approved amounts above, the balance of the Maximum Settlement Amount will form the Net Settlement Fund (“NSF”), which will be distributed to all Settlement Class members who do not submit a valid and timely Request for Exclusion (described below). The NSF is estimated at approximately \$1,722,500 and will be divided as follows:

- (i) Payments to all participating Settlement Class members: Seventy-five percent (75%) of the NSF will be allocated to each participating Settlement Class member in proportion to the number of workweeks worked by him or her between April 6, 2016, and June 22, 2021.
- (ii) Wage Statement Amount: Ten percent (10%) of the NSF has been designated as the “Wage Statement Amount” and will be allocated to all participating Settlement Class members who were employed by Creative Stone at any time between April 6, 2019, and June 22, 2021, in proportion to the number of workweeks that he or she worked between April 6, 2019, and June 22, 2021.

- (iii) Waiting Time Amount: Fifteen percent (15%) of the NSF shall be designated as the “Waiting Time Amount,” and shall be distributed equally to each participating Settlement Class member who separated their employment with Creative Stone between April 6, 2017, through June 22, 2021.
- (iv) PAGA Amount: \$25,000 has been designated as the “PAGA Amount” and will be allocated to Settlement Class members who were employed by Creative Stone at any time from August 20, 2019, to June 22, 2021 (including those who submit a valid and timely Request for Exclusion from the class action settlement), in proportion to the number of workweeks that he or she worked between August 20, 2019, and June 22, 2021.

Payments to Settlement Class Members. If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to all Settlement Class members who did not submit a valid and timely Request for Exclusion. Settlement checks will be valid for 180 days from the date the Settlement Administrator mails it. Any funds payable to Settlement Class members whose checks were not cashed within 180 days after mailing will be distributed to the Legal Aid Society of San Bernardino.

Allocation and Taxes. For tax purposes, each Individual Settlement Payment will be treated as follows: fifteen percent (15%) as “wages,” for which an IRS form W-2 will be issued, and Eighty-Five percent (85%) as penalties and interest, for which an IRS form 1099 will be issued. Any payment made from the PAGA Amount shall be treated 100% penalties. The wages allocation will be minus legally mandated payroll withholdings. Settlement Class members are responsible for the proper income tax treatment of the Individual Settlement Payments. The Settlement Administrator, Creative Stone and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court approves the Settlement, the Settlement Class, and each Settlement Class member who has not submitted a timely and valid Request for Exclusion, will release Creative Stone, and its past and present parent companies, affiliates, controlling persons, subsidiaries, directors, officers, shareholders and investors, agents, attorneys, employees, and benefit plans sponsored by any such entities (collectively the “Released Parties”) from all claims and causes of action, alleged or which could have reasonably been alleged based on the allegations in the Second Amended Class and Representative Action Complaint (“SAC”) during the Class Period, including claims for: (a) failure to pay overtime wages; (b) failure to pay minimum wages; (c) failure to provide all meal periods, or premium pay in lieu thereof; (d) failure to authorize and permit all rest periods, or premium pay in lieu thereof; (e) unlawful deductions from earned wages; (f) failure to provide complete and accurate wage statements; (g) all claims for waiting time penalties; (h) all claims for unfair business practices that could have been premised on the claims, causes of action or legal theories pled in the operative SAC; (i) all claims under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”) that could have been premised on the claims, causes of action, or legal theories pled in the SAC; and (j) all damages, penalties, interest, costs (including attorneys’ fees) and other amounts recoverable under said claims or causes of action as to the facts and/or legal theories alleged in the SAC (collectively, “Class Member Released Claims”). In addition, all Settlement Class members (regardless whether they opt out) who worked for Creative Stone at any time from August 20, 2019 through the end of the Class Period (the “PAGA Period”) shall release Creative Stone from all claims for civil penalties under PAGA based on the above-mentioned violations, arising from their employment with Creative Stone during the PAGA Period (the “PAGA Released Claims”). The released claims include all claims for legal or equitable relief, compensatory and statutory damages, all penalties, including statutory and civil penalties, restitution, injunctive relief, pre and post-judgment interest, attorneys’ fees, and costs of the lawsuit based on the claims and causes of action alleged or which could have reasonably been alleged based on the allegations in the SAC during the Class Period. The Parties, including Plaintiff and the Settlement Class members, acknowledge that the wages Defendant is paying as part of this settlement are genuinely disputed. The Parties, including Plaintiff and the Settlement Class members, further acknowledge that as a result of this bona fide dispute, Labor Code, §206.5(a) is not applicable to the settlement set forth in this Settlement Agreement.

Conditions of Settlement. The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate, and in the best interests of the Settlement Class, and the entry of Judgment.

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your share of the Settlement based on the number of workweeks you worked between April 6, 2016, and June 22, 2021, the proportionate number of workweeks you worked between April 6, 2019, through June 22, 2021, the proportionate number of workweeks you worked between August 20, 2019, through June 22, 2021, and whether you ended your employment from April 6, 2017, through June 22, 2021, as stated in the accompanying Notice of Estimated Settlement Award. You also will be bound by the Settlement, including the release of claims stated above.

What other options do I have?

Dispute Information in Notice of Settlement Award. Your award is based on the number of workweeks you worked between April 6, 2016, and June 22, 2021, the proportionate number of workweeks you worked between April 6, 2019, through June 22, 2021, the proportionate number of workweeks you worked between August 20, 2019, through June 22, 2021, and whether you ended your employment from April 6, 2017, through June 22, 2021. The information contained in Creative Stone's records regarding each of these factors, along with your estimated Individual Settlement Payment, is listed on the accompanying Notice of Estimated Settlement Award. If you disagree with the information in your Notice of Estimated Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Estimated Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than **<<RESPONSE DEADLINE>>**. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class members. The Settlement Administrator's decision regarding any dispute will be final.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator a written "Request for Exclusion" letter or card postmarked no later than **<<RESPONSE DEADLINE>>**, with your name, address, telephone number, the last four digits of your social security number, and your signature.

Send the Request for Exclusion directly to the Settlement Administrator at **<<INSERT ADMINISTRATOR CONTACT INFO>>**. Any person who submits a timely Request for Exclusion Form shall, upon receipt by the Settlement Administrator, no longer be a Settlement Class member and shall be barred from participating in the class action settlement. However, Settlement Class members who were employed by Creative Stone at any time from August 20, 2019 through June 22, 2021 shall still be entitled to their portion of the PAGA Amount described above. **Do not submit both a Dispute and a Request for Exclusion.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you should mail a written objection to the Settlement Administrator. Your written objection must include your name, address, as well as contact information for any attorney representing you regarding your objection, the case name and number, each specific reason in support of your objection, and any legal or factual support for each objection together with any evidence in support of your objection. Objections should be in writing and must be postmarked on or before **<<RESPONSE DEADLINE>>**.

You may also appear at the Final Approval Hearing scheduled for **<<FINAL APPROVAL HEARING DATE/TIME>>** in Department S-26 of the San Bernardino County Superior Court, located at 247 W. Third Street, San Bernardino, CA. 92415. You have the right to appear either in person or through your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before **<<RESPONSE**

DEADLINE>>. All objections or other correspondence must state the name and number of the case, which is *Davis Allen v. Creative Stone Mfg., Inc.*, San Bernardino Superior Court Case No. CIVSB2201498.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class members who do not object. In other words, by submitting an Objection, you are not excluding yourself from the Settlement.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on **<<FINAL APPROVAL HEARING DATE/TIME>>**, in Department S-26 of the San Bernardino County Superior Court, located at 247 W. Third Street, San Bernardino, California 92415. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses and the Service Award to the Class Representative. The Final Approval Hearing may be postponed without further notice to the Settlement Class. **You are not required to attend the Final Approval Hearing, although any Settlement Class member is welcome to attend the hearing.**

If you plan on attending the hearing or otherwise visiting the Court, please consult the Court's website, www.sb-court.org, for information regarding court operations during COVID-19 as well as face covering and social distancing requirements.

How can I get additional information?

This Notice is only a summary of the Action and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the San Bernardino County Superior Court, located at 247 W. Third Street, San Bernardino, CA. 92415, during regular court hours. You may also contact Class Counsel using the contact information listed above for more information.

PLEASE DO NOT CALL OR WRITE THE COURT, CREATIVE STONE, OR ITS ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is **<<RESPONSE DEADLINE>>**. These deadlines will be strictly enforced.

BY ORDER OF THE COURT ENTERED ON **<<PRELIM APPROVAL DATE>>.**

EXHIBIT 2

NOTICE OF ESTIMATED SETTLEMENT AWARD

DAVIS ALLEN V. CREATIVE STONE MFG., INC.
SAN BERNARDINO COUNTY SUPERIOR COURT CASE NO. CIVSB2201498

Please complete, sign, date, and return this Form to <<ADMINISTRATOR CONTACT INFO>> **ONLY IF** (1) your personal contact information has changed, and/or (2) you wish to dispute any of the items listed in Section (III), below. It is your responsibility to keep a current address on file with the Settlement Administrator.

(I) Please type or print your name:

(First, Middle, Last)

(II) Please type or print the following identifying information if your contact information has changed:

Former Names (if any)

New Street Address

City

State

Zip Code

(III) Information Used to Calculate Your Settlement Payment:

According to Creative Stone Mfg., Inc.'s ("Creative Stone") records:

- (a) you worked [REDACTED] workweeks between April 6, 2016, and June 22, 2021 for Creative Stone;
- (b) you worked [REDACTED] workweeks between April 6, 2019, and June 22, 2021 for Creative Stone;
- (c) you worked [REDACTED] workweeks between August 20, 2019, and June 22, 2021 for Creative Stone; and
- (d) your employment with Creative Stone <<DID/DID NOT>> end between April 6, 2017, and June 22, 2021.

Based on the above, your Settlement Payment is estimated at \$ [REDACTED].

(IV) If you disagree with items (a), (b), (c), and/or (d) in Section (III) above, please explain why in the space provided below and include copies of any supporting evidence or documentation with this Form:

If you dispute the above information from Creative Stone's records, Creative Stone's records will control unless you are able to provide credible documentation that establishes otherwise and that Creative Stone's records are mistaken. If there is a dispute about whether Creative Stone's information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved by the Parties and the Settlement Administrator as described in the "Notice of Pendency of Class Action and Proposed Settlement" that accompanies this Form.

**ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE POSTMARKED
NO LATER THAN <<RESPONSE DEADLINE>>.**

EXHIBIT B

1 **JAMES HAWKINS APLC**

James R. Hawkins (SBN 192925)

2 Christina M. Lucio (SBN 253677)

9880 Research Drive, Suite 200

3 Irvine, CA 92618

Tel.: (949) 387-7200

4 Fax: (949) 387-6676

Email: James@jameshawkinsaplc.com

5 Email: Christina@jameshawkinsaplc.com

6 Attorneys for Plaintiff Davis Allen

individually and on behalf of all others similarly situated

7 *[Additional counsel listed on following page]*

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SAN BERNARDINO**

12
13 DAVIS ALLEN, individually and on behalf
of all others similarly situated,

14
15 Plaintiffs,

16 v.

17 CREATIVE STONE MFG. INC., dba
18 CORONADO STONE PRODUCTS, INC., a
California Corporation; and DOES 1-10,
19 inclusive,

20 Defendants.

Case No.: CIVSB2201498

Assigned For All Purposes To:

Judge: Hon. David Cohn

Dept.: S26

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Failure to Pay Wages, Including Minimum Wages and Overtime;
2. Failure to Provide Meal Periods as Required;
3. Failure to Provide Rest Periods as Required;
4. Failure to Pay Timely Wages;
5. Failure to Provide Accurate Itemized Wage Statements;
6. Failure to Maintain Accurate Payroll Records;
7. Violation of Business & Professions Code § 17200, *et seq.*
8. Penalties Under the Private Attorney Generals Act, Labor Code § 2698 *et seq.*
9. Unlawful Deductions From Earned Wages (Labor Code §§ 221-223)

DEMAND FOR JURY TRIAL

1 **HAINES LAW GROUP, APC**
2 Paul K. Haines (SBN 248226)
3 phaines@haineslawgroup.com
4 Sean M. Blakely (SBN 264384)
5 sblakely@haineslawgroup.com
6 Alexandra R. McIntosh (SBN 320904)
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8 2155 Campus Drive, Suite 180
9 El Segundo, California 90245
10 Tel: (424) 292-2350
11 Fax: (424) 292-2355

12 Attorneys for Plaintiff Davis Allen
13 individually and on behalf of all others similarly situated
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1 Plaintiff Davis Allen (“Plaintiff”), individually and on behalf of all others similarly
2 situated (hereinafter collectively referred to as the “Class” or “Class Members”), hereby files this
3 Complaint against Defendant Creative Stone Mfg. Inc., d/b/a Coronado Stone Products, Inc.; and
4 DOES 1-10, inclusive (collectively “Defendants”) and alleges on information and belief as
5 follows:

6 **I. JURISDICTION AND VENUE**

7 1. This class action is brought pursuant to California Code of Civil Procedure §382.
8 The monetary damages and restitution sought by Plaintiff exceeds the minimum jurisdiction limits
9 of the California Superior Court and will be established according to proof at trial.

10 2. This Court has jurisdiction over this action pursuant to the California Constitution
11 Article VI §10, which grants the California Superior Court original jurisdiction in all causes
12 except those given by statute to other courts. The statutes under which this action is brought do not
13 give jurisdiction to any other court.

14 3. This Court has jurisdiction over Defendants because, upon information and belief,
15 each Defendant either has sufficient minimum contacts in California, or otherwise intentionally
16 avails itself of the California market so as to render the exercise of jurisdiction over it by the
17 California Courts consistent with traditional notions of fair play and substantial justice.

18 4. Venue is proper in this Court because upon information and belief, one or more of
19 the Defendants, reside, transact business, or have offices in this County and/or the acts or
20 omissions alleged herein took place in this County.

21 **II. PARTIES**

22 5. Plaintiff Davis Allen was, at all times relevant to this action, a resident of
23 California. Plaintiff was employed by Defendants from approximately November 2018 through
24 September 2019 as a non-exempt employee. Plaintiff worked for Defendants as a Maintenance
25 Welder. Plaintiff’s job duties included, but were not limited to, maintaining and repairing welding
26 equipment.

27 6. Other than identified herein, Plaintiff is unaware of the true names, capacities,
28 relationships, and extent of participation in the conduct alleged herein, of the Defendants sued as

DOES 1 through 10, but are informed and believe and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint when their true names and capabilities are ascertained.

7. Plaintiff is informed and believes and thereon alleges that each defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and other members of the Class, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believe and thereon allege that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other defendants.

III. CLASS ACTION ALLEGATION

8. Plaintiff brings this action individually and on behalf of all others similarly situated as a class action pursuant to Code of Civil Procedure § 382. The members of the Class are defined as follows:

All persons who are or have been employed by Defendants as non-exempt employees or equivalent positions, however titled, in the state of California within four (4) years from the filing of the Complaint in this action until its resolution. (collectively referred to as the “Class” or “Class Members”).

9. Plaintiff also seeks to represent the subclass(es) composed of and defined as follows:

Waiting Time Subclass

All Class members who separated their employment from Defendants within three years prior to the filing of this action to the present and continuing.

10. Plaintiff reserves the right under California Rule of Court 3.765(b) and other applicable laws to amend or modify the class definition with respect to issues or in any other ways. Plaintiff is a member of the Class as well the Subclass.

11. The term “Class” includes Plaintiff and all members of the Class and the Subclass, if applicable. Plaintiff seeks class-wide recovery based on the allegations set forth in this complaint.

12. There is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable through the records Defendants are required to keep.

13. Numerosity. The members of the Class are so numerous that individual joinder of all of them as plaintiffs is impracticable. While the exact number of the Class Members is unknown to Plaintiff at this time, Plaintiff is informed and believe and thereon alleges that there are at least 100 (one hundred) Class Members.

14. Commonality. Common questions of law and fact exist as to all Class Members and predominate over any questions that affect only individual members of the Class. These common questions include, but are not limited to:

i. Whether Defendants failed to pay all lawful earned wages to Plaintiff and Class Members;

ii. Whether Defendants properly paid Class Members for non-productive time;

iii. Whether Defendants deprived Plaintiff and Class Members of lawful meal periods without compensation;

iv. Whether Defendants deprived Plaintiff and Class Members of lawful rest breaks without compensation;

v. Whether Defendants provided accurate itemized wage statements pursuant to Labor Code section 226;

vi. Whether Defendants kept accurate records as required by the Labor Code and the Wage Order;

vii. Whether Plaintiff and Class Members are entitled to equitable relief pursuant to Business and Professions Code section 17200, *et. seq.*

15. Typicality. Plaintiff's claims herein alleged are typical of those claims which could be alleged by any member of the Class and/or Subclass, and the relief sought is typical of the relief which would be sought by each member of the Class and/or Subclass in separate actions. Plaintiff and all members of the Class and or Subclass sustained injuries and damages arising out of and

1 caused by Defendants' common course of conduct in violation of California laws, regulations, and
2 statutes as alleged herein.

3 16. Adequacy. Plaintiff is qualified to, and will fairly and adequately, protect the
4 interests of each member of the Class and/or Subclass with whom he has a well-defined
5 community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges an
6 obligation to make known to the Court any relationships, conflicts, or differences with any
7 member of the Class and/or Subclass. Plaintiff's attorneys and the proposed Counsel for the Class
8 and Subclass are versed in the rules governing class action discovery, certification, litigation, and
9 settlement and experienced in handling such matters. Other former and current employees of
10 Defendants may also serve as representatives of the Class and Subclass if needed.

11 17. Superiority. A class action is superior to other available means for the fair and
12 efficient adjudication of the claims of the Class and would be beneficial for the parties and the
13 court. Class action treatment will allow a large number of similarly situated persons to prosecute
14 their common claims in a single forum, simultaneously, efficiently, and without the unnecessary
15 duplication of effort and expense that numerous individual actions would require. The damages
16 suffered by each Class member are relatively small in the sense pertinent to class action analysis,
17 and the expense and burden of individual litigation would make it extremely difficult or
18 impossible for the individual Class Members to seek and obtain individual relief. A class action
19 will serve an important public interest by permitting such individuals to effectively pursue
20 recovery of the sums owed to them. Further, class litigation prevents the potential for inconsistent
21 or contradictory judgments raised by individual litigation.

22 18. Public Policy Considerations: Employers in the state of California violate
23 employment and labor laws everyday. Current employees are often afraid to assert their rights out
24 of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because
25 they believe their former employers may damage their future endeavors through negative
26 references and/or other means. The nature of this action allows for the protection of current and
27 former employees' rights without fear of retaliation or damage.
28

IV. FACTUAL ALLEGATIONS

19. Defendants operate factories that manufacture and supply stones and stone products in the State of California.

20. At all times set forth herein, Defendants employed Plaintiff and other persons in the capacity of non-exempt hourly positions, however titled, throughout the state of California at Defendants' various California locations. Plaintiff is informed and believes that all Class Members are citizens of the state of California.

21. Plaintiff was employed by Defendants from approximately November, 2018 through September, 2019. During the relevant statutory period, Plaintiff worked for Defendants as a full-time, hourly non-exempt employee at one of Defendants' locations in Perris, California.

22. Defendants continue to employ non-exempt employees, however titled, in California and implement a uniform set of policies and practices to all non-exempt employees, as they were all engaged in the generic job duties of factory operations and manufacturing.

23. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the requirements of California's wage and employment laws.

24. Plaintiff and the Class Members were not properly compensated for all hours worked. This is due, in part, to Defendant's failure to pay for time rounded to Defendant's advantage. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and Class Members were entitled to receive wages for all time worked (including minimum and overtime wages) and that they were not receiving all wages earned for work that was required to be performed. In violation of the Labor Code and IWC Wage Orders, Plaintiff and Class Members were not properly paid for all of their time worked because Defendant rounded Plaintiff's and Class Members' time punches to Defendant's advantage.

25. In addition to the violations set forth herein, upon information and belief, Defendants also failed to pay its Class Members who were paid on a piece-rate basis for all minimum wages. Specifically, upon information and belief, Defendants failed to separately compensate its Class Members who were paid on a piece-rate basis for “non-productive time”

1 (i.e., time spent working on tasks which were not compensated on a piece-rate basis).

2 26. Furthermore, Defendants did not separately compensate aggrieved employees paid
3 on a piece-rate basis for rest periods at the correct rate of pay, as required under Labor Code §
4 226.2 and *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal.App.4th 864, 872 (“under the rule of
5 *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 323, rest periods must be separately
6 compensated in a piece-rate system.”).

7 27. Further, although Class Members paid on a piece-rate basis regularly worked shifts
8 of 3.5 hours or more, they were not provided with a paid rest period for every 4-hour period
9 worked, or major fraction thereof, because Defendants’ piece-rate compensation plan failed to
10 separately compensate the Class Members for required rest periods at the correct rate of pay.

11 28. Accordingly, Defendants failed to pay aggrieved employees all wages owed,
12 including all minimum wages as a result of the failure to pay for non-productive time. In addition,
13 Defendants are liable for rest period premiums for its failure to separately compensate aggrieved
14 employees paid on a piece-rate basis for rest periods.

15 29. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and Class
16 Members were regularly required to work shifts in excess of five hours without being provided a
17 lawful meal period and over ten hours in a day without being provided a second lawful meal
18 period as required by law. Plaintiff and Class Members regularly had late meal breaks after the
19 fifth hour, at times did not receive a first meal break, and never got a second meal break when
20 working over 10 hours a day.

21 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and Class Members were entitled to receive all meal periods or
23 payment of one additional hour of pay at Plaintiff’s and Class Members’ regular rate of pay when
24 they did not receive one timely, uninterrupted meal period when working more than five hours and
25 a second timely, uninterrupted meal period when working more than ten hours. Defendants failed
26 to provide these lawful meal periods to Plaintiff and Class Members.

27 31. Despite the above-mentioned meal period violations, Defendants failed to
28 compensate Plaintiff, and on information and belief, failed to compensate Class Members, one
additional hour of pay at their regular rate as required by California law when meal periods were

1 not timely or lawfully provided in a compliant manner.

2 32. In addition, during the relevant time frame, Plaintiff and Class Members were
3 systematically not authorized and permitted to take one net ten-minute paid, rest period for every
4 four hours worked or major fraction thereof, which is a violation of the Labor Code and IWC
5 wage order. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and Class Members were entitled to receive all rest breaks or
7 payment of one additional hour of pay at Plaintiff and Class Members' regular rate of pay when a
8 rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff and Class
9 Members did not receive all rest breaks or payment of one additional hour of pay at Plaintiff and
10 Class Members' regular rate of pay when a rest break was missed.

11 33. Plaintiff is informed and believe, and thereon alleges, that Defendants maintained
12 and enforced scheduling practices, policies, and imposed work demands that frequently required
13 Plaintiff and Class Members to forego their lawful, paid rest periods of a net ten minutes for every
14 four hours worked or major fraction thereof.

15 34. Despite the above-mentioned rest period violations, Defendants did not compensate
16 Plaintiff, and on information and belief, did not pay Class Members one additional hour of pay at
17 their regular rate as required by California law, including Labor Code section 226.7 and the
18 applicable IWC wage order, for each day on which lawful rest periods were not authorized and
19 permitted. As a result, Plaintiff and Class Members were not paid all wages owed (including
20 overtime wages). Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and Class Members were entitled to receive all wages owed yet
22 failed to do so.

23 35. Upon information and belief, as a matter of policy, Defendants also required
24 Plaintiff and Class Members to carry radios during meal periods and rest breaks and remain
25 attentive to any issues directed their way, forcing them to remain available at all times whether
26 during their scheduled working shifts or while on their own personal time in violation of the Labor
27 Code and IWC Wage Orders.

28 36. Plaintiff is informed and believes, and thereon alleges, that at all times herein
mentioned, Defendants knew that at the time of termination of employment (or within 72 hours

1 thereof for resignations without prior notice as the case may be) they had a duty to accurately
2 compensate Plaintiff and Class Members for all wages owed including minimum wages, meal and
3 rest period premiums, and Defendants had the financial ability to pay such compensation, but
4 willfully, knowingly, recklessly, and/or intentionally failed to do so in part because of the above-
5 specified violations.

6 37. Plaintiff is informed and believes, and thereon alleges, that Defendants also failed
7 to provide accurate, lawful itemized wage statements to Plaintiff and Class Members in part
8 because of the above specified violations. In addition, upon information and belief, Defendants
9 omitted an accurate itemization of total hours worked, including premiums due and owing for
10 meal and rest period violations, gross pay and net pay figures from Plaintiff's and the Class
11 Members' wage statements.

12 **V. CLASS ACTION CLAIMS**

13 **FIRST CAUSE OF ACTION**

14 **FAILURE TO PAY ALL LAWFUL WAGES INCLUDING**

15 **MINIMUM WAGES AND OVERTIME**

16 **(Against All Defendants)**

17 38. Plaintiff incorporates and re-allege each and every allegation contained above as
18 though fully set forth herein.

19 39. At all times relevant, the IWC wage orders applicable to Plaintiff's and the Class
20 require employers to pay its employees for each hour worked at least minimum wage. "Hours
21 worked" means the time during which an employee is subject to the control of an employer, and
22 includes all the time the employee is suffered or permitted to work, whether or not required to do
23 so, and in the case of an employee who is required to reside on the employment premises, that
24 time spent carrying out assigned duties shall be counted as hours worked.

25 40. At all relevant times, Labor Code §1197.1 states "[a]ny employer or other persons
26 acting individually as an officer, agent, or employee of another person, who pays or causes to be
27 paid to any employee a wage less than the minimum fixed by an applicable state or local law, or
28 by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated

1 damages payable to the employee, and any applicable penalties pursuant to Section 203...”

2 41. At all times relevant, Plaintiff and Class Members regularly performed non-exempt
3 work and thus were subject to the overtime requirements of the IWC Wage Orders, CCR § 11000,
4 *et. seq.* and the Labor Code.

5 42. As discussed herein, Defendants did not compensate Plaintiff and Class Members
6 one additional hour of pay as required by California law, including Labor Code section 226.7 and
7 the applicable IWC wage order, for each day on which lawful meal periods and rest breaks were
8 not authorized and permitted. As a result, Plaintiff and Class Members were not paid all lawful
9 wages, including minimum wages and overtime wages. Plaintiff is informed and believes, and
10 thereon alleges, that Defendants knew or should have known that Plaintiff and Class Members
11 were entitled to receive all wages owed yet failed to do so.

12 43. During the relevant time period, Defendants paid Plaintiff and Class Members less
13 than minimum wages when they rounded Plaintiff’s and Class Members’ time punches to
14 Defendants’ advantage, among other reasons. To the extent these hours do not qualify for the
15 payment of overtime, Plaintiff and Class Members were not being paid at least minimum wages
16 for their work.

17 44. Further, Defendants failed to pay for non-productive time as required by law as its
18 employees who were paid in whole or in part on a piece rate basis.

19 45. Pursuant to Labor Code §§ 510, 558, 1194, 1197, 1198, and the Wage Order,
20 Plaintiff and Class Members are entitled to recover their unpaid minimum wages and overtime
21 compensation, as well as interest, costs, and attorneys’ fees.

22 **SECOND CAUSE OF ACTION**

23 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**

24 **(Against All Defendants)**

25 46. Plaintiff incorporates and re-alleges each and every allegation contained above as
26 though fully set forth herein.

27 47. Pursuant to Labor Code §512, no employer shall employ an employee for a work
28 period of more than five (5) hours without providing a meal break of not less than thirty (30)

1 minutes in which the employee is relieved of all of his or her duties. An employer may not employ
2 an employee for a work period of more than ten (10) hours per day without providing the
3 employee with a second meal period of not less than thirty (30) minutes, except that if the total
4 hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual
5 consent of the employer and the employee only if the first meal period was not waived.

6 48. Pursuant to the IWC wage orders applicable to Plaintiff and Class Members'
7 employment by Defendants, in order for an "on duty" meal period to be permissible, the nature of
8 the work of the employee must prevent an employee from being relieved of all duties relating to
9 his or her work for the employer and the employees must consent in writing to the "on duty" meal
10 period. On information and belief, Plaintiff and Class Members did not consent in writing to an
11 "on duty" meal period. Further, the nature of the work of Plaintiff and Class Members was not
12 such that they were prevented from being relieved of all duties. Despite the requirements of the
13 IWC wage orders applicable to Plaintiff's and Class Members' employment by Defendants and
14 Labor Code §512 and §226.7, Defendants did not provide Plaintiff and Class Members with all
15 their statutorily authorized meal periods.

16 49. For the four (4) years preceding the filing of this lawsuit, Defendants failed to
17 provide Plaintiff and Class Members, timely and uninterrupted meal periods of not less than thirty
18 (30) minutes pursuant to the IWC wage orders applicable to Plaintiff and Class Members'
19 employment by Defendants. As a proximate result of the aforementioned violations, Plaintiff and
20 Class Members have been damaged in an amount according to proof at time of trial.

21 50. By their failure to provide a compliant meal period for each shift worked over five
22 (5) hours and their failure to provide a compliant second meal period for any shift worked over ten
23 (10) hours per day by Plaintiff and the Class Members, and by failing to provide compensation in
24 lieu of such non-provided meal periods, as alleged above, Defendants violated the provisions of
25 Labor Code sections 226.7 and 512 and applicable IWC Wage Orders.

26 51. Plaintiff and the Class Members he seeks to represent did not voluntarily or
27 willfully waive meal periods and were regularly required to work shifts without being provided all
28 of her legally required meal periods. Defendants created a working environment in which Plaintiff

1 and Class Members were not provided all of their meal periods due to shift scheduling and/or
2 work-related demands placed upon them by Defendants as well as a lack of sufficient staffing to
3 meet the needs of Defendants' business as discussed above. On information and belief,
4 Defendants' implemented a policy and practice which resulted in systematic and class-wide
5 violations of the Labor Code. On information and belief, Defendants' violations have been
6 widespread throughout the relevant period and will be evidenced by Defendants' time records for
7 the Class Members.

8 52. As a result of the unlawful acts of Defendants described herein, Plaintiff and the
9 Class Members he seeks to represent have been deprived of premium wages in amounts to be
10 determined at trial. Pursuant to Labor Code §226.7, Plaintiff and Class Members are entitled to
11 recover one (1) hour of premium pay for each day in which a meal period was not provided, along
12 with interest and penalties thereon, attorneys' fees, and costs.

13 **THIRD CAUSE OF ACTION**

14 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**
15 **(Against All Defendants)**

16 53. Plaintiff incorporates and re-alleges each and every allegation contained above as
17 though fully set forth herein.

18 54. Pursuant to the IWC wage orders applicable to Plaintiff and Class Members'
19 employment by Defendants, "Every employer shall authorize and permit all employees to take rest
20 periods, which insofar as practicable shall be in the middle of each work period.... [The]
21 authorized rest period time shall be based on the total hours worked daily at the rate of ten (10)
22 minutes net rest time per four (4) hours worked or major fraction thereof... Authorized rest period
23 time shall be counted as hours worked, for which there shall be no deduction from wages." Labor
24 Code §226.7(a) prohibits an employer from requiring any employee to work during any rest period
25 mandated by an applicable order of the IWC.

26 55. Defendants were required to authorize and permit employees such as Plaintiff and
27 Class Members to take rest periods, based upon the total hours worked at a rate of ten (10) minutes
28 net rest per four (4) hours worked, or major fraction thereof, with no deduction from wages.

1 Despite said requirements of the IWC wage orders applicable to Plaintiff's and Class Members'
2 employment by Defendants, Defendants failed and refused to authorize and permit Plaintiff and
3 Class Members to take ten (10) minute rest periods for every four (4) hours worked, or major
4 fraction thereof.

5 56. On information and belief Defendants created a working environment in which
6 Plaintiff and Class Members were not provided all of their rest periods due to shift scheduling
7 and/or work-related demands placed upon them by Defendants as well as a lack of sufficient
8 staffing to meet the needs of Defendants' business as discussed above. On information and belief,
9 Defendants implemented a policy and practice which resulted in systematic and class-wide
10 violations of the Labor Code. On information and belief, Defendants' violations have been
11 widespread throughout the relevant period.

12 57. As a proximate result of the aforementioned violations, Plaintiff and Class
13 Members have been damaged in an amount according to proof at time of trial. Pursuant to Labor
14 Code §226.7, Plaintiff and Class Members are entitled to recover one (1) hour of premium pay for
15 each day in which Defendants failed to provide a rest period to Plaintiff and the Class, plus
16 interest and penalties thereon, attorneys' fees, and costs.

17 **FOURTH CAUSE OF ACTION**

18 **FAILURE TO PAY TIMELY PAY WAGES**

19 **(Against All Defendants)**

20 58. Plaintiff incorporates and re-alleges each and every allegation contained above as
21 though fully set forth herein.

22 59. Labor Code §§201-202 requires an employer who discharges an employee to pay
23 compensation due and owing to said employee immediately upon discharge and that if an
24 employee voluntarily leaves his or her employment, his or her wages shall become due and
25 payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-
26 two (72) hours previous notice of his or her intention to quit, in which case the employee is
27 entitled to his or her wages on their last day of work.

28 60. Labor Code §203 provides that if an employer willfully fails to pay compensation

1 promptly upon discharge, as required by Labor Code §§201-202, the employer is liable for
2 waiting time penalties in the form of continued compensation for up to thirty (30) work days.

3 61. During the relevant time period, Defendants willfully failed and refused, and
4 continue to willfully fail and refuse, to pay Plaintiff and Class Members their wages, earned and
5 unpaid, either at the time of discharge, or within seventy-two (72) hours of their voluntarily
6 leaving Defendants' employ. These wages include regular and overtime.

7 62. As a result, Defendants are liable to Plaintiff and members of the Class for waiting
8 time penalties pursuant to Labor Code §203, in an amount according to proof at the time of trial.

9 **FIFTH CAUSE OF ACTION**

10 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

11 **(Against All Defendants)**

12 63. Plaintiff incorporates and re-alleges each and every allegation contained above as
13 though fully set forth herein.

14 64. Section 226(a) of the California Labor Code requires Defendants to itemize in wage
15 statements all deductions from payment of wages and to accurately report total hours worked by
16 Plaintiff and the Class including applicable hourly rates and reimbursement expenses among
17 other things. Defendants have knowingly and intentionally failed to comply with Labor Code
18 section 226 and 204 on wage statements that have been provided to Plaintiff and the Class.

19 65. IWC Wage Orders require Defendants to maintain time records showing, among
20 others, when the employee begins and ends each work period, meal periods, split shift intervals
21 and total daily hours worked in an itemized wage statement, and must show all deductions and
22 reimbursements from payment of wages, and accurately report total hours worked by Plaintiffs
23 and the Class. On information and belief, Defendants have failed to record all or some of the
24 items delineated in Industrial Wage Orders and Labor Code §226.

25 66. As a result of Defendants' knowing and intentional failure to comply with Labor
26 Code § 226(a), Plaintiff and Class Members have suffered injury and damage to their statutorily-
27 protected rights. Specifically, Plaintiff and Class Members have been injured by Defendants'
28 intentional violation of Labor Code § 226(a) because they were denied both their legal right to

1 receive, and their protected interest in receiving, accurate itemized wage statements under Labor
2 Code § 226(a). In addition, Defendants have made it difficult to calculate the amount of wages
3 and compensation owed to Plaintiff and Class Members. Plaintiff has had to file this lawsuit and
4 will be required to conduct discovery and perform computations in order to analyze whether in
5 fact Plaintiff was paid correctly and the extent of the underpayment, thereby causing Plaintiff to
6 incur expenses and lost time. Plaintiff would not have had to engage in these efforts and incur
7 these costs had Defendants provided wage statements accurately showing her regular and
8 overtime rates of pay, among other things. This has also delayed Plaintiff's ability to demand and
9 recover the underpayment of wages from Defendants.

10 67. Plaintiff and Class Members are entitled to recover from Defendants the greater of
11 their actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or an
12 aggregate penalty not exceeding \$4,000 dollars per employee.

13 **SIXTH CAUSE OF ACTION**

14 **FAILURE TO MAINTAIN ACCURATE PAYROLL RECORDS**

15 **(Against All Defendants)**

16 68. Plaintiff incorporates and re-alleges each and every allegation contained above as
17 though fully set forth herein.

18 69. Labor Code section 1174 provides, among other things that: Every person
19 employing labor in this state must maintain records including the names and addresses of all
20 employees employed and the ages of all minors, as well as the payroll records showing the hours
21 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
22 applicable piece rate paid to, employees employed at the respective plants or establishments.
23 These records shall be kept in accordance with rules established for this purpose by the
24 commission, but in any case shall be kept on file for not less than three years. An employer shall
25 not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a
26 piece-rate basis, piece-rate units earned.

27 70. Plaintiff alleges on behalf of himself and the Class that Defendants violated Labor
28 Code section 1174.

71. As a proximate result of the aforementioned violations, Plaintiff and Class Members have been damaged in an amount according to proof at time of trial. In addition, Plaintiff alleges that he and the members of the Class are entitled to recover \$500 for each violation of this section. In addition, Plaintiff seeks interest and penalties thereon, attorneys' fees, and costs on behalf of himself and the Class.

SEVENTH CAUSE OF ACTION

VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200, et.seq.

(Against All Defendants)

72. Plaintiff incorporates and re-alleges each and every allegation contained above as though fully set forth herein.

73. Defendants' conduct, as alleged in this complaint, has been, and continues to be, unfair, unlawful, and harmful to Plaintiff and Class Members, Defendants' competitors, and the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of the California Code of Civil Procedure §1021.5.

74. Defendants' policies, activities, and actions as alleged herein, are violations of California law and constitute unlawful business acts and practices in violation of California Business and Professions Code §§17200, *et seq.*

75. A violation of California Business and Professions Code §§17200, *et seq.*, may be predicated on the violation of any state or federal law. Defendants' policies and practices have violated state law in at least the following respects:

(a) Failing to pay all lawful wages owed to Plaintiff and Class Members in violation of Labor Code §§ 510, 1194, 1197 and 1198;

(b) Failing to provide lawful uninterrupted meal periods without paying Plaintiff and Class Members premium wages for every day said meal periods were not provided in violation of Labor Code §§ 226.7 and 512;

1 (c) Failing to authorize or permit lawful rest breaks without
2 paying Plaintiff and Class Members premium wages for every day said rest
3 breaks were not authorized or permitted in violation of Labor Code § 226.7;

4 (d) Failing to provide Plaintiff and Class Members with
5 accurate itemized wage statements in violation of Labor Code § 226; and

6 (e) Failing to timely pay all earned wages to Plaintiff and
7 Class Members upon separation of employment in violation of Labor Code
8 §§ 201, 202 and 203.

9 76. Defendants intentionally avoided paying Plaintiff and Class Members' wages and
10 monies, thereby creating for Defendants an artificially lower cost of doing business in order to
11 undercut their competitors and establish and gain a greater foothold in the marketplace.

12 77. Pursuant to Business and Professions Code §§ 17200, *et seq.* Plaintiff and Class
13 Members are entitled to restitution of the wages unlawfully withheld and retained by Defendants
14 during a period that commences four years prior to the filing of the Complaint; an award of
15 attorney's fees pursuant to Code of Civil Procedure § 1021.5 and other applicable laws; and an
16 award of costs.

17 **EIGHTH CAUSE OF ACTION**

18 **Violation of Private Attorneys General Act of 2004, Labor Code § 2698, Et Seq.**

19 **(Against all Defendants)**

20 78. Plaintiff incorporates the above allegations as if fully set forth herein.

21 79. Pursuant to Labor Code §2699.3,

22
23 (a) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of
24 Section 2699 alleging a violation of any provision listed in Section 2699.5 shall
commence only after the following requirements have been met:

25 (1) (A) The aggrieved employee or representative shall give
26 written notice by online filing with the Labor and Workforce
27 Development Agency and by certified mail to the employer of the
specific provisions of this code alleged to have been violated,
including the facts and theories to support the alleged violation.

28 (B) A notice filed with the Labor and Workforce Development Agency
pursuant to subparagraph (A) and any employer response to that
notice shall be accompanied by a filing fee of seventy-five dollars

1 (\$75). The fees required by this subparagraph are subject to waiver
2 in accordance with the requirements of Sections 68632 and 68633 of
3 the Government Code.

4 Section 2699.3 further provides

5 (2) (A) The agency shall notify the employer and the aggrieved
6 employee or representative by certified mail that it does not intend
7 to investigate the alleged violation within 60 calendar days of the
8 postmark date of the notice received pursuant to paragraph (1). Upon
9 receipt of that notice or if no notice is provided within 65 calendar
10 days of the postmark date of the notice given pursuant to paragraph
11 (1), the aggrieved employee may commence a civil action pursuant to
12 Section 2699.

13 80. Plaintiff complied with the notice requirements pursuant to California Labor Code §
14 2699.3 and gave written notice via online filing and certified mail of the specific provisions
15 alleged to have been violated to the Labor and Workforce Development Agency (“LWDA”) and
16 Defendants. A true and correct copy of the notice is attached hereto as **Exhibit A** and incorporated
17 herein by reference.

18 81. Sixty-five (65) days have passed since Plaintiff provided written notice required by Labor
19 Code § 2699.3. Therefore, Plaintiff may commence a civil action pursuant to Labor Code §
20 269.3(a)(1)-(2).

21 82. Plaintiff is an aggrieved employee as defined in Labor Code § 2699(c). Plaintiff brings this
22 action on behalf of all non-exempt employees employed by Defendants in the State of California
23 during the relevant time period (the “Aggrieved Employees”).

24 83. Plaintiff alleges upon information and belief that by Defendants’:

- 25 i. Failure to lawfully and accurately pay minimum wages and overtime wages
26 as earned;
- 27 ii. failed to provide lawful meal periods or properly pay premium payments for
28 missed meal periods;
- iii. failed to authorize and permit rest periods or properly pay premium
payments for missed rest periods;
- iv. failed to timely and accurately pay all wages earned, including overtime
pay;

- v. failed to timely pay all wages earned during employment and owed upon separation from employment with Defendants;
- vi. failed to provide accurate wage statements;
- vii. unlawfully deducted sums from wages earned;
- viii. failed to separately pay non-productive time, including rest periods; and
- ix. failed to keep accurate records.

Defendants engaged in unlawful activity prohibited by inter alia, Labor Code §§ 201, 202, 203, 204, 221-226, 226.3, 226.7, 510, 512, 516, 558, 1174, 1194, 1194.5, 1195, 1197, 1198, and applicable IWC California Wage Orders and California Code of Regulations, Title 8, section 11000 *et seq.*, which violation constitutes a violation of fundamental public policy.

84. Labor Code § 558 provides:

a. “An employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

“(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recovery underpaid wages.”

85. Labor Code § 1174.5 provides: Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174 , or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174 , shall be subject to a civil penalty of five hundred dollars (\$500).

86. Labor Code § 2699(f) provides:

(f) For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows:

1. If, at the time of the alleged violation, the person does not employ one or more employees, the civil penalty is five hundred dollars (\$500).

2. If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period

1 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per
2 pay period for each subsequent violation.

3 87. As a result of their unlawful acts, Plaintiffs are entitled to civil penalties pursuant to
4 Labor Code Private Attorneys General Act of 2004, Labor Code §2698 et seq.

5 88. Pursuant to Labor Code § 2699, Plaintiff, individually and on behalf of all
6 aggrieved employees, requests and is entitled to recover from Defendants penalties according to
7 proof for the violations alleged herein, including attorneys' fees and costs and interests.

8 89. Pursuant to Labor Code § 2699, Plaintiff is entitled to recover penalties under
9 Labor Code section 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee
10 per pay period for each initial violation and two hundred dollars (\$200) for each aggrieved
11 employee per pay period for each subsequent violation.

12 90. Pursuant to Labor Code § 2699(i), civil penalties recovered by aggrieved
13 employees shall be distributed as follows: seventy-five percent (75%) to the LWDA and twenty-
14 five percent (25%) to the aggrieved employees.

15 91. WHEREFORE, Plaintiff and the Representative Class he seeks to represent request
16 relief as described herein and below.

17 **NINTH CAUSE OF ACTION**

18 **UNLAWFUL DEDUCTIONS FROM EARNED WAGES**

19 **(AGAINST ALL DEFENDANTS)**

20 92. Plaintiff incorporates the above allegations as if fully set forth herein.

21 93. Plaintiff alleges that Defendants made unlawful deductions from Plaintiff's earned
22 wages. As a result, Defendants failed to pay all wages owed to Plaintiff and members of the
23 Unlawful Deduction Class in violation of Labor Code §§ 221-223.

24 94. Defendants' failure to pay all earned wages is unlawful and creates an entitlement
25 to recovery by Plaintiff and the members of the Unlawful Deduction Class for unpaid wages,
26 interest on said wages, and attorneys' fees pursuant to Code of Civil Procedure § 1021.5.

27 **PRAYER FOR RELIEF**

28 Plaintiff, on his own behalf and on behalf of all others similarly situated, prays for relief
and judgment against Defendants, jointly and severally, as follows:

- 1 1. For certification of the proposed Class and Subclass and any other appropriate
- 2 subclasses under California Code of Civil Procedure § 382;
- 3 2. For appointment of Davis Allen as the class representative;
- 4 3. For appointment of James Hawkins, APLC and Haines Law Group, APC as class
- 5 counsel for all purposes;
- 6 4. For penalties under the Private Attorneys' General Act, Labor Code section 2698
- 7 et seq.;
- 8 5. For general damages;
- 9 6. For special damages;
- 10 7. For statutory penalties to the extent permitted by law, including those pursuant to
- 11 the Labor Code and IWC Wage Orders;
- 12 8. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;
- 13 9. For an order requiring Defendants to restore and disgorge all funds to each
- 14 employee acquired by means of any act or practice declared by this Court to be unlawful, unfair
- 15 or fraudulent and, therefore, constituting unfair competition under Business and Professions
- 16 Code §§ 17200, *et seq.*;
- 17 10. For an award of damages in the amount of unpaid compensation including, but
- 18 not limited to, unpaid wages, premiums, benefits and penalties;
- 19 11. For pre-judgment interest;
- 20 12. For reasonable attorney's fees, costs of suit and interest to the extent permitted
- 21 by law, including pursuant to Code of Civil Procedure § 1021.5 and Labor Code § 1194; and
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13. For such other relief as the Court deems just and proper.

Dated: August 19, 2022

JAMES HAWKINS APLC
HAINES LAW GROUP, APC

By: _____
James R. Hawkins
Christina M. Lucio
Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable of right by jury.

Dated: August 19, 2022

JAMES HAWKINS APLC
HAINES LAW GROUP, APC

By: _____
James R. Hawkins
Christina M. Lucio
Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff