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Attorneys for Plaintiff LUKE KOEHLER, on behalf of himself and other aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

LUKE KOEHLER, an individual; on behalf
of himself and other aggrieved employees

Plaintiff,

v.

SEA POINTE CONSTRUCTION AND
DEVELOPMENT, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

) CASE NO. 30-2022-01297787-CU-OE-CXC
)
) [Assigned for all purposes to the Hon. Melissa
) R. McCormick, Dept. CX-104]
)

) **RESERVATION ID. # 74144814**

) **DECLARATION OF AARON A. BARTZ**
) **IN SUPPORT OF MOTION TO**
) **APPROVE PAGA SETTLEMENT**

)
)
)
) Date: February 22, 2024
) Time: 2 p.m.
) Dept.: CX-104
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1 d. PAGA Counsel Litigation Expenses Payment: \$6,478.66;

2 e. Administration Expenses: \$2,750.

3 7. The Agreement covers the following “Aggrieved Employees”: Any and all
4 current and former hourly-paid, non-exempt employees who worked for Defendant in the State
5 of California at any time from October 13, 2021 to the date of preliminary approval. Based upon
6 Defendant’s records, there are 42 aggrieved employees through the date of the PAGA period.

7 8. As part of the settlement, the aggrieved employees release only penalties
8 recoverable under PAGA, and do not release any of their underlying wage claims.

9 **Background of Case**

10 9. This case arises out of alleged wage and hour violations committed by Defendant
11 against its non-exempt employees in California. Prior to pursuing this case, I interviewed former
12 employees of Defendant, and spoke at length with Plaintiff regarding the wage violations and
13 potential claims that could be brought against Defendant. I also reviewed payroll and other
14 personnel records of Plaintiff and other former employees of Defendant. Thereafter, on October
15 13, 2022, Plaintiff served his PAGA letter on the Labor and Workforce Development Agency
16 (LWDA) and Defendant. Attached as **Exhibit 2** is a true and correct copy of Plaintiff’s PAGA
17 letter. Plaintiff filed a Complaint on December 21, 2022, on behalf of himself and other
18 aggrieved employees for Civil Penalties under PAGA based on Defendant’s wage and hour
19 violations, including failure to pay all wages, meal period and rest break violations, and other
20 wage violations. Attached as **Exhibit 3** is a true and correct copy of Plaintiff’s PAGA
21 Complaint filed in this action.

22 10. After filing this action, the parties conducted informal discovery in an attempt to
23 resolve this matter. In advance of scheduled Mediation, Defendant produced time, payroll and
24 personnel records, including all payroll and time data for the aggrieved employees. This
25 production took significant time and effort to review and analyze, and Plaintiff engaged an
26 expert, James Toney, to develop a damages analysis. Attached as **Exhibit 4** is a true and correct
27 copy of Mr. Toney’s penalties exposure analysis.

11. Thereafter, on September 5, 2023, the parties attended Mediation before well-respected wage and hour mediator Laurie Saldana. After an all day Mediation, the parties were able to reach a settlement in principle. At all times, the negotiations were non-collusive, and involved considerable disputes over payment terms.

12. Plaintiff did not settle this case until he had conducted sufficient investigation into the claims, interviewed aggrieved employees working for Defendant, and thoroughly reviewed Defendant's employment policies and pay records. I believe that this is an excellent settlement of the PAGA claims, which will not affect any aggrieved employee's right to pursue underlying Labor Code violations against Defendant if he or she chooses to do so.

Plaintiff's Counsel Is Very Experienced In Representative And Class Actions

13. I am experienced class action and representative action counsel, including specializing in wage and hour and employment claims. Some of the class action litigation on which I have served as Class Counsel include:

- a. *Wilkins, et al. v. Equinox Holdings, Inc.*
Los Angeles Superior Court, No.: BC440058
- b. *TBC Retail Group Wage and Hour Cases*
Los Angeles Superior Court, No.: JCCP No. 4701
- c. *Cassery v. Randstad US, L.P., et al.*
U.S.D.C., Central District of California, No. SACV 12-1023-DOC(ANx)
- d. *Crilly v. Micro Electronics, Inc.*
Orange County Superior Court, No.: 30-2013-00662586-CU-OE-CXC
- e. *Concho, et al. v. Pipeline Carriers, Inc. et al.*
Orange County Superior Court, No.: 30:2013-00649600-DU-OE-CXC
- f. *Holsted et al. v. R.J. Noble Company et. al.*
Orange County Superior Court, No.: 30:2010-00379770-CU-OE-CXC
- g. *Piggue v. Chief Protective Services, Inc.*
Orange County Superior Court, No.: 30-2013-00688107-CU-OE-CXC

- h. *Walsh v. Pacific Bell Telephone Company*
Orange County Superior Court, No.:30-2011-00498062-CU-OE-CXC
- i. *Woods v. JFK Memorial Hospital*
Riverside County Superior Court, No.: INC 1205209
- j. *Ramirez et. al v. Titan Insurance of New Mexico*
Riverside County Superior Court, No.: RIC1211890
- k. *DeSantos v. Jaco Oil Company, et al.*
U.S.D.C. Eastern District of California, No. 1:14-CV-00738-JLT
- l. *Duran v. Big 5 Corp.*
Los Angeles Superior Court, Case No. BC557154
- m. *Sheahan v. Celtic Leasing Corporation, Inc.*
Orange County Superior Court No.: 30-2016-00852151-CU-OE-CXC
- n. *Panasis v. Control4 Corporation*
United States District Court, Central District of California
Case No. SACV-16-1179-DOC
- o. *O&R Construction, LLC v. Dun & Bradstreet, et al.*
United States District Court, Western District of Washington
Case No. C12-2184 TSZ
- p. *Matthews v. Whelan Security of California, Inc.*
Orange County Superior Court, No.: 30-2016-00833250-CU-OE-CXC
- q. *Rodriguez v. R.J. Noble Company (Navarro/Kles)*
Orange County Superior Court, No.: 30-2017-00916018-CU-OE-CXC
- r. *Wang v. Fountain Valley Regional Hospital and Medical Center*
Orange County Superior Court, No. 30-2015-00821329-CU-OE-CXC
- s. *Skerl v. Sutter Bay Hospitals*
San Mateo Superior Court, No. 21-CV-02057

14. I graduated from Vanderbilt University in 1992 with a Bachelor of Arts in

1 Economics and English, and graduated from Southwestern Law School in 1998. Since becoming
2 a lawyer in 1998, my practice has focused on complex litigation matters, and for more than a
3 decade, complex employment law and wage and hour matters.

4 15. I am a member of the California State Bar, the Orange County Bar Association,
5 Los Angeles County Bar Association, and the California Employment Lawyers Association. I
6 have an AV rating from Martindale-Hubbell, the highest possible rating for a lawyer. During my
7 25-year career, I have handled many successful employment law matters both at the trial and
8 appellate levels. I estimate that I have represented plaintiffs in over 100 different employment
9 cases, the vast majority of which have resulted in favorable settlements, awards and/or verdicts
10 for my clients. I have successfully prosecuted and obtained significant recoveries in several
11 class action lawsuits and other lawsuits involving complex legal and factual issues. In 2015, I
12 was co-lead counsel in *Walsh v. Pacific Bell*, which settled for \$16,800,000. I also served as co-
13 class counsel in the above-referenced *Wilkins* case which settled for \$5,500,000 and the above-
14 referenced *Casserly* case which settled for \$4,900,000. I also was co-class counsel in the above-
15 described *Holsted v. RJ Noble*, which settled on behalf of 66 class members for \$1,900,000. I
16 have also been involved in many other million and multi-million dollar verdicts and settlements
17 over the years.

18 **Evaluation of the PAGA Claims**

19 16. Plaintiff seeks PAGA penalties only in this case. The sole PAGA claim that is at
20 issue in this settlement concerns Defendant's failure to: (1) pay all wages owed, including
21 minimum wage, overtime and off-the-clock compensation; (2) provide duty-free meal periods;
22 (3) authorize and permit duty-free rest periods; (4) pay all wages due upon termination; (5)
23 properly maintain and submit accurate itemized wage statements; (6) reimburse employees.

24 a. **Unpaid wages**

25 California Labor Code § 510(a) and the applicable Wage Orders regulating payment of
26 wages in the State of California, provide that eight (8) hours of labor constitutes a day's work
27 and any work in excess of eight (8) hours in one (1) workday and any work in excess of forty
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1 (40) hours in any one workweek shall be compensated at the rate of no less than one and one-half
2 times the regular rate of pay for each employee and any work in excess of twelve (12) hours in
3 any one workday shall be compensated at the rate of no less than twice the regular rate of pay for
4 each employee.

5 Labor Code § 1194 states any employee receiving less than the legal minimum wage is
6 entitled to recover the unpaid balance of the full amount of this minimum wage, including
7 interest thereon, reasonable attorney's fees, and costs of suit.

8 Plaintiff contends that Defendant has committed overtime and minimum wage violations
9 in numerous respects. **First**, Plaintiff contends that Defendant unlawfully collected, received
10 and/or paid Plaintiff and the aggrieved employees less than the required minimum wage due
11 based on Defendant's practice of automatically deducting 30 minutes from their time, even
12 though frequently, they did not receive meal periods that were 30 minutes in length, or at all.
13 This resulted in substantially undercompensating Plaintiff and the aggrieved employees.

14 **Second**, Plaintiff contends that he and the aggrieved employees worked substantial off-
15 the-clock overtime based on Defendant's failure and refusal to pay for most overtime hours
16 worked. Plaintiff contends that Defendant had both actual and constructive knowledge of the
17 off-the-clock hours being worked here. *See Morillion v. Royal Packing Co.*, 22 Cal.4th 575, 585
18 (2000) (work "suffered or permitted is work time," and an employer's actual or constructive
19 knowledge of such work obligates the employer to compensate the employee for such work).

20 Defendant contends that it has numerous defenses to Plaintiff's unpaid wage claims,
21 including that it did pay the overtime premium, strictly enforced off-the-clock policies, and that
22 Plaintiff and the aggrieved employees received at least 30 minutes for meal periods, and
23 therefore it was proper to deduct 30 minutes based thereon.

24 Plaintiff's expert calculates unpaid wage penalties under Labor Code §§ 558, 1174, and
25 1194 of \$408,900. Plaintiff believes this is one of his strongest claims, and therefore believes he
26 had a 60% chance of success on the unpaid wage theory. Nevertheless, Labor Code section
27 2699(e)(2) also gives a trial court broad discretion to reduce PAGA penalties: "[A] court may
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award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Case law supports a trial court’s discretion in downgrading penalties based on these factors. *See Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1135-1136 (2012) (no abuse of discretion by reducing penalty by 30 percent). Thus, Plaintiff believes that the real value of the unpaid wage penalties is \$171,738 ($\$408,900 \times .6$ [chances of success] $\times .7$ [court discretion] = \$171,738).

b. Meal period violations

Plaintiff contends that Defendant failed to provide Plaintiff and other aggrieved employees thirty-minute duty-free meal periods for every five hours of work as is required by Labor Code § 512, the applicable wage orders, and in violation of *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012). In *Brinker*, the California Supreme Court held that “under ... Labor Code § 512, subdivision (a), an employer must relieve the employee of all duty for the designated period.” *Id.* at 1034. Moreover, when time records show short, missed, and late meal periods, there is a presumption that an employer violated California’s meal period requirements. *See Donohue v. AMN Services, LLC*, 11 Cal.5th 58, 78 (2021) (“If time records show noncompliant meal periods, then a rebuttable presumption of liability arises.”)

Plaintiff contends that Defendant’s meal period practices are unlawful under California law. **First**, Defendant’s time records show that at no time did Plaintiff or any of the aggrieved employees ever clock out for their meal periods. As such, Plaintiff alleges that there is a presumption that Defendant violated California’s meal period requirements.

Second, because Defendant fails to maintain accurate and complete documentation regarding Plaintiff’s and the aggrieved employees’ meal periods, Plaintiff contends that there is a prima facie violation of the Wage Orders, and that he and the aggrieved employees were not relieved of duty and no meal periods were provided. *See Brinker, supra*, 53 Cal.4th at 1053 (conc. opn. of Werdegar, J.)

In response to such arguments, Defendant contends that it permits all aggrieved

1 employees more than 30-minute meal periods, and whenever meal periods were late, short or
2 missed, it was due to Plaintiff's and the aggrieved employees' voluntary choice. Defendant
3 further argues that individual issues will predominate because of the various scenarios affecting
4 different classes of employees working for Defendant. As such, Defendant claims that PAGA
5 claims must meet a manageability requirement. *See Wesson v. Staples The Office Superstore,*
6 *LLC*, 68 Cal.App.5th 746 (2021) (holding that courts have inherent authority to ensure the
7 manageability of PAGA claims).

8 The maximum potential PAGA penalties recoverable for meal period violations are
9 \$267,800, as calculated by Plaintiff's expert. Based on the various issues raised above regarding
10 proving meal period violations, Plaintiff believes that he has a 20% chance of proving all of
11 those penalties. Thus, Plaintiff believes that the real value of the meal period penalties is
12 \$37,492. ($\$267,800 \times .2$ [chances of success] $\times .7$ [court discretion] = \$37,492).

13 c. Rest period claims

14 Section 12(A) of the IWC Wage Order(s) states: "Every employer shall authorize and
15 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
16 each work period. The authorized rest period time shall be based on the total hours worked daily
17 at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However,
18 a rest period need not be authorized for employees whose total daily work time is less than three
19 and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which
20 there shall be no deduction from wages."

21 Section 12(B) of the IWC Wage Order(s) states: "If an employer fails to provide an
22 employee a rest period in accordance with the applicable provisions of this order, the employer
23 shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for
24 each workday that the rest period is not provided."

25 Under *Brinker, supra*, the California Supreme Court found that employers have a "duty
26 to make a good faith effort to authorize and permit rest breaks in the middle of each work period.
27 ..."
28 *Brinker, supra*, 53 Cal.4th at 1031. Plaintiff alleges that rest periods were not authorized or

1 permitted because Defendant did not have a policy allowing Plaintiff and other aggrieved
2 employees to take rest periods away from their job sites, and Plaintiff and other aggrieved
3 employees were often interrupted with work inquiries and other duties, which is “irreconcilable
4 with employees’ retention of freedom to use rest periods for their own purposes. *See Augustus v.*
5 *ABM Security Services, Inc.*, 2 Cal.5th 257, 270 (2016).

6 Defendant contends that it complied with California’s rest period requirements, and
7 produced a rest period policy that facially complies with California law.

8 Plaintiff’s expert calculates total penalties on the rest period claim of \$268,800. Given
9 Defendant’s facially valid rest period policy, and potential individual issues relating to proving
10 rest break violations, Plaintiff believes he had a 10% chance of recovering all of the above
11 penalties on the rest period claim, in the absence of other mitigating factors. Given that a court
12 has discretion regarding the amount of penalties to be assessed, Plaintiff therefore believes the
13 real exposure of PAGA penalties on the rest period claim is approximately \$18,816. ($\$268,800 \times$
14 $.1$ [chances of success] $\times .7$ [court discretion] = \$18,816.)

15 d. Failure to pay all wages on termination

16 Plaintiff further alleges that pursuant to Labor Code §203, aggrieved employees terminated
17 from Defendant’s employment are entitled to the default penalty of Labor Code § 2699 because
18 Defendant did not pay them all wages due upon separation. Such a claim is derivative, and for the
19 same reasons as stated above, Defendant contends no wages are due, and thus no penalties owed
20 under PAGA. Defendant further argues that its failure to pay wages upon separation was not
21 “willful,” in that the law is uncertain as to claims asserted in this case or whether the failure to pay is
22 due to a good faith dispute. *See Barnhill v. Robert Saunders & Co.*, 125 Cal.App.3d 1, 8 (1981)
23 (employer’s failure to pay is not willful if its failure is due to uncertainty in the law); *Road Sprinkler*
24 *Fitters Local Union No. 669 v. G & G Fire Sprinklers, Inc.*, 102 Cal.App.4th 765, 782 (2002)
25 (willfulness not met if defendant’s failure to pay a result of a “good faith mistaken belief that wages
26 are not owed”).

27 Plaintiff’s expert calculates PAGA penalties on this claim of \$1,200, based on the fact
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1 that there are only 12 separated employees, and the default penalty is \$100. Because of the
2 heightened willfulness standard applicable to waiting time penalties, and based on Defendant's
3 defenses, Plaintiff believes that he had a 30% chance of recovering all of the above penalties.
4 Given that a court has discretion regarding the amount of penalties to be assessed, Plaintiff
5 therefore believes the real exposure of PAGA penalties on the waiting time penalties' claim is
6 approximately \$252. ($\$1,200 \times .3$ [chances of success] $\times .7$ [court discretion] = \$252.)

7 e. Improper pay stubs

8 Plaintiff further alleges that Defendant failed to provide proper pay statements that
9 complied with Labor Code § 226.

10 Plaintiff alleges similar theories of liability as above with respect to the paystub claim,
11 i.e. that the wage statements are defective because they do not reflect all wages owed, and fail to
12 show premium payments for missed meal and rest periods. *See Naranjo v. Spectrum Security*
13 *Servs., Inc.*, 13 Cal.5th 93 (2022). Plaintiff further alleges that to obtain PAGA penalties for pay
14 stub violations, a plaintiff need not satisfy the "injury" or "knowing and intentional"
15 requirements of Labor Code section 226(e)(1). *See Raines v. Coastal Pacific Food Distributors,*
16 *Inc.*, 23 Cal.App.5th 667 (2018).

17 On the other hand, Defendant argues derivative violations of Labor Code § 226 do not
18 give rise to pay stub violations upon which PAGA penalties arise. *See Maldonado v. Epsilon*
19 *Plastics, Inc.*, 22 Cal.App.5th 1308 (2018); *see also Culley v. Lincare Inc.*, 236 F.Supp.3d 1184,
20 1195-1196 (E.D. Cal. 2017). Defendant further argues that any such violations were inadvertent,
21 and therefore not actionable. *See Heritage Residential Care, Inc. v. Division of Labor Standards*
22 *Enforcement*, 192 Cal.App.4th 75 (2011).

23 Plaintiff's expert calculates pay stub penalties to be approximately \$269,800. Plaintiff
24 believes he had a 20% chance of recovering all of the potentially recoverable civil penalties.
25 Moreover, Plaintiff applies the same discounts as set forth above in the analysis as to the court's
26 discretion to reduce penalties. As such, Plaintiff believes the real exposure on this claim to be
27 \$37,772. ($\$269,800 \times .2$ [chances of success] $\times .7$ [court discretion] = \$37,772).

1 f. Reimbursement of expenses

2 Labor Code § 2802 provides, in pertinent part: “An employer shall indemnify his or her
3 employee for all necessary expenditures or losses incurred by the employee in direct
4 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
5 the employer. . .”

6 Plaintiff contends that Defendant required he and other aggrieved employees to use their
7 personal cell phones to respond to work calls and respond to text messages during their
8 employment, as well as using their personal tools for construction. Defendant contends that
9 Plaintiff and the other aggrieved employees were prohibited from working off the clock, and
10 therefore any use of personal cell phones for work purposes during non-work hours was
11 voluntary and not reimbursable, and that Defendant complied with the wage orders when
12 requiring use of personal tools by paying at least double the minimum wage.

13 Upon further investigation and discussions with witnesses, Plaintiff was unable to
14 substantiate this claim to prove PAGA penalties across all pay periods. At most, therefore,
15 because of proof problems with this claim, Plaintiff values the total reimbursement claim at \$200
16 per employee, or \$8,400. But given the tenuous nature of this claim, Plaintiff estimates the real
17 value is 20% of that amount, or \$1,680.

18 g. Total exposure to PAGA penalties

19 Based upon the alleged Labor Code violations, Plaintiff believes the total actual PAGA
20 exposure is approximately \$267,750. Based on a settlement value of \$135,000, this amounts to
21 approximately 50% of the total exposure to PAGA penalties. Plaintiff believes this to be an
22 excellent result, given that Defendant has valid defenses to Plaintiff’s claims, and there is a
23 substantial question as to whether a trial court will even award cumulative penalties sought by
24 Plaintiff for alleged multiple Labor Code violations because there is no established precedent for
25 such an award.¹ Moreover, even to the extent any violations are proven, Defendant argues that

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27 ¹ While there are cases allowing for the “stacking” of penalties when it comes to evaluating the
28 “amount in controversy” where a case has been removed to federal court (*see Schiller v. David’s
Bridal, Inc.*, 2010 WL 2793650 (E.D. Cal. July 14, 2010), it appears to be an open question

1 any heightened penalties from subsequent violations are not warranted. *See Amaral v. Cintas*
2 *Corp. No. 2*, 163 Cal.App.4th 1157, 1208-1209 (2008) (“Until the employer has been notified
3 that it is violating a Labor Code provision. . . , the employer cannot be presumed to be aware that
4 its continuing underpayment of employees is a ‘violation’ subject to penalties”).

5 The purpose of the PAGA is to “achieve maximum compliance with [California’s] labor
6 laws.” *See Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal.4th 348, 379 (2014). The penalties
7 recovered here on behalf of the State and aggrieved employees achieve that purpose.

8 **Attorneys’ Fees and Costs**

9 17. To date, my firm Bartz Law Group, APC has spent approximately 70 hours on
10 this action and has incurred approximately \$55,000 in fees. The fees incurred were reasonable
11 and necessary in order to prosecute this case. My billing rate of \$850 per hour and are in line
12 with other firms billing rates for similar work, and generally, lower based on my collective
13 experience and results achieved in other cases. In connection with this PAGA settlement,
14 Plaintiff’s counsel requests attorneys’ fees of \$45,000, or one-third of the gross settlement
15 amount. This amount is less than PAGA counsel’s lodestar of over \$55,000, and I believe that
16 pursuant to *Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480 (2016), such a recovery is fair and
17 reasonable in this case, given the work expended and the results achieved in this case. Bartz
18 Law Group APC has also incurred \$6,478.66 in out of pocket costs, all of which were reasonable
19 and necessary in prosecuting this action. Attached as **Exhibit 5** is a true and correct copy of the
20 attorneys’ fees to date incurred to prosecute this action. Attached as **Exhibit 6** is a true and
21 correct copy of the litigation expenses incurred in this action.

22 18. Plaintiff’s counsel has also retained Phoenix Class Action Administration
23 Solutions to administer the settlement in this case. The Settlement Administrator provided a not
24 to exceed bid for \$2,750 to administer the settlement. The Settlement Administrator’s bid is
25 attached hereto as **Exhibit 7**.

26 19. I am aware of no actual or potential conflicts of interest between Plaintiff’s
27 whether such “stacked” penalties may be awarded when they potentially overlap and “double
28 count” remedies for similar violations.

1 counsel or any of the aggrieved employees in this case and/or the settlement administrator.
2 Moreover, I am not aware of any other pending matters or actions that assert similar claims as
3 the ones asserted herein, that will be extinguished or adversely affected by this PAGA
4 settlement.

5 **Notice of Settlement**

6 20. Notice of the PAGA settlement will be provided to aggrieved employees with a
7 one-page form entitled "Notice of Settlement," setting forth the case name, case number, a
8 description of the payment sent to each aggrieved employee, and a sentence providing that "No
9 wage claims are released by this settlement." The Notice of Settlement will be sent in both
10 English and Spanish, given that for some aggrieved employees, Spanish is their native language.
11 Attached as **Exhibit 8** is a true and correct copy of the Notice of Settlement.

12 21. My office provided notice of the proposed settlement and all documents filed in
13 support of this motion for PAGA settlement approval to the LWDA via uploading the documents
14 the California DIR/LWDA's website on the same date as the filing of the instant motion.

15 I declare under penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct. Executed on November 8, 2023, at Irvine, California.

17 //Aaron A. Bartz//
18 Aaron A. Bartz
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EXHIBIT 1

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff Luke Koehler (“Plaintiff”) and Defendant Sea Pointe Construction and Development, Inc. (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s PAGA lawsuit alleging wage and hour violations against Defendant filed on December 21, 2022, Case No. 30-2022-01297787-CU-OE-CXC and pending in Superior Court of the State of California, County of Orange.
- 1.2. “Administrator” means Phoenix Settlement Administrators (“Phoenix”), the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.
- 1.4. “Aggrieved Employee” means a person employed by Defendant in California and classified as a non-exempt employee who worked for Defendant during the PAGA Period.
- 1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in Defendant’s possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.
- 1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.
- 1.7. “Court” means the Superior Court of California, County of Orange.
- 1.8. “Defense Counsel” means Littler Mendelson, P.C.
- 1.9. “Effective Date” means the date by which this Agreement is approved by the Court and that approval becomes final. The approval becomes final when the later of the following events occur: (a) the period for filing any appeal, writ, or other appellate proceeding opposing the settlement approval has elapsed without any appeal, writ, or other appellate proceeding having been filed; (b) any appeal, writ, or other appellate proceeding opposing the settlement approval has been dismissed finally and conclusively with no right by any appellant or objector to pursue further remedies or relief; or (c) any appeal,

writ, or other appellate proceeding has upheld the settlement approval with no right by any appellant or objector to pursue further remedies or relief. In this regard, it is the intention of the Parties that the settlement shall not become effective until the Court's approval of the settlement is completely final, and no further recourse exists by an appellant or objector who seeks to contest the settlement. The occurrence of the Effective Date is a prerequisite to any obligation of Defendant to pay the Gross Settlement Amount.

- 1.10. "Gross Settlement Amount" means \$135,000.00 which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator's Expenses Payment.
- 1.11. "Individual PAGA Payment" means the Aggrieved Employees' pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods each Aggrieved Employee worked during the PAGA Period.
- 1.12. "Judgment" means the judgment entered by the Court based upon the Final Approval.
- 1.13. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.14. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.15. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to the LWDA as the LWDA PAGA Payment and to Aggrieved Employees as Individual PAGA Payments.
- 1.16. "PAGA Counsel" means Bartz Law Group APC, the attorneys representing the Plaintiff in the Action.
- 1.17. "PAGA Counsel Fees Payment" and "PAGA Counsel Litigation Expenses Payment" mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.
- 1.18. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.19. "PAGA Period" means the period from October 13, 2021 to the date of the PAGA settlement approval.
- 1.20. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698, et seq.).

- 1.21. "PAGA Notice" means Plaintiff's October 13, 2022 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.22. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees and the 75% to LWDA in settlement of PAGA claims.
- 1.23. "Plaintiff" means Luke Koehler, the named plaintiff in the Action.
- 1.24. "Approval Order" means the proposed Court Order Granting Approval of PAGA Settlement.
- 1.25. "Released PAGA Claims" means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.
- 1.26. "Released Parties" means: Defendant and any of its past, present, and future direct or indirect parents, subsidiaries, predecessors, successors, and affiliates, as well as each of their past, present, and future officers, directors, employees, partners, members, shareholders and agents, attorneys, insurers, reinsurers, and any individual or entity which could be jointly liable with Defendant
- 1.27. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.
- 1.28. "Defendant" means Defendant Sea Pointe Construction and Development, Inc.

2. RECITALS.

- 2.1. On October 13, 2022, Plaintiff gave written notice to Defendant and the LWDA by sending the PAGA Notice pursuant to Labor Code section 2699.3. subd.(a).
- 2.2. On December 21, 2022, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for Civil Penalties Under the Private Attorneys General Act. The Complaint is the operative complaint in the Action (the "Operative Complaint"). Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.
- 2.3. After filing the Complaint, the Parties engaged in substantive settlement discussions, and Defendant produced informal discovery to Plaintiff, including the total number of Aggrieved Employees and pay periods during the PAGA Period, as well as hundreds of pages of time and payroll records, and Defendant's policies and procedures, including employee handbooks, and policies relating to payment of wages, clocking in and out, meal periods, rest periods, reimbursement policies, and similar wage policies, from October 2021 to the present.

- 2.4. On September 5, 2023, the Parties attended Mediation before prominent wage and hour mediator Laurie Saldana. After a full day of negotiations, and arms-length bargaining, the Parties were able to reach a settlement in this Action.
- 2.5. The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Defendant promises to pay \$135,000 and no more as the Gross Settlement Amount. Defendant has no obligation to pay the Gross Settlement Amount prior to the deadlines stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.
- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
- 3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of one-third, which is \$45,000, and PAGA Counsel Litigation Expenses Payment of not more than \$7,000. Defendant will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fees Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.
- 3.2.2. To the Administrator: An Administrator Expenses Payment not to exceed \$5,000 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$5,000, the Administrator will allocate the remainder to the Net Settlement Amount.
- 3.2.3. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$79,000 to be paid from the Gross Settlement Amount, with 75% (\$59,250)

allocated to the LWDA PAGA Payment and 25% (\$19,750) allocated to the Individual PAGA Payments.

3.2.3.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$19,750) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.3.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Aggrieved Employee Pay Periods. Based on a review of its records shared ahead of the mediation, Defendant estimates there are 42 Aggrieved Employees who worked a total of 1,310 PAGA Pay Periods in the aggregate for the time period between October 13, 2021 and August 16, 2023.

4.2. Aggrieved Employee Data. Within 5 days after the latter of 1) the Effective Date, and 2) the date the Settlement Administrator provides Defendant with instructions to securely transmit the Aggrieved Employee Data to the Administrator, Defendant will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify PAGA Counsel if they discover that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data. The Aggrieved Employee Data shall not be shared with PAGA Counsel.

4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 10 days after the latter of 1) Effective Date, and 2) the date the Settlement Administrator provides Defendant with wire instructions for depositing the Gross Settlement Amount and verbally verifies the authenticity of those wire instructions with Defendant by a telephone call prior to the transfer, initiated by Defendant using the Settlement Administrator's telephone number published on its known website.

4.3.1 Payments from the Gross Settlement Amount. Within 10 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fees Payment, and PAGA Counsel Litigation Expenses Payment.

4.3.2 The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.3.3 The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

4.3.3. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to Bet Tzedek Legal Services.

4.3.4. The payment of Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS. Effective on the date when Defendant fully funds the entire Gross Settlement Amount, Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:

5.1 Plaintiff's Release. Plaintiff and his respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the PAGA Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts, allegations and/or claims pled for PAGA penalties contained in the Operative Complaint and the PAGA Notice, including claims for penalties under the California Labor Code and California Industrial Welfare Commission Wage Orders that were alleged, specifically California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197.1, 1198, 1198.5, 2802,

2698, et seq. ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the PAGA Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

- 5.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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.

5.2 Release by Aggrieved Employees:

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims any PAGA claims which reasonably could have been alleged under the facts, allegations, and/or claims pled for PAGA penalties based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice, including claims for penalties under the California Labor Code and California Industrial Welfare Commission Wage Orders that were alleged, specifically California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197.1, 1198, 1198.5, 2802, 2698 et seq.

5.3 Release by PAGA Counsel:

PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT. Plaintiff agrees to prepare and file an application or motion for approval of this Settlement.

- 6.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to

serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents and all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement. PAGA Counsel is responsible for delivering the Court's Approval Order to the Administrator.

6.2 Responsibilities of Defense Counsel. Defendant agrees to not oppose the motion for PAGA approval to the extent it comports with this Agreement and associated paperwork for the motion has been provided to Defendant at least seven (7) calendar days prior to filing it with the Court.

6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

7.1 Selection of Administrator. The Parties have jointly selected Phoenix to serve as the Administrator and verified that, as a condition of appointment, Phoenix agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

- 7.4 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8. AGGRIEVED EMPLOYEE SIZE ESTIMATES AND ESCALATOR CLAUSE

Based on its records, Defendant estimates that, between October 13, 2021 and October 30, 2023, there are an estimated 1,427 PAGA Pay Periods. In the event that the actual PAGA Pay Periods are more than 10% greater than the number of represented PAGA Pay Periods (i.e. if there are more than 1,570 PAGA Pay Periods), the Gross Settlement Amount shall increase in proportion to the increase in PAGA Pay Periods (i.e. if the number of PAGA Pay Periods is 12% greater than 1,427, the Gross Settlement Amount shall increase by 2%).

9. **CONTINUING JURISDICTION OF THE COURT.** The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

- 9.1 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties, and their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10. ADDITIONAL PROVISIONS.

- 10.1 No Admission of Liability or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be

admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

- 10.2 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 10.3 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 10.4 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 10.5 No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 10.6 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 10.7 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 10.8 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 10.9 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 10.10 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

10.11 Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of information derived from or related to the Aggrieved Employee Data provided to PAGA Counsel by Defendant or the Settlement Administrator in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff and PAGA Counsel shall destroy all paper and electronic versions of any information derived from the Aggrieved Employee Data received from Defendant or the Settlement Administrator unless, prior to the Administrator's payment of all Settlement Funds, Defendant makes a written request to PAGA Counsel for the return, rather than the destruction, of such information. Nothing in this paragraph shall entitle Plaintiff to receive or review the Aggrieved Employee Data sent by Defendant to the Settlement Administrator pursuant to paragraph 4.2 of this Agreement.

10.12 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

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

10.14 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Bartz Law Group APC
c/o Aaron A. Bartz
5151 California Ave., Suite 100
Irvine, CA 92617
aaron@bartzlawgroup.com

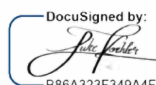
To Defendant:

Littler Mendelson, P.C.
c/o Andrew H. Woo
5200 North Palm Avenue, Suite 302
Fresno, CA 93704
awoo@littler.com

- 10.15 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 10.16 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.
- 10.17 Plaintiff represents that he has complied with any and all prefiling requirements for the PAGA claims released by this Agreement, including but not limited to providing notice to the California Labor and Workforce Development Agency as required by California Labor Code section 2699.3. Plaintiff further agrees to provide any and all notices to the California Labor and Workforce Development Agency required to effectuate this Agreement, including the notice required by California Labor Code section 2699 subdivision (l)(2).
- 10.18 Confidentiality of Settlement. Plaintiff and PAGA Counsel will not make any public disclosure of this Agreement or the settlement effectuated by this Agreement until after the filing of the motion for approval of the Settlement. Plaintiff and PAGA Counsel represent that they have not made any such disclosure. PAGA Counsel will take all steps necessary to ensure that Plaintiff is aware of, and will encourage him to adhere to, the restriction against any public disclosure of the settlement or this Agreement until after the Settlement is approved by the Court. Thereafter, PAGA Counsel and Plaintiff agree not to publicize the terms of this Settlement with the media, including, but not limited to, any newspaper, journal, magazine, website, social media and/or online reporter of settlements or on any website. Nothing in this Agreement prevents Plaintiff from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that Plaintiff has reason to believe is unlawful. Nothing in this Agreement shall be construed to waive Plaintiff's right to testify in an administrative, legislative, or judicial proceeding concerning alleged criminal conduct or alleged sexual harassment on the part of Defendant, or on the part of the agents or employees of Defendant, when Plaintiff has been required or requested to attend such a proceeding pursuant to a court order, subpoena, or written request from an administrative agency or the legislature.

“PLAINTIFF”

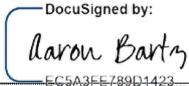
10/20/2023
Dated: _____, 2023

DocuSigned by:

B86A323F349A4F8
Luke Koehler

Dated: 10-20-2023
_____, 2023

“PLAINTIFF’S COUNSEL”

BARTZ LAW GROUP, APC

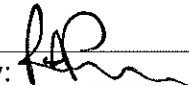
DocuSigned by:

EC5A3EE789D1423

Aaron Bartz, Attorneys for Plaintiff

Dated: Oct 13th, 2023

“DEFENDANT”

Sea Point Construction and Development,
Inc.

By: 

Its: PRESIDENT

Dated: 10/30/2023
_____, 2023

“DEFENSE COUNSEL”

LITTLER MENDELSON, P.C.



Andrew Woo, Attorneys for Defendant

EXHIBIT 2

BARTZ LAW GROUP, APC

5151 California Ave., Suite 100

Irvine, California 92617

(949) 504-4413

October 13, 2022

Notice Via Online Submission

PAGA Administrator
California Labor and Workforce Development Agency

Via Certified Mail (Return Receipt Requested)

Sea Pointe Construction and Development, Inc.
c/o Roger A. Shore, Agent for Service of Process
103 Via Ensueno
San Clemente, CA 92672

Re: *Luke Koehler v. Sea Pointe Construction and Development, Inc.*

Dear PAGA Administrator:

Please be advised that the law firm of Bartz Law Group, APC represents Luke Koehler and all other similarly situated aggrieved employees (“Plaintiffs”) with respect to their employment with Sea Pointe Construction and Development, Inc. (“Employer” or “Sea Pointe”).

The Employer has committed numerous violations of the California Labor Code, including, but not limited to, sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1198, and 2802. The facts and theories to support the alleged violations are set forth herein.

Employer is a home remodeling and design company operating within California. Plaintiff Koehler was employed with Employer from 2018 through July 2022. Plaintiffs worked for Employer in California within the last year. Plaintiffs at all times were paid on an hourly basis and are non-exempt employees.

A. Failure to Pay All Wages

Employer has regularly failed to pay Plaintiff Koehler and all other aggrieved employees all wages that they are owed, including minimum wages and overtime compensation, based upon Employer’s policy and practice of not paying for all hours worked. For example, Plaintiff Koehler and other aggrieved employees regularly worked off the clock hours because Employer refused to pay all overtime hours worked for remodeling projects, and instead capped their hours by requiring Plaintiff Koehler and the other aggrieved employees to clock out but continue working. Based on Employer’s failure to pay all wages owed, Employer owes Plaintiffs minimum and overtime compensation violates Labor Code §§ 510 and 1194.

Labor Code § 204(a) provides in pertinent part that “[a]ll wages, other than those mentioned in [Labor Code] Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.”

Pursuant to Labor Code § 204(b)(1), moreover, “all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.” Here, Employer did not pay Plaintiffs all wages owed in a timely manner, based on the allegations above, thereby violating Labor Code § 204.

B. Meal Breaks

Employer adopted, implemented and enforced uniform meal period policies that are not lawful under California law. Employer is required to provide a first meal period no later than the end of the 5th hour of work, and a second meal period no later than the end of the 10th hour of work. However, Employer failed to provide proper, timely meal periods during Plaintiff Koehler’s and other aggrieved employees’ shifts.

Employer failed to permit and provide Plaintiffs: (a) a first duty-free meal period of not less than thirty minutes before working more than five hours; or (b) a second duty-free meal period of not less than thirty minutes before working more than ten hours. Employer also failed to pay Plaintiff Koehler or the other aggrieved employees’ one hour of pay at their regular rate of pay for each workday that a compliant meal period was not provided. As such, Employer has violated Labor Code §§ 226.7 and 512.

C. Rest Breaks

Employer failed to adopt, implement, or enforce a rest break policy that complied with California law. Plaintiff Koehler and all other aggrieved employees were either not authorized or permitted to take their rest breaks. By the nature of Plaintiff Koehler’s and other aggrieved employees’ job duties in remodeling homes on tight and demanding timelines, they were always on call during their shifts, and not allowed to take their rest periods. Employer also coerced Plaintiffs not to take legally mandated rest periods by criticizing, disciplining and/or reprimanding employees who attempted to take legally mandated rest periods; failing to schedule rest periods; and constantly pressuring Plaintiffs to remain available during their shifts. As such, Employer failed to authorize and permit Plaintiffs to take duty-free rest periods of 10 minutes for every four hours worked or major fraction thereof, failed to provide a second duty-free rest period of 10 minutes for shifts between 6-10 hours and failed to provide a third duty-free rest period of 10 minutes for shifts in excess of 10 hours. As a result of Employer’s lack of a rest break policy that complies with California law, Employer has violated Labor Code section 226.7.

Employer also failed to pay Plaintiff Koehler or the other aggrieved employees’ one hour of pay at their regular rate of pay for each workday that a compliant rest period was not authorized or permitted. As such, Employer has violated Labor Code §§ 226.7 and 512.

D. Wage Statement Violations

In conjunction with the above-referenced violations, Employer willfully failed to provide properly itemized wage statements to Plaintiffs pursuant to Labor Code section 226. Violations include, but are not limited to: an inaccurate showing of wages due and owing, failing to include

gross wages earned as a result of not showing meal and rest period premium payments on Plaintiffs' paystubs, failing to show all hourly rates in effect and the corresponding number of hours at each hourly rate, failing to identify the name of the legal entity that is the employer, and failing to maintain accurate payroll and itemized wage statements. The failure to provide accurate itemized wage statements violates Labor Code § 226 and 1174.

E. Failure to Reimburse Expenses

Employer also failed to reimburse Plaintiff Koehler and the Plaintiffs for all of their necessary and reasonable expenses incurred on behalf of Employer. For example and without limitation, Plaintiffs incurred expenses for using their own tools and equipment for work business, Plaintiffs were required to use their personal cell phones for company business, but Employer fails and refuses to reimburse Plaintiffs for the costs to maintain and service such equipment and/or fails to reimburse Plaintiffs for the usage of their personal cell phones while attending to work matters.

F. Waiting Time Penalties

Employer willfully failed and refused to timely pay all compensation due and owing to Plaintiffs whose employment was terminated during the relevant time period, by failing to pay overtime, straight time and minimum wages for all hours worked, failing to pay Plaintiffs for time worked during meal and rest periods, and failing to pay Plaintiffs for an extra hour at the regular rate of pay because Employer failed to provide compliant meal and rest periods. As such, Employer is liable for accrued wages due, and waiting time penalties owed, in accordance with Labor Code §§ 201, 202, and 203.

CONCLUSION

Pursuant to Labor Code Section 2699.3, the undersigned, on behalf of Plaintiff Luke Koehler and other aggrieved employees, is providing written notice of the alleged Labor Code violations. Please advise the undersigned if the agency intends to investigate the alleged violations. If not, Plaintiffs intend to pursue their claims under PAGA in a representative action lawsuit. Please also consider this letter as providing notice on behalf of other similarly aggrieved employees working for Employer, that were subject to the same Labor Code violations described above.

Should you have any questions with respect to the above, please do not hesitate to contact the undersigned.

Very truly yours,

BARTZ LAW GROUP, APC

/s/ Aaron A. Bartz
Aaron A. Bartz

EXHIBIT 3

Aaron A. Bartz (SBN 198722)
BARTZ LAW GROUP, APC
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aaron@bartzlawgroup.com

Assigned for All Purposes
Judge Peter Wilson
cx-101

Attorneys for Plaintiff LUKE KOEHLER, on behalf of himself and
other aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

LUKE KOEHLER, on behalf of
himself and other aggrieved employees,

Plaintiffs,

vs.

SEA POINTE CONSTRUCTION
AND DEVELOPMENT, INC., a
California corporation; and DOES 1
through 100, inclusive,

Defendants.

CASE NO. 30-2022-01297787-CU-OE-CXC

**COMPLAINT FOR CIVIL PENALTIES
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT ("PAGA") [California
Labor Code §§2698, et seq.]**

DEMAND FOR JURY TRIAL

Plaintiff LUKE KOEHLER ("Koehler"), on behalf of himself and all other aggrieved
employees (hereinafter collectively "Plaintiffs"), and as private attorneys general, hereby assert
representative claims against Defendant SEA POINTE CONSTRUCTION AND
DEVELOPMENT, INC. ("Sea Pointe"), and DOES 1 through 100 (hereinafter collectively
"Defendants"), and hereby complain and allege as follows:

I. INTRODUCTION

1. This lawsuit is directed at Defendants' California state law violations of wage and
hour laws -- it is a representative action seeking recovery of civil penalties under the Private
Attorneys General Act of 2004 ("PAGA"), California Labor Code ("Labor Code") §§2698, et

1 seq. PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on
2 behalf of themselves and other aggrieved current and former employees to recover civil penalties
3 for Defendants’ violations of the Labor Code, including, but not limited to Labor Code §§201,
4 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1198, 1198.5, 2699, 2802, and all applicable
5 Industrial Welfare Commission (“IWC”) Orders.

6 2. This action is brought as a representative action on behalf of all current and
7 former aggrieved employees who were employed by Defendants in California and who work or
8 worked as non-exempt hourly employees during the applicable time period and who were subject
9 to Defendants’ meal period policy, rest period policy, compensation policy, overtime policy,
10 final payment of wages policy, and related wage and hour policies and/or practices.

11 3. As set forth in detail below, Defendants consistently implemented, maintained
12 and enforced unlawful policies and practices regarding Plaintiffs in violation of California’s
13 wage and hour laws, which led to Defendants’ violations of Labor Code §§ 201-204, 226, 226.7,
14 510, 512, 1174, 1194, 1198, 2698, et seq. and IWC Wage Orders to Defendants’: (1) failure to
15 pay all wages, including minimum wages, straight time wages, and overtime compensation; (2)
16 failure to provide meal periods; (3) failure to authorize and permit rest periods or provide
17 compensation in lieu thereof; (4) failure to timely pay all wages owed; (5) failure to properly
18 maintain and submit accurate itemized wage statements; (6) failure to reimburse expenses; and
19 (7) waiting time penalties. Such policies and practices, as further described herein, violate the
20 Labor Code, and trigger civil penalties under Labor Code §2699. Therefore, Plaintiffs, on behalf
21 of themselves and all aggrieved employees, bring this representative PAGA action pursuant to
22 the provisions of the Labor Code as referenced herein. Plaintiffs seek recovery of civil penalties,
23 reasonable attorney’s fees and costs, and other relief as deemed proper.

24 4. The acts complained of herein occurred, occur and will occur, at least in part,
25 within the statute of limitations under the PAGA statute, or within the statute of limitations of
26 any other Complaint or other filing which has tolled the claims asserted herein, up to and through
27 the time of trial for this matter.
28

II. THE PARTIES

5. Plaintiff Koehler is, and was at all relevant times mentioned herein, an individual residing within the State of California. Plaintiff Koehler worked for Defendants as non-exempt employee between 2018 and 2022.

6. Defendant Sea Pointe is and has been, at all relevant times herein, a corporation organized and existing under the laws of the State of California, and doing business within the County of Orange, in the State of California.

7. Defendants DOES 1 through 100, inclusive, are sued herein under fictitious names. Their true names and capacities are unknown to Plaintiffs. When their true names and capacities are ascertained, Plaintiffs will amend their complaint by inserting their true names and capacities herein. Plaintiffs are informed and believe, and based thereon allege that each of the fictitiously named Defendants are responsible in some manner for the occurrences herein alleged and that Plaintiffs' damages as herein alleged were proximately caused by those Defendants.

8. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were the agents, servants and/or employees of some or all other Defendants, and vice-versa, and in doing the things alleged in this Complaint, Defendants are now and/or at all times mentioned in this Complaint were acting within the course and scope of that agency, servitude and/or employment.

9. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint venture, partnership and common enterprise, and were acting within the course and scope of, and in pursuit of a joint venture, partnership and common enterprise.

10. Each reference in this complaint to "Defendant," "Defendants," or a specifically named Defendant refers also to all Defendants sued under fictitious names.

11. Plaintiffs are informed and believe, and thereon allege that at all relevant times herein, Defendants maintained offices, employed persons, conducted business in, and/or engaged in illegal employment practices and policies in the State of California, County of Orange.

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13. The California Superior Court also has jurisdiction in this matter because both the relief sought herein exceeds the minimal jurisdictional limits of the Superior Court and will be established at trial, according to proof.

15. The California Superior Court also has jurisdiction in this matter because during their employment with Defendants, Plaintiffs herein were all California citizens and Defendants have owned and operated offices within California. Further, there is no federal question at issue, as the issues herein are based solely on California statutes and law.

16. Venue in Orange County is proper in this matter as Defendants' liabilities and obligations arose in Orange County, including Defendants' statutory obligations to pay Plaintiffs wages for all hours worked, overtime wages, straight time wages, minimum wages, timely wages upon termination and/or resignation, provide legally compliant meal and rest periods, maintain and submit accurate wage statements, and other obligations as described herein.

17. Defendants own and operate a home remodeling and design company serving customers in California, including in the County of Orange. This case arises out of Defendants' failure to comply with California's wage and hour laws.

19. During Plaintiffs' employment, Defendants have failed to pay Plaintiffs and other aggrieved employees the proper amount of straight time and overtime wages. Defendants have violated various sections of the Labor Code, including §§510 and 1194, by failing to provide

1 Plaintiffs overtime compensation for work over 8 hours in a day and/or 40 hours in a week,
2 because, among other things, Defendants cap Plaintiffs overtime, and require Plaintiffs to
3 continue working off-the-clock hours for the benefit of Defendants, without compensation.

4 20. Defendants also fail to provide Plaintiffs with meal and rest periods under
5 California law. Defendants failed to adopt, implement, and enforce a uniform meal period policy
6 that complied with California law. For example, Defendants required Plaintiffs to take meal
7 periods after they worked for more than five hours, and Defendants failed to provide Plaintiffs
8 with their full 30 minute duty-free meal period based on numerous factors, including but not
9 limited to the fact that the amount of work required of Plaintiffs by Defendants necessitated that
10 Plaintiffs take their meal periods late, return early from their meal periods, and/or interrupt their
11 meal periods. Moreover, as a matter of policy and/or practice, Defendants failed to pay Plaintiffs
12 one hour of pay at their regular rate of pay for each workday that a 30 minute duty-free meal
13 period was not provided. Defendants also failed to keep accurate records of meal breaks taken by
14 Plaintiffs in violation of Labor Code §1174 and the applicable IWC Wage Orders.

15 21. Defendants also failed to adopt, implement, and enforce a uniform rest period
16 policy that complied with California law. Defendants failed to authorize and permit Plaintiffs to
17 take duty free rest periods of 10 minutes for every four hours worked or major fraction thereof,
18 by requiring Plaintiffs to regularly work through their rest periods to complete their duties, and
19 failing and refusing to provide a rest period for any hours in excess of 10 per day. As a result of
20 Defendants' lack of any meal or rest break policy that complies with California law, Defendants
21 have violated Labor Code §§512 and 226.7 and the applicable IWC Wage Orders, among other
22 things.

23 22. Defendants also willfully failed to provide properly itemized wage statements to
24 Plaintiffs pursuant to Labor Code §226. Defendants, for example, fail to identify the correct
25 hours and rates of pay for hours worked for Defendants, including but not limited to violations of
26 Labor Code § 226(a)(9) by not setting forth “all applicable hourly rates in effect during the pay
27 period and the corresponding number of hours worked at each hourly rate.” Defendants also
28 violate Labor Code §§ 226(a)(1) and 226(a)(5) by failing to correctly state the total net and gross

wages earned by failing to itemize meal and rest period premium payments, among other things. Defendants also violate Labor Code § 226(a)(4) by failing to itemize all deductions on the wage statement, and Labor Code § 226(a)(8) by failing to state the name and address of the legal entity of Plaintiffs' employer. The failure to provide accurate itemized wage statements violates Labor Code §§226, 2699, et seq., and IWC Wage Orders.

23. Defendants willfully failed and refused to timely pay all compensation due and owing to Plaintiffs whose employment was terminated during the relevant time period, by failing to pay all of Plaintiff's compensation due upon termination by failing and refusing to pay overtime and straight time wages, failing to pay Plaintiffs for time worked during meal and rest periods, failing to pay Plaintiffs for an extra hour because Defendants failed to provide compliant meal and rest periods and/or to pay for such meal and rest period premiums at the regular rate of pay, and by Defendants' other unlawful actions as described herein. As such, Defendants are liable for accrued wages due, and waiting time penalties owed, in accordance with Labor Code §§201, 202, and 203.

VI. PRIVATE ATTORNEYS GENERAL ACT CLAIM

24. On or about October 13, 2022, Plaintiffs provided written notice via certified mail to the Labor and Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

25. The LWDA failed to respond to Plaintiffs' counsel's correspondence dated October 13, 2022 and failed to notify Plaintiffs' counsel as to whether it would investigate the allegations contained therein, within 65 calendar days of the postmark date of Plaintiff's correspondence as required under Labor Code §2699.3. Plaintiffs have fully complied with the notice requirements set forth in Labor Code §2699.3 in order to commence a civil action against an employer pursuant to Labor Code §2699.

26. Defendants' failure to pay Plaintiffs for all hours worked, minimum wages, overtime compensation, failure to provide meal periods, failure to authorize and permit rest periods, failure to pay all wages upon termination or resignation, and failure to provide accurate

1 itemized wage statements, will subject Defendants to civil penalties pursuant to, without
2 limitation, Labor Code §§ 210, 226.3, 256, 558, 1174.5, 1197.1, 1198, 2699 and the IWC Wage
3 Orders.

4 27. Plaintiffs are aggrieved employees as defined in Labor Code §§2699(a) and (c),
5 and related Labor Code provisions. Plaintiffs bring the causes of action below on behalf of
6 themselves, as private attorneys general, and in a representative capacity on behalf of other
7 aggrieved employees, affected by the labor law violations alleged herein.

8 **A. FAILURE TO PAY ALL WAGES AND OVERTIME COMPENSATION**

9 28. Labor Code §1194 states that any employee receiving less than the legal
10 minimum wage or the legal overtime compensation applicable to the employee is entitled to
11 recover the unpaid balance of the full amount of this minimum wage or overtime compensation,
12 including interest thereon, reasonable attorney's fees, and costs of suit.

13 29. Labor Code §1197 states that the minimum wage for employees fixed by the
14 commission is the minimum wage to be paid to employees, and the payment of a lesser wage
15 than the minimum so fixed is unlawful.

16 30. Labor Code §510(a) and IWC Wage Orders regulating payment of wages in the
17 state of California, provide that eight (8) hours of labor constitutes a day's work and any work in
18 excess of eight (8) hours in one (1) workday and any work in excess of forty (40) hours in any
19 one workweek shall be compensated at the rate of no less than one and one-half times the regular
20 rate of pay for each employee and any work in excess of twelve (12) hours in any one workday
21 shall be compensated at the rate of no less than twice the regular rate of pay for each employee.

22 31. At all relevant times, Defendants required Plaintiffs to perform work without
23 compensation in violation of the IWC Wage Orders and the Labor Code. Specifically, Plaintiffs
24 were not paid for all of their hours worked, in that Defendants failed to pay non-exempt hourly
25 workers such as Plaintiffs for all of their hours worked by, among other things, capping
26 Plaintiffs' hours worked, requiring Plaintiffs to clock out of work, and continue working off-the-
27 clock for Defendants without compensation. Defendants are therefore in violation of Labor
28 Code §§510 and 1194, and the IWC Wage Orders.

1 32. Pursuant to Labor Code §218.6 and Civil Code §3287, Plaintiffs seek recovery of
2 pre-judgment interest on all amounts recovered herein. Plaintiffs further request that this Court
3 award reasonable attorneys' fees and costs incurred in this action pursuant to Labor Code
4 §§1194(a) and/or 2699.

5 33. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiffs are aggrieved
6 employees, entitled to recover civil penalties pursuant to the Labor Code, including but not
7 limited to Labor Code §§558, 1197.1, and 2699(f). Plaintiffs seek only to recover the civil
8 penalties provided for in §§558(a) and 1197.1 for the violations alleged herein, and do not seek
9 to recover underpaid wages.

10 **B. MEAL PERIODS (Labor Code §§226.7 and 512)**

11 34. Labor Code §512 and applicable IWC Wage Orders state that an employer may
12 not employ an employee for a work period of more than five (5) hours per day without providing
13 the employee a meal period of not less than 30 minutes, and an employer may not employ an
14 employee for a work period of more than 10 hours per day without providing the employee with
15 a second meal period of not less than 30 minutes. The applicable Wage Orders state that unless
16 the employee is relieved of all duty during a 30-minute meal period, the meal period shall be
17 considered an "on duty" meal period and counted as time worked. Labor Code §226.7(a) further
18 states that no employer shall require any employee to work during any meal or rest period
19 mandated by an applicable order of the IWC. Moreover, an employer is prohibited from exerting
20 coercion against the taking of, creating incentives to forego, or otherwise encouraging the
21 skipping of legally protected breaks.

22 35. Plaintiffs were not provided with nor given the opportunity to take the requisite
23 meal periods before the end of the first 5 hours of work, nor were they provided with or given the
24 opportunity to take a proper second meal period during the days when they worked more than 10
25 hours in a day. Plaintiffs are entitled to an additional one hour of pay at their regular rate of pay
26 for each day in which they were not provided a proper meal period under the above-described
27 authorities.

28 36. Pursuant to Labor Code §226.7(b) and the IWC Wage Orders, if an employer fails

1 to provide an employee a meal period in accordance with the applicable provisions of IWC
2 Wage Orders, the employer shall pay the employee one (1) hour of pay at the employee's regular
3 rate of compensation for each workday that the meal period is not provided. As such, Plaintiffs
4 are entitled to an additional one hour's pay for each day in which Plaintiffs were not provided a
5 proper meal break under the above-described authorities.

6 37. Labor Code §558 and the IWC Wage Orders state, in pertinent part, that any
7 employer or other person acting on behalf of an employer who violates, or causes to be violated,
8 a section of any provision regulating hours and days of work in any order of the IWC shall be
9 subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
10 underpaid employee for each pay period for which the employee was underpaid in addition to an
11 amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred
12 dollars (\$100) for each underpaid employee for each pay period for which the employee was
13 underpaid in addition to an amount sufficient to recover underpaid wages. Plaintiffs seek only to
14 recover the civil penalty provided for in §558(a) for the violations alleged herein, and do not
15 seek to recover underpaid wages.

16 38. Plaintiffs request that the Court award interest on all unpaid wages at the legal
17 rate specified by Civil Code §3289(b), accruing from the date the wages were due and payable
18 pursuant to Labor Code §218.6.

19 39. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiffs are aggrieved
20 employees, entitled to recover civil penalties pursuant to the Labor Code, including but not
21 limited to Labor Code §§558 and 2699(f).

22 **C. REST PERIODS (Labor Code §226.7)**

23 40. The IWC Wage Orders provide that every employer shall authorize and permit all
24 employees to take rest periods. The authorized rest period time shall be based on the total hours
25 worked daily at the rate of ten (10) minutes net rest time per four hours of work, or major
26 fraction thereof. An employer must provide employees with 10 minutes rest for shifts from three
27 and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours,
28 30 minutes for shifts of more than 10 hours up to 14 hours, and so on. Furthermore, Labor Code

§1198 provides, in pertinent part: . . . The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

41. Plaintiffs were not permitted to take proper rest periods and/or were required to work during any “rest periods” in contravention of California law. Further, Plaintiffs and other aggrieved employees were required to waive the taking of their rest breaks because of the business of Defendants’ operations, and/or were coerced not to take legally mandated rest periods by Defendants’ criticizing, disciplining and/or reprimanding Plaintiffs and other aggrieved employees who attempted to take legally required rest periods; failed to schedule rest periods; and pressured Plaintiffs to remain available during the workday.

42. Defendants further failed to pay Plaintiffs a missed rest period premium payment for each rest period that was not authorized or permitted, and/or failed to pay such rest period premium at Plaintiffs’ regular rate of pay.

43. Pursuant to Labor Code §226.7(b) and IWC Wage Orders, if an employer fails to provide an employee a rest period in accordance with the applicable provisions of the IWC Wage Orders, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

44. As such, Plaintiffs are entitled to an additional one hour of pay at their regular rate of pay for each day in which they were not provided a proper rest period under the above-described authorities.

45. Plaintiffs request that the Court award interest on all unpaid wages at the legal rate specified by Civil Code §3289(b), accruing from the date the wages were due and payable pursuant to Labor Code §218.6.

46. Labor Code §558 and IWC Wage Orders state, in pertinent part, that any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of any provision regulating hours and days of work in any order of the IWC 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

1 dollars (\$100) for each underpaid employee for each pay period for which the employee was
2 underpaid in addition to an amount sufficient to recover underpaid wages. Pursuant to Labor
3 Code §§558, 1198 and 2699, and/or IWC Wage Orders, Plaintiffs are entitled to civil penalties
4 for each pay period in which Defendants underpaid their wages as set forth herein. Plaintiffs
5 seek only to recover the civil penalty provided for in §558(a) for the violations alleged herein,
6 and do not seek to recover underpaid wages.

7 47. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiffs are aggrieved
8 employees, entitled to recover civil penalties pursuant to the Labor Code, including but not
9 limited to Labor Code §§558, 2699(f), and applicable IWC Wage Orders.

10 **E. FAILURE TO REIMBURSE EXPENSES**

11 48. Labor Code § 2802(a) states, in pertinent part: “An employer shall indemnify his
12 or her employee for all necessary expenditures or losses incurred by the employee in direct
13 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
14 the employer. . .”

15 49. Defendants required Plaintiffs to maintain and use their own tools to perform their
16 job duties, and failed and refused to reimburse Plaintiffs for using their cell phones for company
17 business.

18 50. Defendants’ failure to reimburse and/or indemnify Plaintiffs for these necessary
19 expenditures constitutes a violation of California law.

20 51. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiffs are aggrieved
21 employees, entitled to recover civil penalties pursuant to the Labor Code, including but not
22 limited to Labor Code § 2699(f).

23 **F. FAILURE TO PROPERLY MAINTAIN AND SUBMIT ACCURATE**
24 **ITEMIZED WAGE STATEMENTS (Labor Code §226)**

25 52. Labor Code §§226, 1174, and/or the applicable IWC Wage Orders require
26 employers to maintain and provide employees accurate time and employment records, as well as
27 itemized wage statements showing, among other things, gross wages earned, the total hours
28 worked by the employee, all deductions, net wages earned, all applicable hourly rates in effect

1 during the pay period and the corresponding number of hours worked at each hourly rate by the
2 employee. Furthermore, the applicable Wage Orders and Labor Code §226 requires every
3 employer to keep accurate information with respect to each employee, including: (1) the
4 employee's full name, home address, occupation, social security number, employee's date of
5 birth, and time records showing when the employee begins and ends each work period; (2) an
6 employee's meal periods; (3) total wages paid each payroll period; and (4) total hours worked
7 during the payroll period and applicable rates of pay.

8 53. Defendants failed to properly maintain itemized wage statements in that, among
9 other things, the wage statements provided do not set forth the accurate number of hours worked,
10 correct rates of pay, all overtime compensation, meal periods, premium pay, and other related
11 information required by California law. In addition, in implementing their illegal policies and
12 practices regarding Plaintiffs, Defendants failed to record wages for rest period and meal period
13 premiums and other wages that should have been paid to Plaintiffs as required by California law.
14 Defendants have failed to record all items delineated in Labor Code §226 and the applicable
15 IWC Wage Orders, and required under Labor Code §1174. Plaintiffs are informed and believe
16 that these failures were knowing and intentional by Defendants as Defendants sought to deprive
17 Plaintiffs of their legitimate right to unpaid wages, and otherwise deprive them of their proper
18 compensation. As a result of Defendants' intentional and knowing failure to maintain adequate
19 itemized statements, Plaintiffs could not ascertain the actual amount of compensation they
20 earned and/or were entitled to, and thereby are presumed to have suffered cognizable injury in
21 the form of the accrual of unpaid wages, overtime, and interest pursuant to Labor Code
22 §226(e)(2).

23 54. Pursuant to Labor Code §226(e), an employee who suffers injury as a
24 result of an employer's knowing and intentional failure to comply with subdivision (a), is
25 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
26 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
27 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
28 is entitled to an award of costs and reasonable attorney's fees.

1 55. Pursuant to Labor Code §226.3, “[a]ny employer who violates subdivision (a) of
2 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
3 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
4 for each violation in a subsequent citation. . .”

5 56. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiffs are aggrieved
6 employees, entitled to recover civil penalties pursuant to the Labor Code, including but not
7 limited to Labor Code §§226.3, 1174.5 and 2699(f), as well as reasonable attorneys’ fees and
8 costs.

9 **G. WAITING TIME PENALTIES (Labor Code §§201-203)**

10 57. Labor Code §201 states that an employer is required to provide an employee who
11 is terminated all unpaid wages immediately upon termination.

12 58. Plaintiffs are informed and believe and thereon allege that Defendants failed to
13 pay Plaintiffs all wages due and owing immediately upon termination, thereby violating Labor
14 Code §201.

15 59. Labor Code §202 states, in pertinent part, that an employer is required to provide
16 an employee who quits his or her employment all wages due and owing not later than 72 hours
17 thereafter.

18 60. Plaintiffs are informed and believe and thereon allege that Defendants failed to
19 pay Plaintiffs all wages due and owing upon voluntary resignation, thereby violating Labor Code
20 §202.

21 61. Labor Code §203 states that if an employer willfully fails to pay an employee
22 wages according to Labor Code §§201 and 202, these wages shall continue as a penalty for up to
23 a maximum of 30 days.

24 62. Defendants willfully withheld paying Plaintiffs wages thereby violating Labor
25 Code §203, as further set forth herein. As such, Defendants are required to pay Plaintiffs a 30-
26 day wage penalty in addition to all unpaid wages as described herein.

27 63. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiffs are aggrieved
28 employees, entitled to recover civil penalties pursuant to the Labor Code, including but not

1 limited to Labor Code §§256 and 2699(f).

2 **H. ALL CLAIMS**

3 64. Pursuant to Labor Code §2699, Plaintiffs seek to recover civil penalties, as
4 otherwise provided by statute and wage order, for which Defendants are liable as a result of their
5 violations of the Labor Code and applicable Wage Order(s) in an amount to be proven at trial.
6 These penalties include, but are not limited to, those provided by Labor Code §§210, 225.5,
7 226.3, 256, 558, 1174.5, 1197.1, and 2699. Plaintiffs further seek an award of reasonable
8 attorneys' fees and costs pursuant to the Labor Code §2699(g)(1) and any other applicable
9 statute.

10 **WHEREFORE**, Plaintiffs pray:

- 11 a. For civil penalties pursuant to Labor Code §2699(f), in addition to and entirely
12 independent and apart from other penalties in the Labor Code and for Labor Code
13 violations without a specific civil penalty, in the amount of \$100 for each
14 aggrieved employee per pay period for each violation, and \$200 for each
15 aggrieved employee per pay period for each subsequent violation;
- 16 b. For civil penalties pursuant to Labor Code §558, as follows:
- 17 i. For any initial violation, fifty dollars (\$50) for each aggrieved underpaid
18 employee for each pay period for which the employee was underpaid;
- 19 ii. For each subsequent violation, one hundred dollars (\$100) for each
20 aggrieved underpaid employee for each pay period for which the
21 employee was underpaid;
- 22 c. For civil penalties pursuant to Labor Code §1197.1, as follows:
- 23 i. For any initial violation that is intentionally committed, one hundred
24 dollars (\$100) for each underpaid employee for each pay period for which
25 the employee is underpaid;
- 26 ii. For each subsequent violation for the same offense, two hundred fifty
27 dollars (\$250) for each aggrieved underpaid employee for each pay period
28 for which the employee was underpaid regardless of whether the initial

violation is intentionally committed;

d. For civil penalties per Labor Code §226.3 in the amount of \$250 for each aggrieved employee per pay period for each violation, and \$1,000 for each aggrieved employee per pay period for each subsequent violation;

e. For civil penalties per Labor Code §1174.5 in the amount of \$500 for each willful failure to maintain records as required by Labor Code §1174(c);

f. For civil penalties per Labor Code §256 in the amount of one day of pay, at the same rate, for each day that an aggrieved employee was paid late, at the time of termination, until payment was/is made, up to a maximum of thirty (30) days;

g. For civil penalties per Labor Code §210 in the amount of \$100 for each failure to pay each employee, and for each subsequent violation, or any willful or intentional violation, \$200 for each failure to pay each employee;

h. For reasonable attorneys' fees and costs incurred; and

i. For such relief as this Court may deem just and proper.

Dated: December 19, 2022

BARTZ LAW GROUP APC

By: /s/ Aaron A. Bartz
AARON A. BARTZ
Attorneys for Plaintiff LUKE KOEHLER, on behalf
of himself and all other aggrieved employees

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Dated: December 19, 2022

By: /s/ Aaron A. Bartz
AARON A. BARTZ
Attorneys for Plaintiff LUKE KOEHLER, on
behalf of himself and all other aggrieved employees

EXHIBIT 4

Privileged and Confidential - For Mediation Purposes Only

Sea Pointe

PAGA Claims: Payroll Check Dates October 15, 2021 through September 30, 2023

	Labor Code §558	Labor Code §1174	Labor Code §1194	Meal Breaks Labor Code §512/226.7
Employee Count	42	42	42	42
First Period Penalty Amount	\$50.00	\$100.00	\$100.00	\$100.00
Total First Period Penalty	\$2,100.00	\$4,200.00	\$4,200.00	\$4,200.00
Total Pay Period Count	1,370	1,370	1,370	1,360
Net Pay Period Count	1,328	1,328	1,328	1,318
Subsequent Period Penalty Amount	\$100.00	\$100.00	\$100.00	\$200.00
Total Subsequent Period Penalty Amt	\$132,800.00	\$132,800.00	\$132,800.00	\$263,600.00
Total Penalty	\$134,900.00	\$137,000.00	\$137,000.00	\$267,800.00

	Rest Breaks Labor Code §512/226.7	Labor Code §226(a)	Labor Code §201/202	Grand Total
Employee Count	42	42	12	
First Period Penalty Amount	\$100.00	\$100.00	\$100.00	
Total First Period Penalty	\$4,200.00	\$4,200.00	\$1,200.00	\$24,300.00
Total Pay Period Count	1,365	1,370		
Net Pay Period Count	1,323	1,328		
Subsequent Period Penalty Amount	\$200.00	\$200.00		
Total Subsequent Period Penalty Amt	\$264,600.00	\$265,600.00	\$0.00	\$1,192,200.00
Total Penalty	\$268,800.00	\$269,800.00	\$1,200.00	\$1,216,500.00

Notes:

- Pay period count is based information from opposing counsel. Information was extrapolated to September 30, 2023
- Meal Punch Data was not tracked. Meal Break deductions of 0.5 hours were considered non-compliant.
- Based on the assumption that the first set of punches reflect time prior to a meal, 800 pay periods show a violation. The related PAGA amount is \$155,800

EXHIBIT 5

Activities Export

11/08/2023

4:55 PM

Date ▼	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
11/08/2023		Review, revise and final Motion for PAGA approval and supporting documents, and coordinate filing and service of same.  Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Aaron Bartz	3.90h	\$850.00	-	\$3,315.00
11/07/2023		Continue preparing Motion for PAGA approval, and supporting documents.  Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Aaron Bartz	2.40h	\$850.00	-	\$2,040.00
11/03/2023		Review and consider emails from OPC re PAGA settlement, and respond to same.  Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Aaron Bartz	1.00h	\$850.00	-	\$850.00
10/20/2023		Revise motion for PAGA approval, review of settlement agreements, and prepare email to OPC regarding same.  Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Aaron Bartz	1.60h	\$850.00	-	\$1,360.00
10/18/2023		Continue preparing Motion for PAGA approval; Prepare supporting declarations.  Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Aaron Bartz	3.90h	\$850.00	-	\$3,315.00
10/11/2023		Prepare Motion for PAGA approval; Final settlement documents, and review and respond to correspondence from OPC.  Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Aaron Bartz	1.30h	\$850.00	-	\$1,105.00
09/13/2023		Prepare PAGA settlement	00030-Koehler	Aaron Bartz	2.50h	\$850.00	-	\$2,125.00
					69.46h		\$0.00 0.00h	\$55,249.05 69.46h

Activities Export

11/08/2023

4:55 PM

Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		agreement. ● Unbilled	Koehler v Sea Pointe Construction Development, Inc.					
09/08/2023	🕒	Review and respond to emails from OPC regarding settlement; Call with OPC regarding same. ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Aaron Bartz	0.50h	\$850.00	-	\$425.00
09/07/2023	🕒	Call with client regarding settlement, and review and respond to emails regarding settlement. ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Aaron Bartz	0.70h	\$850.00	-	\$595.00
09/06/2023	🕒	Review and consider revisions to MOU, and prepare email regarding same. ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Aaron Bartz	0.50h	\$850.00	-	\$425.00
09/05/2023	🕒	Review and consider case materials in advance of Mediation; Attend Mediation; Review and consider MOU, and conference calls with client regarding same. ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Aaron Bartz	9.00h	\$850.00	-	\$7,650.00
09/01/2023	🕒	Review, revise and final Mediation Brief, and prepare email to Mediator. ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Aaron Bartz	1.00h	\$850.00	-	\$850.00
08/31/2023	🕒	Prepare Mediation Brief, and review case documents in preparation of Mediation.	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Aaron Bartz	5.80h	\$850.00	-	\$4,930.00
					69.46h		\$0.00	\$55,249.05
							0.00h	69.46h

Activities Export

11/08/2023

4:55 PM

Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		● Unbilled						
08/28/2023	🕒	Continue reviewing payroll and related records; Conference call with client in preparation for Mediation. ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Aaron Bartz	2.50h	\$850.00	-	\$2,125.00
08/24/2023	🕒	Review and analyze payroll and related mediation data, and conference call with expert regarding same; Review of case documents, and begin preparing Mediation Brief, and research in support of same. ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Aaron Bartz	6.00h	\$850.00	-	\$5,100.00
07/13/2023	🕒	Finalize, file and serve Joint Status Report. ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Nestor Mejia	0.50h	\$295.00	-	\$147.50
07/07/2023	🕒	Draft Proof of Service ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Nestor Mejia	0.50h	\$295.00	-	\$147.50
07/05/2023	🕒	Prepare Joint Status Report, and email OPC regarding same. ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Aaron Bartz	0.50h	\$850.00	-	\$425.00
04/17/2023	🕒	Review of case and research regarding claims, and prepare mediation data request. ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Aaron Bartz	2.00h	\$850.00	-	\$1,700.00
					69.46h		\$0.00 0.00h	\$55,249.05 69.46h

Activities Export

11/08/2023

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Date ▾	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
03/20/2023	 	Review and consider status of mediation, and call with client regarding case status. ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Aaron Bartz	1.00h	\$850.00	-	\$850.00
03/10/2023	 	Finalize Joint Status report, file, and serve. ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Nestor Mejia	1.00h	\$295.00	-	\$295.00
03/06/2023	 	Review case documents, and prepare Joint Status Report (1.0); Research regarding potential mediators (1.2); Conference call with OPC regarding status conference (.3) ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Aaron Bartz	2.50h	\$850.00	-	\$2,125.00
02/02/2023	 	Client conference call re status of case. ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Nestor Mejia	0.09h	\$295.00	-	\$26.55
12/28/2022	 	Prepare documents for Service of Process via Nationwide ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Nestor Mejia	0.67h	\$250.00	-	\$167.50
12/28/2022	 	Call with client regarding case documents. ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Nestor Mejia	0.50h	\$250.00	-	\$125.00
12/23/2022	 	Call with client. ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development,	Nestor Mejia	0.50h	\$250.00	-	\$125.00
					69.46h		\$0.00 0.00h	\$55,249.05 69.46h

Activities Export

11/08/2023

4:55 PM

Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
			Inc.					
11/28/2022	 	Prepare PAGA Complaint, and research in support thereof. ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Aaron Bartz	5.00h	\$750.00	-	\$3,750.00
11/15/2022	 	Review and consider documents produced by Defendant regarding Plaintiff's employment, and research regarding potential claims. ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Aaron Bartz	4.30h	\$850.00	-	\$3,655.00
10/13/2022	 	Review and revise PAGA letter, and coordinate filing and service of same. ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Aaron Bartz	0.80h	\$750.00	-	\$600.00
10/13/2022	 	Finalize PAGA letter for Service via Certified Mail. ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Nestor Mejia	1.50h	\$250.00	-	\$375.00
10/12/2022	 	Prepare PAGA letter. ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Aaron Bartz	1.50h	\$750.00	-	\$1,125.00
08/17/2022	 	Review and consider intake, and client documents regarding potential matter; Research regarding potential claims. ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Aaron Bartz	4.00h	\$850.00	-	\$3,400.00
					69.46h		\$0.00 0.00h	\$55,249.05 69.46h

EXHIBIT 6

Activities Export

11/07/2023

5:21 PM

Date ▼	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
10/18/2023	\$	Motion for PAGA approval filing fees (anticipated). ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Aaron Bartz	1.00	\$100.00	-	\$100.00
09/13/2023	\$	JT Calcs - Expert Witness Fees. ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Aaron Bartz	1.00	\$900.00	-	\$900.00
09/09/2023	\$	Document access fees from OCSC. ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Aaron Bartz	1.00	\$7.50	-	\$7.50
08/23/2023	\$	Mediation Fees - Mediation Central. ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Aaron Bartz	1.00	\$3,500.00	-	\$3,500.00
07/13/2023	\$	One Legal Joint Status Report filing Confirmation #28729821 ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Nestor Mejia	1.00	\$12.95	-	\$12.95
04/14/2023	\$	One Legal Notice of Posting Jury Fees ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Nestor Mejia	1.00	\$165.20	-	\$165.20
03/16/2023	\$	One Legal filing of CMS Confirmation #28120063 ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Nestor Mejia	1.00	\$12.95	-	\$12.95
03/10/2023	\$	One Legal Filing Confirmation #28090399 - Joint Status Report	00030-Koehler Koehler v Sea Pointe	Nestor Mejia	1.00	\$12.95	-	\$12.95
							\$0.00 0.00h	\$6,478.66 0.00h

Activities Export

11/07/2023

5:21 PM

Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		● Unbilled	Construction Development, Inc.					
01/20/2023	\$	One Legal POS sub service filing Confirmation #27837028 ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Nestor Mejia	1.00	\$15.20	-	\$15.20
01/12/2023	\$	Nationwide legal Process of Service ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Nestor Mejia	1.00	\$204.56	-	\$204.56
01/02/2023	\$	One Legal Filing fees. ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Nestor Mejia	1.00	\$14.75	-	\$14.75
12/21/2022	\$	Filing Fees re PAGA Complaint. ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Aaron Bartz	1.00	\$1,449.75	-	\$1,449.75
10/13/2022	\$	Certified Mail Fee re PAGA letter. ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Nestor Mejia	1.00	\$7.85	-	\$7.85
10/13/2022	\$	PAGA Filing Fee. ● Unbilled	00030-Koehler Koehler v Sea Pointe Construction Development, Inc.	Aaron Bartz	1.00	\$75.00	-	\$75.00
							\$0.00 0.00h	\$6,478.66 0.00h

EXHIBIT 7



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

CASE ASSUMPTIONS

Class Members	42
Opt Out Rate	N/A
Opt Outs Received	
Total Class Claimants	42
Subtotal Admin Only	\$2,750.00

Not-to-Exceed Total \$2,750.00
For 42 Class Members

Pricing Good for Scope of Estimate Only

September 27, 2023

Case: Koehler v. Sea Pointe Construction-PAGA wTranslation

Phoenix Contact: Jarrod Salinas

Contact Number: 800-523-5773

Email: Jarrod@phoenixclassaction.com

Requesting Attorney: Aaron A. Bartz

Firm: BARTZ LAW GROUP, APC

Contact Number: (949) 504-4413

Email: aaron@bartzlawgroup.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly.
Estimate is based on 42 Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)			
Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$150.00	1	\$150.00
Programming Database & Setup	\$150.00	1	\$150.00
Toll Free Setup*	\$15.09	1	\$15.09
Call Center & Long Distance	\$2.00	4	\$8.40
NCOA (USPS)	\$10.00	1	\$10.00
Total			\$333.49

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Check & Postage			
Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$125.00	2	\$250.00
Data Merge & Duplication Scrub	\$0.50	42	\$21.00
Notice and Check Packet	\$1.00	42	\$42.00
Estimated Postage (up to 1 oz.)*	\$0.64	42	\$26.88
Language Translation	\$250.00	1	\$250.00
Total			\$589.88

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item Estimate
Case Associate	\$50.00	2	\$100.00
Skip Tracing Undeliverables	\$1.00	6	\$6.30
Remail Notice Packets	\$1.00	6	\$6.30
Estimated Postage	\$0.64	6	\$4.03
Programming Undeliverables	\$50.00	2	\$100.00
Total			\$216.63

Database Programming

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Claims Database	\$125.00	1	\$125.00
Case Manager	\$125.00	1	\$125.00
Total			\$250.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Calculations	\$125.00	1	\$125.00
Disbursement Review	\$125.00	1	\$125.00
Programming Manager	\$75.00	1	\$75.00
QSF Bank Account & EIN	\$50.00	1	\$50.00
Check Run Setup & Printing	\$150.00	1	\$150.00
Total			\$525.00

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$125.00	1	\$125.00
Remail Undeliverable Checks (Postage Included)	\$2.00	5	\$10.00
Case Associate	\$100.00	1	\$100.00
Reconcile Uncashed Checks	\$100.00	1	\$100.00
Conclusion Reports	\$100.00	1	\$100.00
Case Manager Conclusion	\$75.00	1	\$75.00
Final Reporting & Declarations	\$75.00	1	\$75.00
QSF Annual Tax Reporting * (State Tax Reporting Included)	\$250.00	1	\$250.00
Total			\$835.00

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$2,750.00



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT 8

[Mailing Date]

NOTICE OF SETTLEMENT

Re: Luke Koehler v. Sea Pointe Construction and Development, Inc., Orange County
Superior Court Case Number 30-2022-01297787-CU-OE-CXC

[Claims Admin Info]

Dear Sir or Madam:

The enclosed payment is made to you pursuant to a court-approved settlement between Plaintiff Luke Koehler (“Plaintiff”), on behalf of himself and the people of the State of California and as “aggrieved employees” under the Labor Code Private Attorneys General Act of 2004, section 2698, et seq. (“PAGA”), and Defendant Sea Pointe Construction and Development, Inc. (“Defendant”), in the above-referenced matter (the “Action”) in which Plaintiff made claims against Defendant.

Defendant denies any liability or wrongdoing of any kind and no finding of liability has been made by the court. However, the Parties have reached a settlement, which has been approved by the Court, and whereby all current and former non-exempt California employees employed by Defendant at any time during the PAGA Period (“PAGA Members”) will receive a portion of the settlement in exchange for a release of all claims that could be made pursuant to the Private Attorneys General Act (Labor Code section 2699, et seq.) for alleged violations of the California Labor Code, arising at any time during the PAGA Period for the claims brought by Plaintiff in the Action or that could have been brought against Released Parties in the Action based on the facts or theories alleged in Plaintiff’s PAGA letter dated October 13, 2022 or the Action, between October 13, 2021 and [preliminary approval date]. **No wage claims are released by this settlement.** There is no opportunity to opt-out of this PAGA settlement. The enclosed check represents your portion of the settlement recovery. Your enclosed check is valid for 180 days from the date of issuance. We suggest you cash it promptly. For tax purposes, an IRS Form 1099 will be issued to you for this payment.