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17 Attorneys for Defendant BEST CHEER STONE INC.

18
19 **SUPERIOR COURT OF CALIFORNIA**

20 **COUNTY OF SAN DIEGO**

21 VICTOR ROJAS, an individual, on behalf
of himself and others similarly situated,

22 Plaintiff,

23 vs.

24 BEST CHEER STONE INC.; and DOES 1
25 through 50, inclusive,

26 Defendants.
27
28

Case No. 37-2023-00016975-CU-OE-CTL

Assigned for All Purposes to:
Hon. Katherine Bacal
Dept. C-69

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

Action Filed: April 24, 2023
Trial Date: None set

1 **JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT**

2 It is stipulated and agreed by and between Plaintiff Victor Rojas (“Plaintiff”), individually and
3 on behalf of the Class Members, as defined below, and Defendant Best Cheer Stone Inc. (“Defendant”)
4 (collectively, the “Parties”), subject to the approval of the Court pursuant to the California Rules of
5 Court, that the Settlement of this Action shall be effectuated upon and subject to the following terms
6 and conditions. Capitalized terms used herein shall have the meanings set forth in Article I or as
7 defined elsewhere in this Joint Stipulation of Class Action and PAGA Settlement (“Settlement”).

8 This Settlement is made by and between the Parties following a full day mediation session on
9 February 8, 2024 with Michael Young, Esq.

10 The Parties agree that the Action shall be, and is, ended, settled, resolved, and concluded by
11 agreement of Defendant to pay the settlement amount of Six Hundred and Twenty-Three Thousand
12 Eight Hundred and Eighty Dollars and Zero Cents (\$623,880.00), as provided in Section III(D)(7)(a)
13 below (“Gross Settlement Amount”) pursuant to the terms and conditions of this Settlement and for
14 the consideration set forth herein, including but not limited to, a full, final, and forever release of all
15 claims by Plaintiff, Class Members, and Aggrieved Employees as set forth herein.

16 **I. DEFINITIONS**

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

19 A. “Action” means the action filed on April 24, 2023 in the San Diego Superior Court,
20 titled *Rojas v. Best Cheer Stone Inc.*, Case No. 37-2023-00016975-CU-OE-CTL.

21 B. “Aggrieved Employees” means all persons currently or formerly employed as non-
22 exempt, hourly-paid employees in California by Defendant at any time during the PAGA Period
23 (defined below). Aggrieved Employees may not exclude themselves from the PAGA release and will
24 be bound by the PAGA Released Claims, as set forth in Section V(B) below.

25 C. “Class” or “Class Members” means all persons currently or formerly employed as non-
26 exempt, hourly-paid employees in California by Defendant at any time during the Class Period
27 (defined below).

28 D. “Class Counsel” means the attorneys for the Class, as follows:

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2 David Alami (State Bar No. 314628)
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10 E. “Class Notice” means the Notice of Proposed Class Action Settlement in a form
11 substantially similar to the notice attached hereto as **Exhibit A**, subject to Court approval, which shall
12 be mailed to Class Members, in English and Spanish.

13 F. “Class Period” means April 24, 2019 through February 26, 2024.

14 G. “Court” means the San Diego Superior Court, where the Action is pending.

15 H. “Effective Date” means the later of the following: (1) the date the Final Approval is
16 signed if no objections are filed to the Settlement; (2) if objections are filed and overruled, and no
17 appeal is taken of the Final Approval Order, sixty (60) days after the Final Approval Order is signed;
18 or (3) if an appeal is taken from the Court’s overruling of objections to the Settlement, ten (10) days
19 after the appeal is withdrawn or after an appellate decision affirming the final approval decision
20 becomes final.

21 I. “Defendant” means Best Cheer Stone Inc.

22 J. “Defense Counsel” means counsel for Defendant, who are:

23 Nicole Sheth (SBN 253515)
nsheth@kbrlaw.com
24 Christina Ricci, Esq. (SBN 346042)
cricci@kbrlaw.com
25 KAUFMAN BERGEEST & RYAN LLP
21700 Oxnard Street
26 Woodland Hills, CA 91367
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27 Facsimile: (818) 880-0993

28 K. “Disposition” means the method by which the Court approves the terms of the

1 Settlement and retains jurisdiction over its enforcement, implementation, construction, administration,
2 and interpretation.

3 L. “Enhancement Award” means an amount of up to Fifteen Thousand Dollars and Zero
4 Cents (\$15,000.00) to be paid from the Gross Settlement Amount for Plaintiff VICTOR ROJAS,
5 subject to Court approval, in exchange for his general release and in recognition of Plaintiff’s effort
6 prosecuting the Action on behalf of all Class Members.

7 M. “Final Approval Order” means the final formal court order signed by the Court and
8 entering a judgment approving this Settlement on substantially the terms provided herein or as the
9 same may be modified by subsequent written agreement of the Parties as approved by the Court
10 following the Final Approval Hearing in accordance with the terms herein.

11 N. “Gross Settlement Amount” means Six Hundred and Twenty-Three Thousand Eight
12 Hundred and Eighty Dollars and Zero Cents (\$623,880.00), unless increased on a pro rata basis
13 pursuant to Section III(D)(5) to be paid by Defendant pursuant to the terms of this Settlement to settle
14 this Action. All claims of the Settlement Class, including all wages, damages, interest, penalties, and
15 all administration costs, attorney’s fees and costs, Enhancement Award, and LWDA Payment (defined
16 below) pursuant to Section III(D)(7) below, shall be paid out of the Gross Settlement Amount. The
17 employer’s share of payroll taxes arising from the payments made under this settlement shall be paid
18 by Defendant separate from and in addition to the Gross Settlement Amount. No part of the Gross
19 Settlement amount shall revert to Defendant. In no event will Defendant be required to pay more than
20 the Gross Settlement Amount, except for an increase on a pro rata basis pursuant to Section III(D)(5),
21 increase of administration costs pursuant to Section I(FF), and Defendant’s share of payroll taxes as
22 defined in Section I(N).

23 O. “Individual Settlement Payment” means the *pro rata* share of the Net Settlement
24 Amount that shall be paid to Participating Class Members less the employee’s portion of required
25 federal and state withholdings. Individual Settlement Payments will be each Participating Class
26 Member’s proportional share of the Net Settlement Amount (which shall be determined by the
27 calculations provided in this Settlement).

28 P. “Individual PAGA Payment” means each Aggrieved Employee’s *pro rata* share of

1 25% of the PAGA Penalties, which shall be calculated in accordance with the Individual PAGA
2 Payment calculations described below.

3 Q. “Judgment” refers to the judgment entered by the Court in conjunction with the Final
4 Approval Order.

5 R. “LWDA Payment” means the 75% share of the total amount allocated toward PAGA
6 Penalties that will be paid to the Labor and Workforce Development Agency (“LWDA”) pursuant to
7 Section III(D)(7)(e) of this Settlement. The Parties have agreed that Twenty Thousand Dollars and
8 Zero Cents (\$20,000) shall be allocated toward PAGA Penalties, of which Fifteen Thousand Dollars
9 and Zero Cents (\$15,000) will be paid to the LWDA (*i.e.*, the LWDA Payment) and Five Thousand
10 Dollars and Zero Cents (\$5,000) will be distributed to PAGA Employees on a *pro rata* basis.

11 S. “Net Settlement Amount” means the Gross Settlement Amount less the Court-
12 approved settlement administration costs, attorney’s fees and costs, Enhancement Award, PAGA
13 Penalties, pursuant to Section III(D)(7) below.

14 T. “Non-Participating Class Member(s)” means those Class Members who submit to the
15 Settlement Administrator a valid and timely Request for Exclusion pursuant to Section III(D)(2)
16 below.

17 U. “Objection” means a signed written objection mailed to the Settlement Administrator
18 by a Class Member by the Response Deadline or by verbal objection to the Court at the Final Approval
19 Hearing, as set forth in Section III(D)(3).

20 V. “PAGA Penalties” means the Twenty Thousand Dollars and Zero Cents (\$20,000.00)
21 portion of the Gross Settlement Amount allocated to settlement of all PAGA claims in the Action,
22 subject to Court approval.

23 W. “PAGA Period” means April 24, 2022 through February 26, 2024.

24 X. “Participating Class Member(s)” means those Class Members who do not submit to
25 the Settlement Administrator a valid and timely Request for Exclusion pursuant to Section III(D)(2)
26 below and will therefore receive his or her share of the Settlement proceeds automatically without the
27 need to return a claim form to be paid his/her Individual Settlement Payment.

28 Y. “Plaintiff” means VICTOR ROJAS.

1 Z. “Preliminary Approval Date” means the date on which the Court enters an Order
2 granting preliminary approval of the Settlement.

3 AA. “Qualifying Pay Periods” means any pay period during which an Aggrieved Employee
4 was employed by Defendant in a non-exempt position and performed work during the PAGA Period.

5 BB. “Qualifying Workweeks” means any week during which a Class Member worked at
6 least one shift for Defendant in a non-exempt position during the Class Period.

7 CC. “Response Deadline” means the date by which Class Members must submit to the
8 Settlement Administrator a Request for Exclusion, Objection, and/or workweek/pay period dispute,
9 which shall be the date that is forty-five (45) calendar days from the initial mailing of the Class Notice
10 by the Settlement Administrator (or fifteen (15) calendar days after the Settlement Administrator re-
11 mails the Class Notice to the Class Member, whichever is later). If the date of the Notice Deadline
12 falls on a Sunday or federal holiday, the Response Deadline will be extended to the next calendar day
13 on which the U.S. Postal Service is open.

14 DD. “Request for Exclusion” means any Class Member(s) who submits to the Settlement
15 Administrator a valid and timely written request to be excluded from the Class pursuant to III(D)(2)
16 below.

17 EE. “Settlement” means this Joint Stipulation of Class Action Settlement, including the
18 Class Notice attached as Exhibit A.

19 FF. “Settlement Administration Costs” means an amount of up to Seven Thousand Nine
20 Hundred and Fifty Dollars and Zero Cents (\$7,950.00), subject to Court approval, for all costs incurred
21 by the Settlement Administrator in administration of the Settlement, including, but not limited to,
22 mailing of notice to the class, calculation of Individual Settlement Payments, generation of Individual
23 Settlement Payment checks and related tax reporting forms, administration of unclaimed and/or
24 uncashed checks to the California State Controller’s Office’s Unclaimed Property Division, and
25 distribution of checks to Class Counsel for attorneys’ fees and costs, to Plaintiff for his Enhancement
26 Award, and to the LWDA. The Settlement Administration Costs shall be paid from the Gross
27 Settlement Amount. If the Settlement Administrative Costs exceed \$7,950.00 due to an increase in
28 class size, then Defendant will be responsible for paying the excess costs.

1 GG. "Settlement Administrator" means Phoenix Class Action Administration Solutions,
2 which the Parties have agreed will be responsible for the administration of the Individual Settlement
3 Payments to be made by Defendant from the Gross Settlement Amount and related matters under this
4 Settlement. The Parties each represent that they do not have any financial interest in the Settlement
5 Administrator or otherwise have a relationship with the Settlement Administrator that could create a
6 conflict of interest.

7 **II. CONTINGENT NATURE OF THE AGREEMENT**

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

1 proceeding relating to the certification of any class. If the Effective Date does not occur, this
2 Settlement shall be deemed null and void, shall be of no force or effect whatsoever, and shall not be
3 referred to or used for any purpose whatsoever. Defendant expressly reserves the right to challenge
4 the propriety of class certification in the Action for any purpose if the Effective Date does not occur.
5 Defendant also expressly reserves the right to challenge the propriety of class certification in any other
6 action on all available grounds as if no class had been certified for settlement purposes in this Action,
7 and no reference to the prior certification of a class, or any documents related thereto, shall be made
8 for any purpose.

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

15 **III. PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT**

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

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

19 Promptly after execution of this Settlement Agreement, Plaintiff shall move the Court for
20 preliminary approval of the Settlement and obtain entry of an order accomplishing the following:

- 21 a. Provisionally certifying the Action under California law as a class action for
22 purposes of this Settlement only;
- 23 b. Preliminarily approving the Settlement subject only to objections of
24 Participating Class Members to the Class Settlement, and final approval by the
25 Court;
- 26 c. Approving as to form and content the proposed Class Notice attached hereto as
27 **Exhibit A;**
- 28 d. Directing the mailing of the Class Notice by first-class mail to the Class

Members;

- e. Preliminarily appointing Plaintiff as Class Representative and Plaintiff's Counsel as Class Counsel (only for purposes of effectuating and implementing this Settlement Agreement);
- f. Preliminarily approving the application for Attorney Fees and Costs to Class Counsel;
- g. Preliminarily approving the Service Award to the Class Representative;
- h. Preliminarily approving the Settlement Administration Costs to the Settlement Administrator.
- i. Preliminarily approving the PAGA Payment; and
- j. Scheduling a hearing for Final Approval on the question whether the proposed Settlement should be finally approved as fair, reasonable, and adequate to Class Members

The date that the Court grants preliminary approval of this Agreement will be the "Preliminary Approval Date." Pursuant to California Labor Code § 2699(l)(1), Plaintiff shall submit to the LWDA a copy of this Agreement and all supporting approval documents required by the LWDA at the same time that Plaintiff submits them to the Court for approval.

B. The Settlement Administrator

The Parties have chosen Phoenix Class Action Administration Solutions to administer this Settlement and to act as the Settlement Administrator, including but not limited to distributing and responding to inquiries about the Class Notice, determining the validity of exclusions/opt-outs, calculating the Net Settlement Amount and the Individual Settlement Payments, issuing the Individual Settlement Payment checks and distributing them to Participating Class Members, administering and making payment of unclaimed and/or uncashed checks to the California State Controller's Office's Unclaimed Property Division, issuing the payment to Class Counsel for attorneys' fees and costs, the Enhancement Award check to Plaintiff, the LWDA Payment, and the employer payroll taxes to the appropriate taxing authorities. The Settlement Administrator shall expressly agree to all of the terms and conditions of this Settlement.

1 All costs of administering the Settlement, including but not limited to all costs and fees
2 associated with preparing, issuing and mailing any and all notices to Class Members and/or
3 Participating Class Members, all costs and fees associated with computing, processing, reviewing, and
4 mailing the Individual Settlement Payments, all costs and fees administering and making payment of
5 unclaimed and/or uncashed checks to the California State Controller's Office's Unclaimed Property
6 Division, all costs and fees associated with preparing any tax returns and any other filings required by
7 any governmental taxing authority or agency, all costs and fees associated with preparing any other
8 checks, notices, reports, or filings to be prepared in the course of administering disbursements from
9 the Net Settlement Amount, and any other costs and fees incurred and/or charged by the Settlement
10 Administrator in connection with the execution of its duties under this Settlement ("Settlement
11 Administration Costs"), shall be paid to the Settlement Administrator from the Gross Settlement
12 Amount.

13 **C. Notice to Class Members**

14 No later than ten (14) business days after the Preliminary Approval Date, Defendant will
15 provide the Settlement Administrator with a "Class List" based on its business records, identifying the
16 names of the Class Members, their last known home addresses in Defendant's possession, custody, or
17 control, Social Security numbers or, as applicable, other taxpayer identification number in Defendant's
18 possession, custody, or control, and their Qualifying Workweeks worked during the Class Period and
19 Qualifying Pay Periods worked during the PAGA Period, respectively. This information shall be
20 treated as confidential and shall not be disclosed to Plaintiff, Class Counsel or any other person without
21 prior approval from Defendant's Counsel.

22 Following Defendant's delivery of the Class List to the Settlement Administrator after
23 Preliminary Approval, the Settlement Administrator shall calculate: (a) the Net Settlement Amount,
24 (b) the Individual Settlement Payment for each Participating Class Member based on the formula
25 specified above, (c) the amount of the Individual Settlement Payments to be allocated to wages,
26 statutory damages/interest, penalties, and reimbursements, (d) the employer share of the payroll taxes
27 applicable to the Net Settlement Amount allocated to wages, and (e) the employee tax withholding
28 amount based on the allocation of each Individual Settlement Payment to wages.

1 Within ten (10) business days of receiving the Class List from Defendant, the Settlement
2 Administrator will send Class Members, by first-class mail, at their last known address, the Court
3 approved Class Notice, including notice of this settlement and of the opportunity to opt out of the
4 Settlement Class or object to the Settlement, in English and Spanish. The Class Notice will include a
5 calculation of the Class Member's estimated share of the Net Settlement Amount. Class Members
6 will have forty-five (45) days from the date of mailing in which to postmark Requests for Exclusion
7 or Objections. Prior to the initial mailing, the Settlement Administrator will check all Class Member
8 addresses against the National Change of Address database and shall update any addresses before
9 mailing. The Settlement Administrator will skip trace and re-mail all returned, undelivered mail
10 within five (5) days of receiving notice that a Class Notice was undeliverable. If a Class Member's
11 Class Notice is re-mailed, the Class Member shall have fifteen (15) days from the re-mailing, or forty-
12 five (45) days from the date of the initial mailing, whichever is later, in which to postmark a Request
13 for Exclusion or Objection. Class Members shall not be required to submit claim forms in order to
14 receive their Individual Settlement Payments.

15 If a Class Notice is returned with a forwarding address, the Settlement Administrator shall re-
16 mail the Class Notice to the forwarding address. With respect to those Class Members whose Class
17 Notice is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall
18 promptly attempt to obtain a valid mailing address by performing a skip trace or mass search on
19 LexisNexis databases based on set criteria and, if another address is identified, shall mail the Class
20 Notice to the newly identified address. It is the intent of the Parties that reasonable means be used to
21 locate Class Members and that the Settlement Administrator be given discretion to take steps in order
22 to facilitate notice of this Settlement and delivery of the Individual Settlement Payments to the
23 Settlement Class. If no address can be determined by the Settlement Administrator after these efforts,
24 no further efforts to determine an address shall be required.

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

28 In the event a Class Member's Class Notice remains undeliverable sixty (60) days after the

1 Class Notice was initially mailed, the Settlement Administrator will not mail the Class Member's
2 Individual Settlement Payment. The Settlement Administrator will hold the Class Member's
3 Individual Settlement Payment during the check cashing period on behalf of the Class Member. If at
4 the conclusion of the check cashing period the Class Member's Class Notice and Individual Settlement
5 Payment remain undeliverable and/or unclaimed and uncashed, the Settlement Administrator will
6 distribute the funds from unclaimed/uncashed checks in accordance with the procedures set forth in
7 Section III(D)(7)(f) below.

8 No later than twenty (20) business days prior to the Final Approval Hearing, the Settlement
9 Administrator shall provide Defense Counsel and Class Counsel with a declaration attesting to
10 completion of the notice process, including any attempts to obtain valid mailing addresses for and re-
11 sending of any returned Class Notices, as well as the number of valid Requests for Exclusion and
12 Objections that the Settlement Administrator received.

13 Compliance with the procedures described in this section shall constitute due and sufficient
14 notice to Class Members of this proposed Settlement and the Final Approval Hearing and shall satisfy
15 the requirements of due process. Nothing else shall be required of the Parties, Class Counsel, Defense
16 Counsel, or the Settlement Administrator to provide notice of the proposed Settlement and the Final
17 Approval Hearing. However, if any Class Member objects to the Settlement and the Final Approval
18 Hearing is continued as a result, the Settlement Administrator shall provide notice to the objecting
19 party of the continuance.

20 **D. Responses to Notice**

21 **1. Qualifying Workweek/Pay Period Disputes**

22 If any Class Member disagrees with Defendant's records as to his or her Qualifying
23 Workweeks during the Class Period or Qualifying Pay Periods during the PAGA Period, as reflected
24 in the Class Notice, the Class Member shall set forth in writing the Qualifying Workweeks or
25 Qualifying Pay Periods he or she claims to have worked during the Class Period and/or PAGA Period,
26 sign the writing, and mail such writing to the Settlement Administrator, along with any supporting
27 documentation, postmarked no later than the Response Deadline. All written disputes must contain
28 the Class Member's address, telephone number, and a reference to the Lawsuit. The Notice will also

1 provide a method for the Class Member to challenge the employment data on which his or her
2 Individual Settlement Payment is based. The Settlement Administrator shall contact the Parties
3 regarding the dispute and the Parties will work in good faith to resolve it. If the Parties are unable to
4 resolve the dispute, the Settlement Administrator will be the final arbiter of the Qualifying Workweeks
5 or Qualifying Pay Periods for each Class Member during the Class Period and/or PAGA Period,
6 respectively, based on the information provided to it. Any dispute not otherwise resolved by the
7 Settlement Administrator and the Parties shall be resolved by the Court.

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

9 The Plaintiff may not request exclusion from the Class. In order for any Class Member to
10 validly exclude himself or herself from the Class and this Settlement (*i.e.*, to validly opt out), a written
11 Request for Exclusion must be signed by the Class Member or his or her authorized representative,
12 and must be sent to the Settlement Administrator, postmarked no later than the Response Deadline (or
13 fifteen (15) days after the Settlement Administrator re-mails the Notice to the Class Member,
14 whichever is later). All written Requests for Exclusion must contain the Class Member's address,
15 telephone number, and a reference to the Lawsuit, and clearly state that the Class Member does not
16 wish to be included in the Class Settlement. The Notice Packet shall contain instructions on how to
17 validly exclude himself or herself from the Class and this Settlement (*i.e.*, opt out), including the
18 language to be used in a request for exclusion. The date of the initial mailing of the Notice Packet, and
19 the date the signed request for exclusion was postmarked, shall be conclusively determined according
20 to the records of the Settlement Administrator. The Settlement Administrator shall immediately
21 provide copies of all Requests for Exclusion to Class Counsel and Defense Counsel and shall report
22 the number of Requests for Exclusion that it receives, to the Court, in its declaration to be provided in
23 advance of the Final Approval Hearing. Any Class Member who timely and validly requests exclusion
24 from the Class and this Settlement will receive his/her share of PAGA Settlement Amount but will not
25 be entitled to the remaining portion of the Individual Settlement Payment which would have been paid
26 to him/her, will not be bound by the terms and conditions of this Agreement, and will not have any
27 right to object, appeal, or comment thereon. However, the Parties' Settlement includes the settlement
28 of claims for civil penalties under PAGA. Class Members may not request exclusion from the

1 settlement of the release of a PAGA claim in the Action. Thus, if the Court approves the Settlement,
2 even if a Class Member requests exclusion from the Settlement, the Class Member will still receive
3 an individual settlement share for the PAGA claims pursuant to the terms in Section III(D)(7)(e)
4 below, and will be deemed to have released the PAGA claims. A Class Member cannot submit both a
5 Request for Exclusion and an Objection. If a Class Member submits both an Objection and Request
6 for Exclusion, the Request for Exclusion will control and the Objection will be void.

7 Any Class Member who fails to timely submit a Request for Exclusion shall automatically be
8 deemed a Class Member whose rights and claims with respect to the issues raised in the Action are
9 determined by the Court's Final Approval Order, and by the other rulings in the Action.

10 **3. Objections to Settlement**

11 The Plaintiff may not object to the Settlement. For any Class Member to object to this
12 Agreement, or any term of it, the person making the objection must not submit a request for exclusion
13 (*i.e.*, must not opt out), and should send to the Settlement Administrator, postmarked no later than the
14 Response Deadline (or fifteen (15) days after the Settlement Administrator re-mails the Notice to the
15 Class Member, whichever is later), a written statement of the grounds of objection, signed by the
16 objecting Class Member or his or her attorney, along with all supporting papers. All written objections
17 must contain the Class Member's address, telephone number, and a reference to the Lawsuit. The date
18 of the initial mailing of the Notice Packet, and the date the signed objection was postmarked, shall be
19 conclusively determined according to the records of the Settlement Administrator. The Settlement
20 Administrator shall send any objections it receives to Defense Counsel and Class Counsel within three
21 (3) business days of receipt. Class Members may also appear at the final approval hearing to object.
22 The Court retains final authority with respect to the consideration and admissibility of any Class
23 Member objections. If a Class Member objects to the Settlement, the Settlement Class Member will
24 remain a member of the Settlement Class and if the Court approves this Agreement, the Class Member
25 will be bound by the terms of the Settlement in the same way and to the same extent as a Class Member
26 who does not object.

27 **4. Encouragement of Class Members**

28 The Parties to this Settlement and the counsel representing such Parties shall not, directly or

1 indirectly, through any person, encourage or solicit any Class Member to exclude himself or herself
2 from this Settlement (opt out), or to object to it. However, Class Counsel may respond to inquiries
3 from Class Members.

4 **5. Plaintiff's Right to Adjust Gross Settlement Amount**

5 When the Parties agreed to settle this matter, Defendant estimated the total number of
6 workweeks during the Class Period as 13,120. If the number of workweeks increases by more than
7 10% (which is more than 14,432 workweeks) as of the end of the Class Period, Defendant will pay
8 \$47.55 for each additional workweek over 14,432.

9 **6. Final Approval Hearing**

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

15 a. Waiver of Right to Appeal

16 Provided that the Final Approval Order is consistent with the terms and conditions of this
17 Settlement, all Class Members who do not submit timely written objections to the Settlement or orally
18 object at the Final Approval Hearing shall have waived any and all rights to appeal from the Final
19 Approval Order and Judgment, including all rights to any post-Final Approval Order proceeding and
20 appellate proceeding, such as a motion to vacate or set-aside the Final Approval Order and Judgment,
21 a motion for new trial, and any extraordinary writ, and the Final Approval Order and Judgment
22 therefore shall become final and non-appealable at the time it is entered. This waiver does not include
23 any waiver of the right to oppose any appeal, appellate proceedings, or post-Final Order proceedings.
24 A modification by the Court of the requested amount of the Enhancement or Class Counsel's fees or
25 costs shall not constitute a basis for appeal of the Final Approval Order within the meaning of this
26 paragraph.

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1 b. Vacation, Reversal, or Material Modification of Final Order and
2 Judgment on Appeal or Review

3 If, after a notice of appeal or a petition for a writ of *certiorari* or any other motion, petition, or
4 application, the reviewing court vacates, reverses, or modifies the Final Approval Order such that there
5 is a material modification to the Settlement and the Court's decision is not completely reversed, and
6 the Final Approval Order is not fully affirmed on review by a higher court, then Plaintiff and Defendant
7 shall each have the right, but not the obligation, to void the Settlement, which either Party must do by
8 giving written notice to the other Party, the final reviewing court, and the Court no later than thirty
9 (30) court days after the final reviewing court's decision vacating, reversing, or materially modifying
10 the Final Order becomes final and non-appealable. A vacation, reversal, or modification of the Court's
11 award of the Enhancement or Class Counsel's fees or costs shall not constitute a vacation, reversal, or
12 material modification of the Final Order and Judgment within the meaning of this paragraph.

13 **7. Settlement Payment Procedures**

14 a. Gross Settlement Amount

15 In exchange for the releases set forth in this Agreement, Defendant agrees to pay the Gross
16 Settlement Amount in the amount of Six Hundred and Twenty-Three Thousand Eight Hundred and
17 Eighty Dollars and Zero Cents (\$623,880.00), subject to a pro rata increase under the condition set
18 forth in Section III(D)(5). The Gross Settlement Amount includes all claims of the Settlement Class
19 and all Settlement Administration costs, Class Counsel's attorney's fees and costs, LWDA Payment,
20 and the Enhancement Award.

21 No later than ten (10) calendar days after the Court's final approval of the Settlement (i.e., the
22 date the final approval order is signed and served on Defense Counsel), Defendant will transfer the
23 Gross Settlement Amount into an account established by the Settlement Administrator either directly
24 or by sending the funds to the Settlement Administer to be deposited and distributed. All of
25 Defendant's obligations under this Settlement are deemed to be satisfied upon Defendant's timely
26 deposit of the entire Gross Settlement Amount and acknowledgement of receipt of said funds and
27 Defendant shall have no further obligations to the Class including, without limitation, any further
28 obligations to make any other payments of any kind to, or on behalf of, the Class (except for the

1 employer's share of payroll taxes).

2 The Settlement Administrator will use these funds to issue the Individual Settlement Payments
3 to Participating Class Members, Class Counsel's attorneys' fees and costs, LWDA Payment, the
4 Enhancement Award, and employer and employee tax withholdings applicable to the Net Settlement
5 Amount allocated to wages. Ten (10) calendar days after Defendant fully funds the Settlement, the
6 Settlement Administrator will distribute Participating Class Members' Individual Settlement
7 Payments, Court-approved attorney's fees and costs, settlement administration costs, Enhancement
8 Award, and LWDA Payment.

9 b. Payment of Attorneys' Fees and Costs

10 Class Counsel shall submit an application for an award of attorneys' fees of up to one-third of
11 the Gross Settlement Amount (which may increase pursuant to Section III(D)(5), i.e., pro rata increase
12 provision), which, based on the current Gross Settlement Amount, is Two Hundred and Seven
13 Thousand Nine Hundred and Sixty Dollars and Zero Cents (\$207,960.00). Class Counsel shall submit
14 an application for an award of costs not to exceed Twenty-Five Thousand Dollars and Zero Cents
15 (\$25,000.00). Such application for attorneys' fees and costs shall be heard by the Court at the Final
16 Approval Hearing. Defendant shall not object to or oppose any such application in these amounts.

17 Any fees and costs awarded by the Court shall be paid from the Gross Settlement Amount and
18 shall not constitute payment to any Class Member(s). The attorneys' fees and costs for Class Counsel
19 approved by the Court shall encompass all work performed, costs, and expenses related to the
20 investigation, prosecution, and settlement of the Action incurred through the Effective Date. To the
21 extent that the Court approves less than the amount of attorney's fees and/or costs requested by Class
22 Counsel, the difference between the requested and awarded amounts will be retained in the Net
23 Settlement Amount for distribution to Participating Class Members.

24 Any award of attorneys' fees and costs shall include and satisfy all past and future attorneys'
25 fees and costs incurred to prosecute, settle, and participate in administering the Settlement, including
26 obtaining the Final Approval Order. Defendant shall have no obligation to Class Counsel for any
27 attorneys' fees and costs incurred in prosecuting this Action other than as stated herein, provided that
28 Defendant fully complies with the terms of this Settlement, including but not limited to timely payment

1 of the Gross Settlement Amount.

2 c. Payment of Settlement Administration Costs

3 The Settlement Administration Costs shall be paid out of the Gross Settlement Amount and
4 shall not constitute payment to any Participating Class Member(s). The amount shall not exceed Seven
5 Thousand Nine Hundred and Fifty Dollars and Zero Cents (\$7,950.00).

6 d. Payment of Enhancement Award to Named Plaintiff

7 Subject to Court approval, Plaintiff will request an Enhancement Award of up to Fifteen
8 Thousand Dollars and Zero Cents (\$15,000.00), the request for which Defendant will not object to or
9 oppose. The Enhancement Award shall be paid out of the Gross Settlement Amount and shall not
10 constitute payment to any Participating Class Member(s). To the extent that the Court approves less
11 than the amount of Enhancement Award that Class Counsel requests, the difference between the
12 requested and awarded amounts will be retained in the Net Settlement Amount for distribution to
13 Participating Class Members.

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

19 Although it is the contemplation of the Parties that the Enhancement Award does not represent
20 wages, the Internal Revenue Service, the California Franchise Tax Board, or some other taxing
21 authority may take the position that some or all of the Enhancement Award constitutes wages for
22 income tax and withholding purposes. Plaintiff agrees to assume the responsibility of remitting to the
23 Internal Revenue Service, the California Franchise Tax Board, and any other relevant taxing authority
24 the amounts required by law, if any, to be withheld by Defendant from the Enhancement Award paid
25 under this Settlement. In addition, Plaintiff shall hold Defendant, Released Parties and Class Counsel
26 harmless and indemnify Defendant, Released Parties and Class Counsel for all taxes, interest,
27 penalties, other payments and costs, incurred by Defendant by reason of any valid claims by taxing
28 authorities relating to the non-withholding of taxes from the Enhancement Award.

e. Payment to the Labor and Workforce Development Agency and the
Class for Settlement of PAGA Claims

In consideration of claims made under the California Private Attorneys General Act (“PAGA”), Cal. Labor Code §§ 2698 et seq. and the release obtained therefor by virtue of this Settlement, Class Counsel will request that the Court approve allocation of Twenty Thousand Dollars and Zero Cents (\$20,000.00) of the Gross Settlement Amount to these claims (“PAGA Penalties”). Seventy-five percent (75%) of the PAGA Penalties will be paid to the California Labor and Workforce Development Agency (“LWDA Payment”) and twenty-five percent (25%) will be paid, on a pro rata basis, to all Aggrieved Employees based on the individual Qualifying Pay Periods worked during the PAGA Period by each Aggrieved Employee, regardless of whether or not they opt out of this Settlement (“Individual PAGA Payment”). Defendant will not oppose this request for PAGA Penalties. The LWDA Payment and Individual PAGA Payments will be paid out of the Gross Settlement Amount. The Court’s adjustment, if any, of the amount allocated to Plaintiff’s PAGA claim will not invalidate this Settlement and the difference between the requested and awarded amounts will be retained in the Net Settlement Amount for distribution to Participating Class Members.

f. Calculating Individual Settlement Payments and Individual PAGA
Payments

The Parties agree that the Net Settlement Amount shall be used to fund Individual Settlement Payments. After final approval by the Court, the Net Settlement Amount will be distributed to Participating Class Members and Aggrieved Employees as follows:

Individual PAGA Payments. The Settlement Administrator will calculate the total number of Qualifying Pay Periods for all Aggrieved Employees worked during the PAGA Period. The Individual PAGA Payment that each Aggrieved Employee will be eligible to receive will be calculated by dividing each Aggrieved Employee’s individual number of Qualifying Pay Periods worked during the PAGA Period by the total number of Qualifying Pay Periods of all Aggrieved Employees worked during the PAGA Period, and multiplying the resulting fraction by the 25% portion of the PAGA Penalties (\$5,000.00) payable to Aggrieved Employees. The Settlement Administrator will determine

1 the total number of Qualifying Pay Periods worked during the PAGA Period for each Aggrieved
2 Employee.

3 *Individual Settlement Payments.* The Settlement Administrator will calculate the total number
4 of Qualifying Workweeks for all Participating Class Members worked during the Class Period. The
5 Individual Settlement Payment that each Participating Class Member will be eligible to receive will
6 be calculated by dividing each Participating Class Member's individual number of Qualifying
7 Workweeks by the total number of Qualifying Workweeks of all Participating Class Members worked
8 during the Class Period, and multiplying the resulting fraction by the Net Settlement Amount. The
9 Settlement Administrator will determine the total number of qualifying Workweeks worked during
10 the Class Period for each Participating Class Member.

11 g. Distribution of Individual PAGA Payments and Individual Settlement Payments

12 No later than ten (10) business days after receiving the entire Gross Settlement Amount from
13 Defendant, the Settlement Administrator shall prepare and mail the checks for the Individual
14 Settlement Payments to Participating Class Members. Participating Class Members who are entitled
15 to receive both an Individual Settlement Payment and Individual PAGA Share will be paid by way of
16 a single check. Defendant shall not bear any liability for lost or stolen checks, forged signatures on
17 checks, or unauthorized negotiation of checks. Individual Settlement Payments paid from the Net
18 Settlement Amount allocated to wages will be reduced by applicable employer and employee tax
19 withholdings, and the Settlement Administrator will issue a Form W-2 for the wage portion of the
20 Individual Settlement Payments. The Settlement Administrator will issue a Form 1099 to the extent
21 required by law for the non-wage statutory damages and interest portions of the Individual Settlement
22 Payments. Participating Class Members shall have 180 days from the date their Individual Settlement
23 Payment checks are issued to cash their settlement checks. Any amounts from checks that remain
24 unclaimed and/or uncashed after 180 days of issuance will be disbursed to the California State
25 Controller's Office's Unclaimed Property Division.

26 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
27 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or
28 a mass search on LexisNexis databases based on set criteria and, if another address is identified, shall

1 mail the check to the newly identified address. If the Settlement Administrator is unable to obtain a
2 valid mailing address through this process, the Settlement Administrator will also transfer the amount
3 represented by the check to the California State Controller's Office's Unclaimed Property Division.

4 h. Allocation and Tax Treatment of Individual PAGA Payments and Individual
5 Settlement Payments

6 Each Individual Settlement Payment will represent wages and penalties allocated using the
7 following formula: 20% allocated to wages and 80% allocated to non-wage statutory damages,
8 reimbursements, penalties, and interest. Each Individual PAGA Payment will be allocated as follows:
9 100% as civil penalties (to be reported on IRS Form 1099, if required). The amounts paid as wages
10 shall be subject to all tax withholdings customarily made from an employee's wages and all other
11 authorized and required withholdings and shall be reported by W-2 forms. The employer-side taxes
12 (including employer's portion of FICA, FUTA, SUTA, and all other applicable payroll taxes) will be
13 paid by Defendant separate from and in addition to the Gross Settlement Amount. The amounts paid
14 as non-wage statutory damages, interest, and/or civil penalties shall be subject to all authorized and
15 required withholdings other than the tax withholdings customarily made from employees' wages and
16 shall be reported by IRS 1099 forms. Defendant shall not make as part of this Settlement, nor be
17 required to make, any deductions, nor pay any monthly contributions for any insurance, retirement,
18 401(k) or profit-sharing plans, or any benefit plans related to monies paid as a result of this Settlement.

19 i. No Credit Toward Benefit Plans

20 The Individual Settlement Payments made to Participating Class Members under this
21 Agreement, as well as any other payments made pursuant to this Agreement, shall have no effect on,
22 nor will they be utilized to calculate, any additional benefits under any benefit plans to which any
23 Class Members may be eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k)
24 plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan.
25 Rather, it is the Parties' intention that this Settlement will not affect any rights, contributions, or
26 amounts to which any Class Members may be entitled under any benefit plans.

27 j. No Effect on Regular Rate or Overtime Compensation

28 Participating Class Members will receive payment under the Settlement as determined by the

1 Settlement Administrator in accordance with this Agreement. The Parties agree that this payment is
2 not viewed as additional compensation for purposes of calculating a “regular rate” of pay under
3 California or federal law for the period during which it is received, and no additional overtime
4 compensation is required as a result of such payment.

5 k. Tax Liability

6 The Parties and counsel for the Parties make no representation as to the tax treatment or legal
7 effect of the payments called for hereunder. Plaintiff and Participating Class Members are not relying
8 on any statement, representation, or calculation by the Parties, counsel for the Parties, or the Settlement
9 Administrator in this regard. Plaintiff, Participating Class Members, and Plaintiff’s Counsel
10 understand and agree that they will be solely responsible for the payment of their own portion of any
11 taxes and penalties assessed on the payments that they receive under the Settlement, and for correctly
12 characterizing any compensation received under the Settlement on his/her personal income tax returns
13 and paying any and all taxes due for any and all amounts paid to them under the Settlement.

14 l. No Additional Contribution by Defendant

15 Other than as set forth above, Defendant shall not be called upon or required to contribute
16 additional monies above the Settlement under any circumstances whatsoever except as specifically set
17 forth herein. In the event that this Settlement is canceled, rescinded, terminated, voided, or nullified,
18 however that may occur, or the Settlement of the Action is barred by operation of law, or invalidated,
19 or ordered not to be carried out by a court of competent jurisdiction, Defendant shall cease to have any
20 obligation to pay any portion of the Settlement to anyone under the terms of this Settlement, except
21 for its share of the costs already incurred by the Settlement Administrator, and this action shall resume
22 as though no Settlement had occurred with the Action proceeding in the San Diego County Superior
23 Court.

24 **IV. LIMITATIONS ON USE OF THIS SETTLEMENT**

25 **A. No Admission**

26 Defendant denies that it has engaged in any unlawful activity, that it has failed to comply with
27 the law in any respect, that it has any liability to anyone under the claims asserted in the Action, and
28 that, but for this Settlement, a class should not and could not be certified in this Action. This

1 Settlement is entered into solely for the purpose of compromising highly disputed claims. Nothing in
2 this Settlement is intended or will be construed as an admission of liability or wrongdoing by
3 Defendant.

4 **B. Non-Evidentiary Use**

5 Whether or not the Effective Date occurs, neither this Settlement nor any of its terms will be:
6 (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any
7 purpose adverse to Defendant or any other of the Released Parties, including but not limited to,
8 evidence of a presumption, concession, indication, or admission by any of the Released Parties of any
9 liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to, or offered
10 in evidence against any of the Released Parties in any further proceeding in the Action, except for the
11 purposes of effectuating the Settlement pursuant to the terms herein or for Defendant to establish that
12 a Class Member has resolved any of his/her claims released through this Settlement.

13 **C. Defendant's Right to Terminate Settlement**

14 Defendant shall have the right at their sole discretion to terminate the Settlement if Class
15 Members holding 10% or more of the Class, timely elect to opt out of the Settlement. If Defendant
16 elects to exercise their right under this paragraph, Defendant shall be liable solely for administrative
17 costs of the third-party claims administrator selected by the parties. The Parties agree that they will
18 not in any manner take any actions to encourage Class Members to opt-out.

19 **D. Nullification**

20 The Parties have agreed to the certification of the Class encompassing all claims alleged in the
21 Action for the sole purpose of effectuating this Settlement. If (a) the Court should for any reason fail
22 to certify this Class for settlement, or (b) the Court should for any reason fail to approve this
23 Settlement, or (c) the Court should for any reason fail to enter the Final Approval Order, or (d) the
24 Final Approval Order is reversed, or declared or rendered void, or (e) the Court should for any reason
25 fail to dispose of the action in its entirety, then (1) this Settlement shall be considered null and void;
26 (2) neither this Settlement nor any of the related negotiations or proceedings shall be of any force or
27 effect; (3) all Parties to this Settlement shall stand in the same position, without prejudice, as if the
28 Settlement had been neither entered into nor filed with the Court; and (4) the fact that the Parties were

1 willing to stipulate to class certification of all causes of action pled in the Action as part of the
2 Settlement will have no bearing on, and will not be admissible in connection with, the issue of whether
3 the Class should be certified by the Court in a non-settlement context in this Action or any other action,
4 and in any of those events, Defendant expressly reserves the right to oppose certification of the Class.

5 Invalidation of any material portion of this Settlement shall invalidate this Settlement in its
6 entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall
7 remain in full force and effect. In the event that the Settlement does not become final for any reason,
8 the Parties will be jointly responsible for payment for the Settlement Administrative Costs.

9 **V. RELEASES**

10 **A. Releases by Participating Class Members**

11 Upon the Effective Date and full payment of the Gross Settlement Amount by Defendant,
12 Plaintiff and all Participating Class Members will forever release Defendant, together with its past,
13 present, and/or future parents, subsidiaries, affiliated or related entities, fictitious business names,
14 franchisors, owners, boards, officers, directors, trustees, shareholders, members, managers, partners,
15 managing agents, employees, agents, payroll processors, independent contractors, insurers, attorneys,
16 representatives, heirs, executors, administrators, successors, predecessors, and assigns and each of
17 their owners, officers, directors, managing agents, trustees, payroll processors, independent
18 contractors, members, managers, employees, attorneys, insurers, assigns, shareholders, successors,
19 predecessors, and agents (collectively, the “Released Parties”) from any and all claims, debts,
20 liabilities, demands, actions, or causes of action of every nature and description that accrued during
21 the Class Period, under state law and the Wage Orders of the California Industrial Welfare
22 Commission, that were alleged or which could have been alleged based on the factual allegations in
23 the First Amended Complaint in the Action, including, but not limited to, claims for unpaid wages
24 (including, *inter alia*, off-the-clock work, rate of pay, and rounding allegations), failure to pay
25 minimum wages, straight time wages, overtime wages, and double time wages, failure to provide
26 compliant meal and rest breaks or periods or provide premium compensation in lieu thereof, failure to
27 comply with itemized employee wage statement provisions, failure to pay wages due at separation and
28 associated waiting time penalties, failure to timely pay wages during employment, failure to maintain

1 compliant time and payroll records, failure to reimburse for business expenses, and for unfair or
2 unlawful business practices pursuant to California Business and Professions Code § 17200, *et seq.*
3 based on the aforementioned, declaratory relief, statutory and civil penalties, and attorney fees and
4 costs. The Released Claims specifically include, but are not limited to, all claims arising under
5 California Labor Code Sections 201-204, 206, 218.6, 226, 226.7, 510, 512, 1182.12, 1194, 1194.2,
6 1197, 1198, 2800, 2802, and/or those arising under the Industrial Welfare Commission Wage Orders;
7 and/or those arising under the Industrial Welfare Commission Wage Orders; California Business and
8 Professions Code section 17200 *et seq.*; California Code of Regulations, title 8, Section 11160; the
9 California Civil Code sections 3287, 3289, and 3294; and California Code of Civil Procedure section
10 1021.5 (“Released Claims”).

11 The above release language shall also be included in the Class Notice.

12 Plaintiff and Participating Class Members will release these Released Claims from April 24,
13 2019 through February 26, 2024.

14 Class Members who do not affirmatively opt out of the Class Settlement by submitting a timely
15 and valid Request for Exclusion will be bound by all of the Settlement Agreement’s terms, including
16 those pertaining to the Released Claims and any claims under the Fair Labor Standards Act (“FLSA”) *(29 U.S.C. §§ 201, et seq.)* arising during the Class Period and based on the factual allegations alleged
17 or which could have been alleged in the Action, including the claims noted above.

18
19 **B. Releases by Aggrieved Employees and the State of California**

20 Any Aggrieved Employee who is also a Non-Participating Class Member will still receive their
21 Individual PAGA Payment. Upon the Effective Date and full payment of the Gross Settlement
22 Amount by Defendant, the State of California and Aggrieved Employees will release the Released
23 Parties from the PAGA Released Claims. Defendant, including its present and former parents,
24 subsidiaries, affiliated and related entities, present and former owners, boards, officers, directors,
25 trustees, shareholders, members, partners, employees, agents, insurers, attorneys, representatives,
26 heirs, executors, administrators, successors and assigns (collectively, the “PAGA Released Parties”) *(29 U.S.C. §§ 201, et seq.)*
27 from any and all claims, debts, liabilities, demands, actions, or causes of action of every nature and
28 description that accrued during the PAGA Period, under state law and the California Labor Code, that

1 were alleged or which could have been alleged based on the exhausted claims and factual allegations
2 in Plaintiff's notices sent to the LWDA and alleged in the operative complaint, regardless of whether
3 the Aggrieved Employees opt-out of the Settlement Agreement, including claims for civil penalties
4 based on unpaid wages, including but not limited to failure to pay minimum wages, straight time
5 compensation, overtime compensation, double time compensation and interest; failure to timely pay
6 regular and final wages; failure to reimburse business expenses; missed meal period and rest period
7 wages and premiums; meal period waivers and on-duty meal period waivers; payment for all hours
8 worked; wage statements and paystubs, including wage statements and paystubs furnished or available
9 in physical, electronic, or other forms; failure to keep accurate records; penalties, including
10 recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time
11 penalties; statutory penalties and civil penalties; and attorneys' fees and costs. Without limiting the
12 foregoing, the PAGA Released Claims include claims for civil penalties arising under California Labor
13 Code Sections 201, 202, 203, 204, 206, 210, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174,
14 1174.5, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, 2800, and 2802, and/or those arising under the
15 Industrial Welfare Commission Wage Orders; PAGA; and/or those arising under the Industrial
16 Welfare Commission Wage Orders; California Code of Regulations, title 8, Section 11160; and
17 California Code of Civil Procedure section 1021.5 ("PAGA Released Claims").

18 The above release language shall also be included in the Class Notice. Plaintiff, the State of
19 California, and Aggrieved Employees will release these PAGA Released Claims from April 24, 2022
20 through February 26, 2024.

21 **C. Plaintiff's General Release**

22 In addition to the Released Claims, Plaintiff does hereby, for himself, and for his heirs,
23 successors, predecessors, attorneys, agents, representatives and assigns, forever release the Released
24 Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements,
25 controversies, damages, actions, causes of action, injuries, suits, rights, demands, costs, losses, debts,
26 judgments, accounts, attorneys' fees, interest, expenses (including back wages, penalties, liquidated
27 damages, and attorneys' fees and costs actually incurred), and other legal responsibilities arising in
28 law, equity or otherwise, of any kind, nature, and character whatsoever, from the beginning of time

1 through the date of his signature on this Settlement, whether known or unknown, suspected or
2 unsuspected, unforeseen, or unanticipated including but not limited to all claims arising out of, based
3 upon, or relating to his employment with Defendant, the termination or resignation of his employment
4 with Defendant, or the remuneration for such employment, including, but not limited to all claims that
5 were brought, or which could have been brought, in the Action under California Labor Code sections
6 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2698 *et*
7 *seq.*, 2800 and 2802, the applicable Wage Orders of the California Industrial Welfare Commission,
8 including IWC Wage Orders 5-2001. Without limiting the generality of the foregoing, Plaintiff
9 expressly releases all claims which were or could have been raised in the Action and all claims or
10 rights arising out of alleged violations of any contracts, express or implied (including but not limited
11 to any contract of employment); any contract or covenant of good faith or fair dealing (express or
12 implied); any tort, including negligence, fraud, misrepresentation under California Labor Code § 970,
13 negligent infliction of emotional distress, intentional infliction of emotional distress, and defamation;
14 any other common law claim; any “retaliation” claims; any claims relating to any breach of public
15 policy; any claim for costs, fees, interest, or other expenses including attorneys’ fees; any legal
16 restrictions on Defendant’s right to discharge employees or refuse to hire applicants; and any federal,
17 state, or other governmental statute, regulation, or ordinance, including, without limitation: (1) Title
18 VII of the Civil Rights Act of 1964, as amended (race, color, religion, sex, and national origin
19 discrimination or harassment, including retaliation for reporting discrimination or harassment); (2)
20 The Civil Rights Act of 1991, as amended; (3) Sections 1981 through 1988 of Title 42 of the United
21 States Code, as amended; (4) The Age Discrimination in Employment Act of 1967, as amended; (5)
22 The Employee Retirement Income Security Act of 1974, as amended; (6) The Immigration Reform
23 and Control Act, as amended; (7) The Americans with Disability Act, as amended; (8) Sections 503
24 and 504 of the Rehabilitation Act of 1973 (disability discrimination); (9) The Workers Adjustment
25 and Retraining Notification Act, as amended; (10) The Occupational Safety and Health Act, as
26 amended; (11) California Equal Pay Law, as amended; (12) Equal Pay Act, 29 U.S.C. § 209(4)(1)
27 (equal pay); (13) Americans with Disabilities Act, 42 U.S.C. § 12100 *et seq.* (disability
28 discrimination); (14) Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.* (family/medical leave);

1 (15) California Fair Employment and Housing Act [*Gov. Code*, §§ 12900, *et seq.*] (discrimination or
2 harassment in employment and/or housing, including discrimination or harassment based on race,
3 religious creed, color, national origin, ancestry, physical or mental disability, marital status, sex
4 (including pregnancy), sexual orientation, genetic, or age, including retaliation for reporting
5 discrimination or harassment); (16) California Family Rights Act, [*Gov. Code*, §§ 12945.1, *et seq.*].
6 (family/medical leave); (17) California Labor Code or any Industrial Welfare Commission Wage
7 Order; (18) FLSA; (19) Executive Order 11246 (race, color, religion, sex, and national origin
8 discrimination or harassment); (20) Executive Order 11141 (age discrimination); (21) California
9 health and safety laws and regulations; and (22) any other federal, state, or local law, regulation or
10 ordinance, including those regulating compensation, and those prohibiting discrimination, harassment,
11 or retaliation of any kind.

12 **D. Plaintiff's General Release of Unknown Claims**

13 Plaintiff, in his individual capacity, also expressly waives, as to the Released Claims any and
14 all provisions, rights and benefits conferred by any law or principle of common law or equity, that is
15 similar, comparable, or equivalent, in whole or in part, to California Civil Code § 1542. For the
16 purpose of implementing a full and complete release, Plaintiff expressly acknowledges that the release
17 given in this Settlement is intended to include in its effect, without limitation, claims that each did not
18 know or suspect to exist in his favor at the time of the effective date of this Settlement, regardless of
19 whether the knowledge of such claims, or the facts upon which they might be based, would materially
20 have affected the settlement of this matter, and that the consideration given under the Settlement was
21 also for the release of those claims and contemplates the extinguishment of any such unknown claims.
22 Plaintiff expressly waives the provisions of section 1542 of the Civil Code of California, which
23 provides:

24 **A general release does not extend to claims that the creditor or**
25 **releasing party does not know or suspect to exist in his or her favor**
26 **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.

27 Thus, subject to and in accordance with this Agreement, even if Plaintiff may hereafter discover facts
28 in addition to or different from those he now knows or believes to be true, Plaintiff, upon the Effective

1 Date, shall be deemed to have fully, finally, and forever settled and released any and all claims against
2 the Released Parties that were alleged or could have been alleged in the Action, as well as any other
3 claims, whether known or unknown, suspected or unsuspected, contingent or non-contingent, that now
4 exist, upon any theory of law or equity, including without limitation, conduct which is negligent,
5 intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the
6 subsequent discovery or existence of such different or additional facts.

7 **E. No Additional Attorneys' Fees or Costs**

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

10 **VI. MISCELLANEOUS PROVISIONS**

11 **A. Amendments or Modification**

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

15 **B. Assignment**

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

21 **C. Governing Law**

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

25 **D. Entire Agreement**

26 This Settlement, including Exhibit A referred to herein, which form an integral part hereof,
27 contains the entire understanding of the Parties hereto with respect of the subject matter contained
28 herein. In case of any conflict between text contained in Articles I through VI of this Settlement and

1 text contained in Exhibit A to this Settlement, the former (*i.e.*, Articles I through VI) shall be
2 controlling, unless Exhibit A is changed by or in response to a Court order. There are no restrictions,
3 promises, representations, warranties, covenants, or undertakings governing the subject matter of this
4 Settlement other than those expressly set forth or referred to herein. This Settlement supersedes all
5 prior agreements, except for the Individual Confidential Settlement Agreement between Plaintiff and
6 Defendant, and all understandings among the Parties hereto with respect to the settlement of the
7 Action, including correspondence between Class Counsel and Defense Counsel and drafts of prior
8 agreements or proposals.

9 **E. Waiver of Compliance**

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

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

17 This Settlement, and any amendments hereto, may be executed in any number of counterparts
18 and any Party and/or their respective counsel hereto may execute any such counterpart, each of which
19 when executed and delivered shall be deemed to be an original and all of which counterparts taken
20 together shall constitute one instrument. A fax, electronic, or PDF signature on this Settlement shall
21 be as valid as an original signature, provided sufficient verification is provided to authenticate the
22 signature.

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

24 Should any dispute arise among the Parties or their respective counsel regarding the
25 implementation or interpretation of this Settlement, a representative of Class Counsel and a
26 representative of Defense Counsel shall meet and confer in an attempt to resolve such disputes prior
27 to submitting such disputes to the Court.

28 ///

1 **H. Agreement Binding on Successors**

2 This Agreement will be binding upon, and inure to the benefit of, the successors in interest of
3 each of the Parties.

4 **I. Cooperation in Drafting**

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

8 **J. Fair Settlement**

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

13 **K. Headings**

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

17 **L. Notice**

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

20 *To Plaintiff and the Class:*

21 Daniel J. Hyun
22 daniel@torusllp.com
23 David Alami
24 david@torusllp.com
25 TORUS LLP
26 2 Park Plaza, Ste. 1260
27 Irvine, California 92614

28 Jarod A. Parker
 jparker@theparkerlaw.com
 PARKER LAW APC
 4121 Westerly Place, Suite 102
 Newport Beach, California 92660

1 and

2 *To Defendant:*

3 Nicole Sheth
4 nsheth@kbrlaw.com
5 Christina Ricci
6 cricci@kbrlaw.com
7 KAUFMAN BORGEEEST & RYAN LLP
8 21700 Oxnard Street
9 Woodland Hills, CA 91367

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

11 To the extent consistent with class action procedure, this Settlement shall be enforceable by
12 the Court pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court
13 3.769(h). The disposition entered by the Court will not adjudicate the merits of the Action or the
14 liability of the Parties resulting from the allegations of the Action. Its sole purpose is to adopt the
15 terms of the Settlement and to retain jurisdiction over its enforcement. To that end, the Court shall
16 retain continuing jurisdiction over this Action and over all Parties and Class Members, to the fullest
17 extent to enforce and effectuate the terms and intent of this Settlement.

18 **N. Mutual Full Cooperation**

19 The Parties agree fully to cooperate with each other to accomplish the terms of this Settlement,
20 including but not limited to execution of such documents, and to take such other action as may
21 reasonably be necessary to implement the terms of this Agreement. The Parties to this Settlement
22 shall use their best efforts, including all efforts contemplated by this Settlement, to effectuate this
23 Settlement and the terms set forth herein. In the event the Parties are unable to reach agreement on
24 the form or content of any document needed to implement the Settlement, or on any supplemental
25 provisions that may become necessary to effectuate the terms of the Settlement, the Parties agree to
26 seek the assistance of the Court.

27 **O. Authorization to Act**

28 Class Counsel warrants and represents that they are authorized by Plaintiff, and Defense
Counsel warrants that they are authorized by Defendant, to take all appropriate action required to
effectuate the terms of this Settlement, except for signing the documents, including but not limited to

1 this Settlement, that are required to be signed by the Parties.

2 **P. No Reliance on Representations**

3 The Parties have made such investigation of the facts and the law pertaining to the matters
4 described herein and to this Settlement as they deem necessary, and have not relied, and do not rely,
5 on any statement, promise, or representation of fact or law, made by any of the other parties, or any of
6 their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted
7 rights, or with regard to the advisability of making and executing this Settlement, or with respect to
8 any other matters. No representations, warranties, or inducements have been made to any party
9 concerning this Settlement.

10 **Q. Invalidity of Any Provision**

11 Before declaring any provision of this Agreement invalid, the Court will first attempt to construe the
12 provision as valid to the fullest extent possible consistent with applicable precedents so as to define all
13 provisions of this Agreement valid and enforceable. If any provision of this Agreement or the application
14 thereof is held invalid, the invalidity shall not affect other provisions or applications of this Agreement which
15 can be given effect without the invalid provisions or application and, to this end, the provisions of this
16 Agreement are declared to be severable. Notwithstanding the foregoing, no portion of any release contained
17 herein may be deemed severed or deleted from this Agreement, except upon waiver in writing by the applicable
18 party.

19 **R. Confidentiality**

20 The Parties hereby expressly agree that any settlement that occurs between the Parties, including this
21 Settlement Agreement, shall remain confidential until a motion for preliminary approval is filed with the Court.

22 **S. Publicity**

23 The Parties and their counsel agree that they will not publicize the Settlement, or issue any
24 press releases, initiate any contact with the media, respond to any media inquiry, or have any
25 communication with the press about the fact, amount or terms of the Settlement. In addition, the Parties
26 and their counsel agree that they will not engage in any advertising or distribute any marketing
27 materials relating to the Settlement of this case, including but not limited to any postings on any
28 websites, social media, and/or any professional organization, unless ordered by the Court in any

1 manner from which Defendant's identity can reasonably be ascertained. Notwithstanding, the Parties
2 shall undertake any and all disclosures which are required by law including providing notice of the
3 PAGA settlement to the LWDA pursuant to statute. Moreover, nothing in this Paragraph shall prohibit
4 or inhibit Class Counsel from communicating with Class Members regarding the Settlement.

5 EXECUTION BY PARTIES

6 The Parties hereby execute this Settlement.

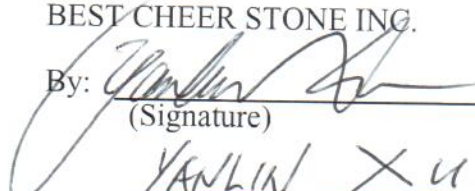
7 Dated: 04/30/2024

VICTOR ROJAS

8 By: 
9 (Signature)

10 Dated: 05/08/2024

11 BEST CHEER STONE INC.

12 By: 
13 (Signature)

14 YANLIN XU
(Printed Name)

15 President
(Title)

16 Approved as to form only:

17 Dated: April 29, 2024

18 TORUS LLP & PARKER LAW APC

19 By: 
20 Daniel J. Hyun
21 David Alami
22 Jarod Parker
23 Attorneys for Plaintiff Victor Rojas

24 Dated: May 1, 2024

25 KAUFMAN BORGEEST & RYAN LLP

26 By: 
27 Nicole Sheth
28 Christina Ricci
Attorneys for Defendant Best Cheer Stone Inc.

EXHIBIT A

THIS IS AN IMPORTANT COURT APPROVED NOTICE. READ CAREFULLY.

Rojas v. Best Cheer Stone Inc.
San Diego County Superior Court
Case No. 37-2023-00016975-CU-OE-CTL

If you worked as a non-exempt hourly employee for Best Cheer Stone Inc. (“Defendant”) in California at any time from April 24, 2019 through February 26, 2024, you are eligible to receive compensation from a class action settlement.

- You have been identified as a Class Member (defined below) in a Lawsuit (defined below) brought by a former employee of Defendant. Defendant denies all allegations in the Lawsuit and contends it fully complies with California law. However, to avoid the continuing expense of litigation, the Parties have reached a settlement of highly disputed claims (the “Settlement”). The Court has preliminarily approved the Settlement, finding it to be fair, reasonable, adequate, and in the best interests of the Class Members.
- The Class Settlement will affect all of Defendant’s non-exempt hourly California employees who were employed from April 24, 2019 through February 26, 2024 (the “Class Period”). The PAGA Settlement will affect all of Defendant’s non-exempt hourly California employees from April 24, 2022 through February 26, 2024 (the “PAGA Period”).
- If the Court grants final approval of the Settlement, you will receive a settlement payment.

*A court authorized this notice. This is not an advertisement.
You are not being sued. Your rights will be affected by this notice and settlement.*

YOUR LEGAL RIGHTS AND OPTIONS	
PARTICIPATE IN THE SETTLEMENT – <u>NO ACTION REQUIRED</u>	Stay in this Lawsuit. Receive a payment. Give up certain rights. By doing nothing, you become part of the Settlement Class (defined below), will receive a settlement payment, and will give up certain rights to sue Defendant separately about the legal claims raised in this Lawsuit.
OBJECT TO THE SETTLEMENT – <u>ACTION REQUIRED</u>	Stay in this Lawsuit. May give up certain rights. You may write to the Settlement Administrator, Phoenix, about why you object to the settlement, and they will forward your concerns to the Court. If you object to the Settlement, you will remain a member of the Class (defined below), and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. You or your attorney may also address the Court and object during the Final Approval Hearing scheduled for [DATE AND TIME] in Department C-69 of the Superior Court of the State of California, County of San Diego, located at 330 West Broadway, San Diego, California 92101.

<u>ASK TO BE EXCLUDED – ACTION REQUIRED</u>	Opt out of the Settlement. Receive no payment from the settlement for the Class claims, but receive an individual settlement share for civil penalties under the California Private Attorneys General Act of 2004 (“PAGA”). Keep rights to individually pursue only the Class claims. If you opt out of the Settlement, you won’t receive any share of the Class payment, but you retain the right to sue Defendant separately about the Class claims in this Lawsuit. However, even if you opt out, and if you worked from April 24, 2022 through February 26, 2024 as a non-exempt, hourly-paid employee of Defendant, you will still receive an individual settlement share for claims for civil penalties pursuant to PAGA and will be deemed to have released the PAGA claims.

- To object to the Settlement or to ask to be excluded, you must act before [DATE], 2025.
- **Any questions?** Read on or contact Class Counsel (defined below) or the Settlement Administrator (defined below).

WHAT THIS NOTICE CONTAINS

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1. Why did I get this notice?
2. What is the Lawsuit about?
3. What is a class action and who is involved?
4. Why is this Lawsuit a class action?
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9. What rights am I releasing if I participate in the Settlement?
10. How do I object to the Settlement?
11. Why would I ask to be excluded?
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THE LAWYERS REPRESENTING YOUPAGE 10

- 13. Do I have a lawyer in this case?
- 14. How will the lawyers be paid?

THE SETTLEMENT, APPROVAL, AND PAYMENT PROCESSPAGE 10-11

- 15. Who is handling the settlement administration process?
- 16. When is the Final Approval Hearing and do I have to attend?
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GETTING MORE INFORMATION.....PAGE 11-12

- 18. Are more details available?

BASIC INFORMATION

1. Why did I get this notice?

Records show that you are a potential member of the Class because you worked for Defendant in California as a non-exempt employee during the Class Period. The Court granted preliminary approval of the Settlement of a class action lawsuit that may affect your legal rights and ordered that this Notice be sent to you to explain your rights in connection with the Settlement. The Court determined only that there is sufficient evidence to suggest that the proposed Settlement might be fair, adequate, and reasonable; however, the Court has not made any ruling on the merits of Plaintiff's claims or Defendant's defenses.

The lawsuit is known as *Rojas v. Best Cheer Stone Inc.*, San Diego County Superior Court Case No. 37-2023-00016975-CU-OE-CTL (the "Lawsuit"). You can view the Lawsuit's records online by visiting the Court's website (<https://roa.sdcourt.ca.gov/roa/>), accepting the terms, completing the security question, entering the Case Number in the search box for the section titled "Case Number Search," and selecting "Search."

2. What is this Lawsuit about?

The Lawsuit is about whether Defendant failed to pay minimum, regular, overtime, and double time wages for all hours worked, failed to provide proper meal and rest breaks, failed to provide accurate itemized wage statements, failed to pay all wages timely upon separation of employment, and failed to reimburse business expenses to its non-exempt employees as required by applicable California laws. Based on these alleged violations, the Lawsuit also alleges violations of California's Labor Code and Unfair Competition Law ("UCL") and seeks penalties under California's Private Attorneys General Act.

Defendant denies any liability or wrongdoing associated with the claims alleged in the Lawsuit and contends that they fully complied with the applicable laws. The Court has made no ruling on the merits of Plaintiff's claims. The Court has only preliminarily approved this Settlement. The Court will decide whether to give final approval to the Settlement at the Final Approval Hearing

3. What is a class action and who is involved?

In an employment class action lawsuit such as this, a person called the "Class Representative" sues his or her employer or former employer on behalf of other current or former employees who may have similar claims. The people who may have similar claims are called "Class Members," and Class Members are collectively referred to as "the Class." The Class Representative is also called the Plaintiff. There is one Plaintiff/Class Representative in this Action, Victor Rojas. The company that was sued (in this case Best Cheer Stone Inc.) is called the Defendant. In class action litigation, one Court resolves the issues for everyone in the Class in one lawsuit, except for those people who choose to exclude themselves from the Class.

4. Why is this Lawsuit a class action?

As part of the Settlement, Plaintiff and Defendant agreed to conditionally certify the Lawsuit as a class action for all of Plaintiff's alleged claims for settlement purposes only and to ask the Court to approve the Settlement.

By agreeing to the terms of the settlement, Defendant does not admit to any of the allegations of wrongdoing in this Action or that any Class Member has suffered any damages. Defendant settled the Lawsuit to avoid additional expense, inconvenience, and interference with their business operations. The Court has not ruled on the merits of Plaintiff's claims or the defenses of Defendant. Defendant retains the right to defend themselves against any of the allegations involved in the Lawsuit if for any reason the Settlement is not approved by the Court.

5. What are the terms of the proposed Settlement?

The major terms of the Settlement are as follows:

1. Defendant has agreed to pay \$623,880. This \$623,880 total settlement figure is known as the "Gross Settlement Amount," unless increased on a pro rata basis according to the terms of the Settlement Agreement.
2. Plaintiff Victor Rojas has agreed to a general release of all of his claims against Defendant.
3. Plaintiff seeks the following allocation of the Gross Settlement Amount:
 - a. Up to one-third (1/3) of the Gross Settlement Amount (or currently approximately \$207,960.00) for Class Counsel's attorneys' fees;
 - b. Up to \$25,000 for reimbursement of Class Counsel's litigation costs;
 - c. An enhancement award of up to \$15,000 for Plaintiff Victor Rojas for dedicating personal time and performing work in connection with the Lawsuit, assisting Class Counsel in investigating the alleged claims, being available to answer Class Counsel's questions, providing a general release of claims, and undertaking the risks of filing the Lawsuit;
 - d. All costs of the Settlement Administrator, which are currently estimated to be no more than \$7,950; and
 - e. \$20,000 as PAGA civil penalties. Per Labor Code Section 2699(i), seventy-five percent (75%) of this amount (\$15,000) will be payable to the California Labor and Workforce Development Agency ("LWDA"). The remaining twenty-five percent (25%), or \$5,000, will be payable to certain employees in the Class as the "PAGA Amount."
4. After the above deductions from the Gross Settlement Amount, the remaining funds will be distributed to Class Members on a pro rata basis. To ensure timely payment, please contact and inform the Settlement Administrator listed in Section 18, below, of any changes to your mailing address.

If the Court approves this proposed allocation, the Parties estimate that \$347,970 (the "Net Settlement Amount") will be distributed to Class Members who do not request exclusion (the "Participating Class Members") according to the following formula:

The Settlement Administrator will calculate the total number of Qualifying Workweeks

for all Participating Class Members worked during the Class Period. The Individual Settlement Payment that each Participating Class Member will be eligible to receive will be calculated by dividing each Participating Class Member's individual number of Qualifying Workweeks by the total number of Qualifying Workweeks of all Participating Class Members worked during the Class Period, and multiplying the resulting fraction by the Net Settlement Amount.

"Qualifying Workweeks" means the weeks that a Class Member worked at least one shift for Defendant in non-exempt position during the Class Period.

The PAGA Amount will be distributed to Aggrieved Employees according to the following formula:

The Settlement Administrator will calculate the total number of Qualifying Pay Periods for all Aggrieved Employees worked during the PAGA Period. The Individual PAGA Payment that each Aggrieved Employee will be eligible to receive will be calculated by dividing each Aggrieved Employee's individual number of Qualifying Pay Periods worked during the PAGA Period by the total number of Qualifying Pay Periods of all Aggrieved Employees worked during the PAGA Period, and multiplying the resulting fraction by the 25% portion of the PAGA Penalties (\$5,000.00) payable to Aggrieved Employees.

Your estimated Individual Settlement Payment is listed in Section 8 of this Notice. Employee-side payroll deductions will be made to your Individual Settlement Payment for state and federal withholding taxes and any other applicable payroll deductions owed by you as a result of the payment, with 20% allocated to wages, which will be subject to W-2 reporting, and 80% allocated to non-wage statutory damages, reimbursements, penalties, and interest, which will be subject to 1099 reporting. Each Individual PAGA Payment will be allocated as follows: 100% as civil penalties, which will be subject to 1099 reporting. Defendant will pay employer-side taxes separate and apart from the Gross Settlement Amount.

Nothing in this Notice or the Settlement is intended to be tax advice. You should consult your tax advisor for any tax issues pertaining to this Settlement.

WHO IS IN THE CLASS?

6. Am I part of this Class?

The "Settlement Class" consists of all persons who worked as non-exempt, hourly employees in California for Defendant at any time from April 24, 2019 through February 26, 2024.

7. I'm still not sure if I am included.

If you still are not sure whether you are included in the Class, you can get free help by contacting Phoenix Class Action Administration Solutions, the "Settlement Administrator," at the designated phone number for this matter at [insert telephone number], or by calling or writing the lawyers representing the Class in this case ("Class Counsel"), at (949) 590-4122.

YOUR RIGHTS AND OPTIONS

You have to decide whether to stay in the Class, object to the Settlement, or ask to be excluded from the Settlement. These options are further explained below, including the dates by which you need to take any action.

8. What is my approximate Individual Settlement Payment?

According to payroll records maintained by Defendant, your total number of Qualifying Workweeks during the Class Period is [REDACTED] and Qualifying Pay Periods during the PAGA Period is [REDACTED]. As a result, your estimated Individual Settlement Payment will be \$[REDACTED]. [Where applicable for Aggrieved Employees: Your estimated Individual PAGA Payment will be \$_____.]

You do not need to do anything further to receive your Individual Settlement Payment, other than to ensure that the Settlement Administrator has an accurate mailing address for you. It is important that you contact and inform the Settlement Administrator listed in Section 18, below, of any changes to your mailing address for timely payment.

If you believe your total number of Qualifying Workweeks or Qualifying Pay Periods (shown above) are not accurate, you may mail a signed written dispute to the Settlement Administrator, along with any supporting documentation, at the address listed below in Section 18 postmarked on or before [DATE], 2025. All signed written disputes must contain your address, telephone number, and a reference to the Lawsuit.

Please be advised that your number of Qualifying Workweeks and Qualifying Pay Periods is presumed to be correct, unless you submit a signed written dispute to the Settlement Administrator no later than [DATE], 2025.

9. What rights am I releasing if I participate in the Settlement?

If the Court grants final approval of the Settlement, each Class Member who does not validly opt-out will be mailed an Individual Settlement Payment. In addition, each Class Member who does not validly opt-out, on behalf of themselves, and on behalf of all those who claim by and through them, or in their stead, including, but not limited to agents, attorneys, representatives, predecessors, successors and assigns will be deemed to forever release, acquit, and discharge, and covenant not to sue, Defendant, together with its past, present, and/or future parents, subsidiaries, affiliated or related entities, fictitious business names, franchisors, owners, boards, officers, directors, trustees, shareholders, members, managers, partners, managing agents, employees, agents, payroll processors, independent contractors, insurers, attorneys, representatives, heirs, executors, administrators, successors, predecessors, and assigns and each of their owners, officers, directors, managing agents, trustees, payroll processors, independent contractors, members, managers, employees, attorneys, insurers, assigns, shareholders, successors, predecessors, and agents (collectively, the “Released Parties”) from any and all claims, debts, liabilities, demands, actions, or causes of action of every nature and description that accrued during the Class Period, under state law and the Wage Orders of the California Industrial Welfare Commission, that were alleged or which could have been alleged based on the factual allegations in the First Amended Complaint in the Action, including, but not limited to, claims for unpaid wages (including, *inter alia*, off-the-clock work, rate of pay, and rounding allegations), failure to pay minimum wages, straight time wages, overtime wages, and double time wages, failure to provide compliant meal and rest breaks or periods or provide premium compensation in lieu thereof, failure to comply with

itemized employee wage statement provisions, failure to pay wages due at separation and associated waiting time penalties, failure to timely pay wages during employment, failure to maintain compliant time and payroll records, failure to reimburse for business expenses, and for unfair or unlawful business practices pursuant to California Business and Professions Code § 17200, *et seq.* based on the aforementioned, declaratory relief, statutory and civil penalties, and attorney fees and costs. The Released Claims specifically include, but are not limited to, all claims arising under California Labor Code Sections 201-204, 206, 218.6, 226, 226.7, 510, 512, 1182.12, 1194, 1194.2, 1197, 1198, 2800, 2802, and/or those arising under the Industrial Welfare Commission Wage Orders; and/or those arising under the Industrial Welfare Commission Wage Orders; California Business and Professions Code section 17200 *et seq.*; California Code of Regulations, title 8, Section 11160; the California Civil Code sections 3287, 3289, and 3294; and California Code of Civil Procedure section 1021.5 (“Released Claims”).

Class Members who do not affirmatively opt out of the Class Settlement by submitting a timely and valid Request for Exclusion will be bound by all of the Settlement Agreement’s terms, including those pertaining to the Released Claims and any claims under the Fair Labor Standards Act (“FLSA”) (29 U.S.C. §§ 201, *et seq.*) arising during the Class Period and based on the factual allegations alleged or which could have been alleged in the Action, including the claims noted above.

For members of the Class who do not validly opt out, the release period shall run from April 24, 2019 through February 26, 2024 for non-exempt hourly employees.

The proposed Settlement also includes the settlement of claims for civil penalties under PAGA. An employee may not request exclusion from the settlement of a PAGA claim. Thus, if the court approves this Settlement, then even if you request exclusion from the Settlement, and you worked from April 24, 2022 through and including February 26, 2024 as a non-exempt, hourly-paid employee of Defendant, you will still receive an individual settlement share for the PAGA claims and will be deemed to have released the PAGA claims. A request for exclusion will preserve your right to individually pursue only the remaining Class claims.

In addition, if the Court grants final approval of the Settlement, the State of California and Aggrieved Employees will be deemed to forever release, acquit, and discharge, and covenant not to sue, Defendant, together with its past, present, and/or future parents, subsidiaries, affiliated or related entities, fictitious business names, franchisors, owners, boards, officers, directors, trustees, shareholders, members, managers, partners, managing agents, employees, agents, payroll processors, independent contractors, insurers, attorneys, representatives, heirs, executors, administrators, successors, predecessors, and assigns and each of their owners, officers, directors, managing agents, trustees, payroll processors, independent contractors, members, managers, employees, attorneys, insurers, assigns, shareholders, successors, predecessors, and agents (collectively, the “PAGA Released Parties”) from any and all claims, debts, liabilities, demands, actions, or causes of action of every nature and description that accrued during the PAGA Period, under state law and the California Labor Code, that were alleged or which could have been alleged based on the exhausted claims and factual allegations in Plaintiff’s notices sent to the LWDA and alleged in the operative complaint, regardless of whether the Aggrieved Employees opt-out of the Settlement Agreement, including claims for civil penalties based on unpaid wages, including but not limited to failure to pay minimum wages, straight time compensation, overtime compensation, double time compensation and interest; failure to timely pay regular and final wages; failure to reimburse business expenses; missed meal period and rest period wages and premiums; meal period waivers and on-duty meal period waivers; payment for all hours worked; wage statements and paystubs, including wage statements and paystubs furnished or available in physical, electronic, or other

forms; failure to keep accurate records; penalties, including recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; statutory penalties and civil penalties; and attorneys' fees and costs. Without limiting the foregoing, the PAGA Released Claims include claims for civil penalties arising under California Labor Code Sections 201, 202, 203, 204, 206, 210, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, 2800, and 2802, and/or those arising under the Industrial Welfare Commission Wage Orders; PAGA; and/or those arising under the Industrial Welfare Commission Wage Orders; California Code of Regulations, title 8, Section 11160; and California Code of Civil Procedure section 1021.5 ("PAGA Released Claims").

Plaintiff, the State of California, and Aggrieved Employees will release these PAGA Released Claims from April 24, 2022 through February 26, 2024 ("PAGA Period").

"Aggrieved Employees" means all persons currently or formerly employed as non-exempt employees in California by Defendant at any time during the PAGA Period.

Any Aggrieved Employee who validly excludes himself or herself from the Settlement will still receive a PAGA Settlement Payment, and will be deemed to have released claims against the PAGA Released Parties for civil penalties pursuant to PAGA based on the PAGA Released Claims.

10. How do I object to the Settlement?

If you are a Class Member and would like to object to the Settlement, you must not submit a request for exclusion (*i.e.*, must not opt out).

If you submit both a request for exclusion and an objection, you will be excluded from the Settlement (see sections 11 and 12 below), and your objection will not be considered.

To object, you must either (1) mail a signed written objection to the Settlement Administrator (at the address in Section 18, below) setting forth the grounds of objection, along with any supporting documents postmarked no later than [DATE], 2025, which is 45 days from the date that this Notice was mailed, or (2) appear and object at the Final Approval hearing.

All written objections must be signed and must contain your address, telephone number, and a reference to the Lawsuit. You may also appear personally or through an attorney, at your own expense, at the Final Approval Hearing to present your objection directly to the Court. If you object, but the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as a Class Member who does not object.

11. Why would I ask to be excluded?

You have the right to exclude yourself from the Settlement. If you exclude yourself from the Class — sometimes called "opting-out" of the Class — you will not receive any compensation from the Settlement for the Class claims. Even if you exclude yourself from the Settlement, you will still receive your Individual PAGA Payment, but only if you have Qualifying Pay Periods in the PAGA Period. If you exclude yourself, you will not be legally bound by the Court's disposition of the Class claims, but you will still be deemed to have released the PAGA claims.

12. How do I ask to be excluded from the Class?

If you are a member of the Class described above and would like to exclude yourself from the Class, you need to mail a timely and written letter submitted by a Class Member, or his or her authorized representative, indicating a request to be excluded from the Class Settlement. To be valid, the Request for Exclusion must be (a) signed; (b) contain the Class Member's address, telephone number, and a reference to the Lawsuit; (c) clearly state that the Class Member does not wish to be included in the Class Settlement; and (d) be submitted by mail to the Settlement Administrator at the address below in Section 18, and it must be postmarked on or before [DATE], 2025. The date of the postmark on the mailing envelope shall be the exclusive means used to determine whether a request for exclusion has been timely submitted. Any Class Member who worked from April 24, 2022 through and including February 26, 2024 as a non-exempt, hourly-paid employee of Defendant and requests to be excluded from the Class will only receive an individual settlement share for the PAGA claims, will release only his or her PAGA claims, will not receive any compensation from the Settlement for the Class claims, and will not have any right to object, appeal, or comment thereon. Class Members who fail to submit a valid and timely request for exclusion on or before [DATE], 2025, will be bound by all terms of the Settlement and any final disposition entered in this Class Action if the Court approves the Settlement.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

The Court preliminarily decided that Torus LLP and Parker Law APC are qualified to represent you and all Class Members in this Lawsuit. These law firms are also called "Class Counsel" in the context of this case.

14. How will the lawyers be paid?

As part of the Settlement with Defendant, Class Counsel has requested one-third of the Gross Settlement Amount (currently, that is equal to approximately \$207,960.00) in attorneys' fees, plus costs not to exceed \$25,000 to be paid from the Gross Settlement Amount to compensate Class Counsel for their work on this matter. You will not have to pay Class Counsel's fees and costs from your Individual Settlement Payment.

THE SETTLEMENT, APPROVAL, AND PAYMENT PROCESS

15. Who is handling the Settlement Administration process?

The Settlement Administrator, Phoenix Class Action Administration Solutions, will handle the process. The Settlement Administrator's contact information is provided in Section 18, below.

16. When is the Final Approval Hearing and do I have to attend?

The Final Approval Hearing has been set for [DATE], 2025 at [TIME] in Department C-71 of the Superior Court of the State of California, County of San Diego, located at 330 West Broadway, San Diego, California 92101. You do not need to attend the hearing to be a part of the Settlement. However, if you wish to object to the Settlement, you may appear at the hearing. If physical access to the Court is restricted due to COVID-19 or other reasons, please contact the Settlement Administrator regarding

alternative options to appear at the hearing.

17. When will I get money after the hearing?

Your Individual Settlement Payment from the Net Settlement Amount will be made within approximately [INSERT] days after the Court's final approval of the Settlement, or, if an objection is filed, then approximately [INSERT] days after the Court's final approval of the Settlement, or, if an appeal is filed, then after all rights to appeal expire (assuming that the Court's approval stands), whichever date is later.

GETTING MORE INFORMATION

18. Are more details available?

A copy of the entire Settlement Agreement was filed in this case as Exhibit 1 to the Declaration of Daniel J. Hyun in Support of Motion for Preliminary Approval, filed on [DATE], 2025.

You may contact the Settlement Administrator, whose contact information is below:

Phoenix Class Action Administration Solutions
[ADDRESS]
[PHONE]
[FAX]

You may also contact Class Counsel, whose contact information is below:

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**PLEASE DO NOT CALL OR WRITE TO THE JUDGE OR TO THE COURT
REGARDING THIS NOTICE OR THE LAWSUIT.**