

STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiff Cristina Cordero (“Plaintiff”), individually and on behalf of all members of the Settlement Class and PAGA Employees (both terms defined below), on one hand, and Defendants Oldcastle APG, Inc. and Oldcastle APG West, Inc. (“Defendants”), on the other hand. Plaintiff and Defendants are referred to herein collectively as the “Parties.” Plaintiff, the Settlement Class and the PAGA Employees are represented by Paul K. Haines of Haines Law Group, APC and Scott M. Lidman and Milan Moore of Lidman Law, APC (collectively, “Class Counsel”). Defendants are represented by Karin M. Cogbill and Sean Bothamley of Jackson Lewis P.C.

On April 17, 2023, Plaintiff filed a class action Complaint against Defendants in San Bernardino County Superior Court, in the matter entitled *Cristina Cordero, as an individual and on behalf of all others similarly situated v. OldCastle APG, Inc., a Delaware corporation; OldCastle APG West, Inc., a Colorado corporation; and Does 1 through 100, inclusive*, Case No. CIVSB2308695 (the “Action”) alleging the following class action claims against Defendants: (a) failure to pay all minimum wages owed; (b) failure to pay all overtime wages owed; (c) failure to provide all meal periods; (d) failure to authorize and permit all rest periods; (e) failure to provide accurate, itemized wage statements; (f) failure to pay all wages upon termination, and (g) unfair competition. As a result of the foregoing alleged violations, Plaintiff contends that Defendants are further liable to Plaintiff and the Settlement Class and PAGA Employees because they engaged in unlawful business practices pursuant to Business and Professions Code section 17200 that could have been premised on the facts, claims, causes of action or legal theories described above. Defendants deny the allegations.

After having exhausted her administrative remedies with the California Labor & Workforce Development Agency (“LWDA”) by way of a letter submitted to the LWDA on April 17, 2023 (a true and correct copy of which is attached hereto as **Exhibit A**), on June 22, 2023, Plaintiff filed a First Amended Complaint (“FAC”) against Defendants which added a claim under the Labor Code Private Attorney General Act of 2004 (“PAGA”) seeking civil penalties premised on the facts, claims, causes of action or legal theories described in the original Complaint and the April 17, 2023 letter.

On August 11, 2023, Defendants filed an Answer to Plaintiff’s FAC.

Given the uncertainty of litigation and Defendants’ denial of Plaintiff’s claims, Plaintiff and Defendants wish to settle both individually and on behalf of the Settlement Class, PAGA Employees and the State of California. Accordingly, Plaintiff and Defendants agree as follows:

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

All current and former non-exempt, hourly employees of Defendants Oldcastle APG, Inc. and Oldcastle APG West, Inc. who worked in California at any time between April 17, 2019 and the date of preliminary approval of this Settlement Agreement.

For purposes of this Settlement Agreement, the “Class Period” shall mean the time period of April 17, 2019 through the date of preliminary approval of this Settlement Agreement.

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

2. **PAGA Employees & PAGA Period.** For the purposes of this Settlement Agreement only, Plaintiff and Defendants stipulate to the following definition of PAGA Employees:

All current and former non-exempt, hourly employees of Defendants Oldcastle APG, Inc and Oldcastle APG West, Inc. who worked in California at any time between April 17, 2022 and the date of preliminary approval of this Settlement Agreement.

For purposes of this Settlement Agreement, the “PAGA Period” and release under the PAGA shall mean the time period between April 17, 2022 through the date of preliminary approval of this Settlement Agreement.

3. **Amendment to Complaint.** In connection with the mediation, Defendants provided Plaintiff with time punch and pay data and other information relating to the members of the Settlement Class and PAGA Employees. That information was analyzed by Plaintiff, and the Parties negotiated this Settlement with the intention of resolving the claims asserted in the FAC, as well as claims for miscalculation of regular rates of pay, unpaid sick pay, and unpaid meal period premiums. Therefore, as a material term and condition of this Settlement, the Parties agree to stipulate, for settlement purposes only, that Plaintiff be granted leave to file a Second Amended Complaint to add these allegations, and also to add to the PAGA claim a request for civil penalties based on: (i) miscalculation of regular rates of pay, including for overtime compensation; (ii) failure to properly pay sick pay; and (iii) failure to pay meal period premiums at the regular rate. Defendants shall cooperate, as necessary, to stipulate to and/or otherwise effectuate the filing of the Second Amended Complaint. On January 24, 2024, Plaintiff submitted a supplemental letter to the LWDA asserting claims based on: (i) miscalculation of regular rates of pay, including for overtime compensation; (ii) failure to properly pay sick pay; and (iii) failure to pay meal period premiums at the regular rate (a true and correct copy of which is attached hereto as **Exhibit B**). This Settlement is expressly conditioned upon the Court granting leave to file the Second Amended Complaint. The Proposed Second Amended Complaint is attached to this Settlement as **Exhibit C**. If the Court grants leave for Plaintiff to file the Second Amended Complaint, Plaintiff shall file the Second Amended Complaint within ten court days, and Defendants are not required to file an answer to the Second Amended Complaint.

4. **Release by Settlement Class Members, PAGA Employees, and Plaintiff.** Plaintiff and every member of the Settlement Class (except those who timely and properly submit a Request for Exclusion of the Settlement Class Members’ Release as set forth below) will fully and forever completely release and discharge Defendants, and all of their past and present officers, directors,

owners, shareholders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys, (collectively the “Released Parties”), as follows:

- A. Settlement Class Members’ Release: Settlement Class members and Plaintiff will release all claims, demands, rights, liabilities and causes of action that are/were pled in the operative complaint in the Action (which is the proposed Second Amended Complaint attached hereto as Exhibit C), or which could have been pled in the operative complaint in the Action (which is the proposed Second Amended Complaint attached hereto as Exhibit C) based on the factual allegations therein, that arose during the Class Period including but not limited to the following claims: (a) failure to pay all overtime wages owed; (b) failure to pay all minimum wages owed; (c) failure to authorize and permit rest periods, or premium pay for non-compliant rest periods; (d) failure to provide meal periods, or premium pay for non-compliant meal periods; (e) failure to issue accurate, itemized wage statements; (f) failure to pay all wages upon termination; (g) failure to pay sick pay leave; and (h) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above (collectively, the “Released Claims”). The time period for the release of the Released Claims shall be the same time period as the Class Period.

Plaintiff and all PAGA Employees will fully and forever completely release and discharge Defendants, and the Released Parties, as follows:

- B. PAGA Release: PAGA Employees, including Plaintiff individually and as a representative for the State of California and on its behalf, will release and forever discharge all claims, demands, rights, liabilities and causes of action for civil penalties under California Labor Code Private Attorneys General Act of 2004 against the Released Parties based on (as alleged in the letters to the LWDA on April 17, 2023 and January 24, 2024 and the operative complaint (which is the proposed Second Amended Complaint attached hereto as **Exhibit C**) for violations of California Labor Code sections 201-203, 204, 212, 218 *et seq.*, 226, 226.7, 246 510, 512, 516, 558, 1194, 1194.2, 1197, 1198 and applicable Industrial Welfare Commission Wage Orders, and for: (a) failure to pay all overtime wages owed; (b) failure to pay all minimum wages owed; (c) failure to authorize and permit rest periods, or premium pay for non-compliant rest periods; (d) failure to provide meal periods, or premium pay for non-compliant meal periods; (e) failure to issue accurate, itemized wage statements; (f) failure to pay all wages upon termination; and (g) failure to pay sick pay leave. (collectively, “PAGA Released Claims”). The time period of the PAGA Released Claims shall be the same as the PAGA Period.

The releases identified herein will only be effective upon the date that Defendants fully fund the Gross Settlement Amount.

5. **Gross Settlement Amount.** As consideration, Defendants agree to pay a “Gross Settlement Amount” of One Million Nine Thousand Dollars and Zero Cents (\$1,009,000.00)

(unless such Gross Settlement Amount is increased pursuant to Paragraph 5.E. below) in full and complete settlement of the Action, as follows:

- A. The Parties have agreed to engage Phoenix Settlement Administrators as the “Settlement Administrator” to administer this Settlement. All administrative fees and costs due and owing to the Settlement Administrator shall be paid from the Gross Settlement Amount.
- B. The Gross Settlement Amount shall be deposited by Defendants into a qualified settlement fund set up by the Settlement Administrator for the benefit of participating Settlement Class members and PAGA Employees. Defendants agree to deposit the Gross Settlement Amount with the Settlement Administrator within thirty (30) calendar days after the “Effective Date” which is defined as the latter of: (a) the Court's final approval of the settlement if no objections by or on behalf of Settlement Class members have been filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; or (c) the final resolution of any appeal that has been filed.
- C. This is a non-reversionary settlement. The Gross Settlement Amount includes:
 - (1) All payments (including interest) to the Settlement Class members;
 - (2) All fees and costs of the Settlement Administrator and settlement administration, which are anticipated to be no greater than Ten Thousand Dollars and Zero Cents (\$10,000.00);
 - (3) Up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) for Plaintiff's Class Representative Service Award or Enhancement Payment, in recognition of her contributions to the Action, and her service to the Settlement Class. Even in the event that the Court reduces or does not approve the requested Class Representative Service Award, Plaintiff shall not have the right to revoke this Settlement Agreement, or otherwise object to the Court's approval of the Settlement Agreement, and this Settlement shall remain binding;
 - (4) Up to one-third of the Gross Settlement Amount in Class Counsel's attorneys' fees [currently estimated to be Three Hundred Thirty-Six Thousand Three Hundred Thirty-Six Dollars and Thirty-Three Cents (\$336,336.33), unless the Gross Settlement Amount is increased pursuant to Paragraph 5.E. below], plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than Twenty Thousand Dollars and Zero Cents (\$20,000.00). In the event that the Court reduces or does not approve the requested Class Counsel attorneys' fees and/or costs, Class Counsel shall not have the right to revoke this Settlement Agreement, and it will remain binding; and

- (5) Fifty Thousand Dollars and Zero Cents (\$50,000.00) of the Gross Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$37,500.00) will be payable to the LWDA, and the remaining twenty-five percent (25%), or Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00), will be payable to PAGA Employees as the “PAGA Amount,” as described below.
 - D. Defendants’ share of payroll taxes shall be paid by Defendants separately from, and in addition to, the Gross Settlement Amount.
 - E. **Unexpected Workweeks/Escalator Clause.** Defendants represent that there are an estimated 32,560 workweeks from April 17, 2019 through January 10, 2024 (date of mediation). If the number of workweeks during this period is more than 10% greater than this figure (i.e., if there are 35,816 or more workweeks worked by the settlement Class Members during this period), Defendants shall increase the Gross Settlement Amount on a proportional basis equal to the percentage increase in the number of workweeks worked above the 10%.
6. **Payments to the Settlement Class.** Settlement Class members are not required to submit a claim form to receive a payment (“Settlement Award”) from the Settlement. Settlement Awards will be determined and paid as follows:
- A. The Settlement Administrator shall first deduct from the Gross Settlement Amount the amounts approved by the Court for Class Counsel’s attorneys’ fees, Class Counsel’s costs and expenses, Plaintiff’s Class Representative Service Award, the Settlement Administrator’s fees and expenses for administration, and the amounts designated as PAGA civil penalties payable to the LWDA and the PAGA Employees. The remaining amount shall be known as the “Net Settlement Amount.”
 - B. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class member’s Settlement Award based on the following formula:
 - i. Each participating Settlement Class member shall receive a portion of the Net Settlement Amount proportionate to the number of workweeks **that he or she** worked as a non-exempt employee during the Class Period, which will be calculated by multiplying the Net Settlement Amount by a fraction, the numerator of which is the Settlement Class member’s number of workweeks worked as a non-exempt employee during the Class Period, and the denominator of which is the total workweeks worked as non-exempt employees by all participating Settlement Class members during the Class Period.

PAGA Employees are not required to submit a claim form to receive a payment (“PAGA Award”) from the Settlement. PAGA Awards will be determined and paid as follows:

- C. PAGA Amount: Twelve Thousand Five Hundred and Zero Cents (\$12,500.00) of the Gross Settlement Amount has been designated as the PAGA Amount as described above. Each PAGA Employee shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked as a non-exempt employee during this PAGA Period, which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Employee's number of workweeks worked as a non-exempt employee during the PAGA Period, and the denominator of which is the total number of workweeks worked as non-exempt employees by all PAGA Employees during the PAGA Period.
- D. Within ten (10) calendar days following Defendants' deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate Settlement Award and PAGA Award amounts and provide the same to counsel for the Parties for review and approval, using employee ID numbers to maintain the confidentiality of employees. Within seven (7) calendar days of approval by counsel for the Parties, the Settlement Administrator will prepare and mail Settlement Awards, less applicable taxes and withholdings, to participating Settlement Class members, all PAGA Awards and PAGA employees, and the portion of the PAGA allocation payable to the LWDA as set forth in Paragraph 5(c)(5) has been mailed to the LWDA. The Settlement Administrator shall simultaneously pay the withholdings to the applicable authorities with the necessary reports, submitting copies to Defendants' counsel.
- E. For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: Sixty-Seven percent (67%) as penalties and interest; and Thirty-Three percent (33%) as wages. PAGA Awards shall be allocated One Hundred percent (100%) as penalties. The Settlement Administrator will be responsible for issuing to participating Settlement Class members and PAGA Employees IRS Forms W-2 for amounts deemed "wages" and IRS Forms 1099 for the amounts allocated as penalties and interest. Each Settlement Class member who receives a Settlement Award, and each PAGA Employee who receives a PAGA Award, will be responsible for correctly characterizing the payment for tax purposes and for payment of any taxes owing on said amount. Notwithstanding the treatment of the payments to each Settlement Class member or PAGA Employee above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans.
- F. Each member of the Settlement Class who receives a Settlement Award or PAGA Award must cash the check(s) within 180 days from the date the Settlement Administrator mails it/them. Any funds payable to Settlement Class members or PAGA Employees whose checks were not cashed within 180 days after mailing will be given to the Katherine and George Alexander Community Law Center, a cy pres, designated by the Parties.

7. **Attorneys' Fees and Costs.** Defendants will not object to Class Counsel's request for a total award of attorneys' fees of one-third of the Gross Settlement Amount, which is currently estimated to be Three Hundred Thirty-Six Thousand Three Hundred Thirty-Six Dollars and Thirty-Three Cents (\$336,336.33) (unless the Gross Settlement Amount is increased pursuant to Paragraph 5.E. above, in which case the attorneys' fees shall increase accordingly). Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00) from the Gross Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when the Settlement Administrator pays the fee award allowed by the Court.

8. **Class Representative Service Award.** Defendants will not object to a request for a Class Representative Service Award of up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff for her time and risk in prosecuting this case and her service to the Settlement Class. This award will be in addition to Plaintiff's Settlement Award as a Settlement Class member and shall be reported on an IRS Form 1099 issued by the Settlement Administrator. Even in the event that the Court reduces or does not approve the requested Class Representative Service Award, Plaintiff shall not have the right to revoke this Settlement, and it will remain binding.

9. **Settlement Administrator.** Defendants will not object the appointment of Phoenix Settlement Administrators as Settlement Administrator. Defendants will not object to Plaintiff's seeking permission to pay up to Ten Thousand Dollars and Zero Cents (\$10,000.00) for its services from the Gross Settlement Amount. The Settlement Administrator shall be responsible for sending notices and for calculating Settlement Awards and preparing all checks and mailings, calculating Defendants' share of taxes payable on the wages, which shall be paid by Defendants separate and apart from the Gross Settlement Amount, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Gross Settlement Amount by Class Counsel only after Settlement Awards have been mailed to all participating Settlement Class members, all PAGA Awards have been mailed to all PAGA Employees, and the portion of the PAGA allocation payable to the LWDA as set forth in Paragraph 5(c)(5) has been mailed to the LWDA.

10. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiff shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;
- B. Appointing Paul K. Haines of Haines Law Group, APC and Scott M. Lidman and Milan Moore of Lidman Law, APC as Class Counsel;

- C. Appointing Cristina Cordero as Class Representative for the Settlement Class;
- D. Approving Phoenix Settlement Administrators as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Packet (which is comprised of the Notice of Pendency of Class Action and Settlement and Notice of Settlement Award, drafts of which are attached collectively hereto as **Exhibit D**) in both English and Spanish, and directing the mailing of same; and
- G. Scheduling a Final Approval hearing.

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

- A. Within fourteen (14) business days after entry of an order preliminarily approving this Settlement Agreement, Defendants will provide the Settlement Administrator with the names, last known addresses, phone numbers, social security numbers, the dates of employment and the number of workweeks worked by each Settlement Class Member and PAGA Employee while employed during the Class Period and PAGA Period, respectively (collectively referred to as the “Class Data”). The Class Data shall be provided to the Settlement Administrator in an electronic format satisfactory to the Settlement Administrator, who shall maintain the confidentiality of the Class Data. The Parties agree that, for purposes of determining the number of workweeks worked as non-exempt employees in this Settlement Agreement, such workweeks may be calculated as the number of days between the later of the employee’s hire date(s) (or change to non-exempt status) or the start of the Class Period or PAGA period, respectively, and the earlier of the employee’s termination date(s) or the date of preliminary approval of this Settlement Agreement in the absence of a subsequent termination date, based on a 360-day year (using Microsoft Excel’s DAYS360 or similar function which returns the number of days between two dates) and dividing the result by 7 and then rounding that number up to the nearest whole number.
- B. Within ten (10) business days from receipt of this information, the Settlement Administrator shall (i) run the names of all Settlement Class Members through the National Change of Address (“NCOA”) database to determine any updated addresses for Settlement Class Members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Settlement Award for each Settlement Class member and estimated PAGA Award; and (iv) mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. Requests for Exclusion. Any Settlement Class member who wishes to opt-out of the Settlement must complete and mail a Request for Exclusion (defined below) to

the Settlement Administrator within sixty (60) calendar days of the date of the initial mailing of the Notice Packets (the "Response Deadline").

- i. The Notice Packet shall state that Settlement Class members who wish to exclude themselves from the Settlement must submit a "Request for Exclusion" by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement, except a Request for Exclusion not containing a Class Member's telephone number and/or last four digits of the Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Except as provided in Paragraph 11(c)(ii) below, any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon.
 - ii. The Parties agree there is no statutory or other right for any PAGA Employee to opt out or otherwise exclude himself or herself from the PAGA portion of the Settlement Agreement, including the PAGA Release. A Settlement Class member who submits a valid and timely Request for Exclusion shall still receive his or her proportionate share of the PAGA Amount and be subject to the PAGA Release.
- D. Objections. Members of the Settlement Class who do not request exclusion may object to this Settlement Agreement as explained in the Class Notice by mailing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendants' counsel). Class Counsel shall file any objections with the Court. Defendants' counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval. To be valid, any written objection must: (1) contain the objecting Settlement Class member's full name and current address, as well as contact information for any attorney representing the objecting Settlement Class member for purposes of the objection; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence, if any; and (4) be postmarked no later than the Response Deadline. Members of the Settlement Class who do not request exclusion may also object to the Settlement by appearing at the Final Approval Hearing in person or virtually irrespective of whether they submitted any written objections.

- E. Notice of Settlement Award / Disputes. Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Settlement Class member's estimated Settlement Award as well the Settlement Class member's number of workweeks worked as a non-exempt employee during the Class Period, and, if the Settlement Class member is also a PAGA Employee, the amount of the PAGA Employee's PAGA Award as well the PAGA Employee's number of workweeks worked as a non-exempt employee during the PAGA Period. Settlement Class members will have the opportunity, should they disagree with Defendants' records regarding the information stated in the Notice of Settlement Award, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Settlement Awards under the terms of this Settlement Agreement. If a resolution cannot be reached by and among the Parties and the Settlement Administrator, the Court will render all final decisions on disputes.
- F. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within three (3) business days of receiving the returned Notice Packet. If an updated mailing address is identified before the Response Deadline, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within three (3) business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to submit a Request for Exclusion, Objection, or dispute. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline. If a Settlement Class member's Notice Packet is returned to the Settlement Administrator more than once before the Response Deadline, the Settlement Administrator shall continue to make reasonable efforts to obtain an updated mailing address. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Defendants' Counsel to provide notice of the proposed settlement.

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

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

- B. Approving Plaintiff's and Class Counsel's application for attorneys' fees and costs, Class Representative Service Award, and settlement administration costs; and
- C. Entering judgment pursuant to California Rule of Court 3.769 and posting notice of the judgment on a static website created and maintained by the Settlement Administrator.

13. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than the settlement contemplated herein. In particular, but without limiting the generality of the foregoing, nothing about this Settlement Agreement shall be offered or construed as an admission of liability, wrongdoing, impropriety, responsibility, or fault whatsoever on the part of Defendants and/or the Released Parties, and it shall not be construed as or deemed to be evidence of, or an admission or concession that the any Settling Class member or PAGA Employee has suffered any damage. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Sections 1152 and 1154, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Sections 1152 and 1154.

14. **Non-disclosure and Non-publication.** Prior to the filing of the Motion for Preliminary Approval, Plaintiff and Class Counsel agree not to disclose or publicize the Settlement Agreement, the fact of the Settlement Agreement, its terms or contents, or the negotiations underlying the Settlement Agreement, in any manner or form, directly or indirectly, to any person or entity, except to Settlement Class members and as shall be contractually required to effectuate the terms of the Settlement Agreement as set forth herein. However, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions, Class Counsel may disclose the names of the Parties in this Action, the venue/case number of this Action, and a general description of the Action, to a court in a declaration by Class Counsel. Class Counsel may also include a general description of the Settlement on their respective websites but may not include the name(s) of any of the Parties, or the case name or case number of the Action.

15. **Legal Developments.** The Parties agree that Plaintiff will submit to the Court a motion for preliminary approval of this Settlement containing all of the terms and conditions contained herein notwithstanding any new legal developments regarding the Released Claims.

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

17. **Attorneys' Fees:** In the event of any action to enforce the terms of this Settlement Agreement, to compel performance of this Settlement Agreement, or breach of any provision of this Settlement Agreement, the prevailing party in such action(s) shall be entitled to recover her and/or its reasonable attorneys' fees and costs incurred arising from such action.

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

if to Defendants: Karin M. Cogbill and Sean Bothamley of Jackson Lewis, P.C., 160 W. Santa Clara Street, Suite 400, San Jose, California 95113;
karin.cogbill@jacksonlewis.com and
sean.bothamley@jacksonlewis.com

if to Plaintiff: Scott M. Lidman and Milan Moore of Lidman Law, APC, 2155 Campus Drive, Suite 150, El Segundo, California 90245;
slidman@lidmanlaw.com and mmoore@lidmanlaw.com

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

19. **Cooperation.** The Parties agree to work cooperatively, diligently and in good faith to ensure that all documents necessary to effectuate this Settlement are properly and timely filed.

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

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

DATED: 4/30/2024

OLDCASTLE APG, INC.

By: *Heather Harper*

Its: Heather Harper, Deputy General Counsel

DATED: 4/30/2024

OLDCASTLE APG WEST, INC.

By: *Heather Harper*

Its: Heather Harper, Deputy General Counsel

DATED:

CRISTINA CORDERO

By: 
Cristina Cordero (Apr 2, 2024 16:22 PDT)

Plaintiff and Settlement Class Representative,
on behalf of herself, the Settlement Class,
PAGA Employees and the State of California

4863-9991-8239, v. 1

EXHIBIT A

EXHIBIT A

LIDMAN LAW

2155 CAMPUS DRIVE, SUITE 150, EL SEGUNDO, CA 90245

OFFICE: (424) 322-4772

FAX: (424) 322-4775

April 17, 2023

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

VIA U.S. CERTIFIED MAIL – RETURN

RECEIPT REQUESTED

OldCastle APG West, Inc., a Colorado
corporation
c/o CSC – Lawyers Incorporating Service
2710 Gateway Oaks Dr., Ste. 150N
Sacramento, CA 95833

VIA U.S. CERTIFIED MAIL – RETURN

RECEIPT REQUESTED

OldCastle APG, Inc., a Delaware corporation
c/o CSC – Lawyers Incorporating Service
2710 Gateway Oaks Dr., Ste. 150N
Sacramento, CA 95833

Re: *Cristina Cordero v. OldCastle APG, Inc., et al.*

To Whom It May Concern:

Please be advised that this law firm represents Cristina Cordero in claims arising from her employment with OldCastle APG, Inc., a Delaware corporation and OldCastle APG West, Inc., a Colorado corporation (“Defendants”). Ms. Cordero is an “aggrieved employee” as defined by Labor Code sections 2699, *et seq.* due to Defendants’ numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated.

For purposes of this letter, an “aggrieved employee” should be considered to include all current and former hourly-paid employees in California who worked, at least in part, during the one year immediately preceding the date of this letter through the date of trial, the date judgment is entered, the date of settlement and/or other date approved by the Court.

Ms. Cordero, a former non-exempt employee, was employed by Defendants from approximately March 2022 through approximately November 28, 2022. During her employment, Ms. Cordero worked as an Operations Coordinator.

During her employment with Defendants, Ms. Cordero generally worked Monday through Friday, 8 hour shifts and often times worked over 10 or 12 hours. Therefore, Ms. Cordero would often work more than eight (8) hours per day and/or forty (40) hours per week.

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During her employment with Defendants, Ms. Cordero and other hourly, non-exempt employees would keep track of their time worked by entering their time into Kronos. Ms. Cordero is informed and believes, and based thereon alleges, that Defendants maintained a policy and practice of requiring hourly, non-exempt employees to track their worktime to the minute and failing to pay Ms. Cordero and other hourly, non-exempt employees based on the time recorded in Kronos. As a result, Defendants failed to pay Ms. Cordero and the other hourly, non-exempt employees all required minimum and overtime wages.

Throughout Ms. Cordero's employment with Defendants, Ms. Cordero and other hourly, non-exempt employees were not provided all required meal periods due to Defendants' meal period policies/practices which fail to provide uninterrupted, duty-free 30-minute meal periods prior to the start of the fifth hour of work. Specifically, due to the work demands imposed by Defendants, Defendants often provided meal periods that were either late or short or failed to provide a required meal period altogether. Moreover, when Ms. Cordero and other hourly, non-exempt employees worked in excess of 10.0 hours in a shift, Defendants failed to provide a second uninterrupted, duty-free 30-minute meal period in violation of California law.

Although Ms. Cordero and other hourly, non-exempt employees were not provided with all legally-compliant meal periods to which they were entitled, Defendants failed to compensate Ms. Cordero and other hourly, non-exempt employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief during at least a portion of the class period, Defendants maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally compliant meal period was not provided to Ms. Cordero and their non-exempt employees.

Ms. Cordero and other non-exempt employees were also not authorized and permitted to take all legally required and compliant rest periods due to Defendants' rest period policies and practices. Specifically, due to Defendants' practices of understaffing and the work demands imposed by Defendants, Defendants did not authorize and permit one rest period for every four hours worked, or major fraction thereof.

On those occasions when Ms. Cordero and other hourly, non-exempt employees were not authorized and permitted to take all legally-compliant rest periods to which they were entitled, Defendants failed to compensate Ms. Cordero and other hourly, non-exempt employees with the required rest period premium for each workday in which they experienced a rest period violation as mandated by Labor Code § 226.7 Further, upon information and belief during at least a portion of the class period, Defendants maintained no payroll code or other mechanism for the payment of rest period premium payments under Labor Code § 226.7 in the event that a legally compliant rest period was not provided to their non-exempt employees.

As a result of Defendants' failure to pay all minimum wages, overtime wages, as well as meal period premium wages and rest period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Ms. Cordero and other hourly, non-exempt employees. Further, Defendants face independent liability as the wage statements were inaccurate because they did not list the proper overtime rates.

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As a result of Defendants' failure to pay all minimum and overtime wages and meal and rest period premium wages, Defendants failed to pay all wages owed to Ms. Cordero and other hourly, non-exempt employees upon termination of employment with Defendants. Additionally, Defendants violated Labor Code §§ 201-203 by, among other unlawful acts, issuing paycards as final payment of wages to employees who have been discharged and/or resigned without such employees' authorization. As alleged herein, these paycards required fees for usage and did not allow employees to access all of the monies contained on such cards in violation of Labor Code § 212.

As described above, Defendants committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 1 ("Wage Order 1"):

Overtime Violations

Defendants were required to pay their aggrieved employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 1194(a) and 1198; the Wage Order 1, § 3. According to Labor Code § 510(a), "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." This Section further provides, "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated equal to one and one-half times their regular rate of pay for all overtime hours worked. As explained above, during her employment with Defendants, Ms. Cordero and other aggrieved employees would keep track of their time worked by entering their time into Kronos. Ms. Cordero is informed and believes, and based thereon alleges, that Defendants maintained a policy and practice of requiring employees to track their worktime to the minute and failing to pay Ms. Cordero and other aggrieved employees based on the time recorded in Kronos. As a result, Defendants failed to pay Ms. Cordero and other aggrieved employees all required minimum and overtime wages.

Minimum Wage Violations

Defendants were required to pay their aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1194; 1194.2, 1197; The Wage Order 1, § 4. The aggrieved employees were not paid for all hours worked due to Defendants' timekeeping and compensation practices. As alleged above, during Ms. Cordero's employment with Defendants, she typically worked in excess of 8 hours per workday and/or 40 hours per work week, and therefore, had Ms. Cordero been properly paid for all of the time that she actually worked, she would have been paid additional overtime wages. Moreover, Ms. Cordero often worked in excess of 12 hours in a shift but was not properly compensated at her double time rate for such hours. This practice by Defendants resulted in Defendants not properly tracking the time worked by Ms. Cordero and aggrieved employees, and also resulted in Defendants paying them less than they were owed for the work they performed, including failing to pay them for all required minimum wages.

Meal Period Violations

As alleged above, Defendants failed to provide their aggrieved employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 1, § 11. As described above,

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due to the work demands imposed by Defendants, Defendants often provided meal periods that were either late or short or failed to provide a required meal period altogether. Moreover, when Ms. Cordero worked in excess of 10.0 hours in a shift, Defendants failed to provide a second uninterrupted, duty-free 30-minute meal period in violation of California law. Therefore, the aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”). Although the aggrieved employees were not provided with all legally-compliant meal periods to which they were entitled, Defendants failed to compensate them with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

Rest Period Violations

Defendants also failed to authorize and permit their aggrieved employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 1, § 12. As alleged above, Defendants’ rest period policies and practices fail to authorize and permit the aggrieved employees to take a net paid 10-minute rest period for every four hours worked, or *major fraction thereof*, due to Defendants’ practices of understaffing and the work demands imposed by Defendants. As a result, the aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest period is not provided.”)

Wage Statement Violations

Defendants knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish their aggrieved employees with accurate and complete, itemized wage statements that included, among other requirements, all minimum and overtime wages earned, total gross wages earned, total net wages earned, and meal and rest period premium wages, in violation of Labor Code § 226 *et seq.* Further, Defendants face independent liability as the wage statements were inaccurate because they did not list the proper overtime rates. Defendants’ failure to furnish their aggrieved employees with complete and accurate, itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all minimum and overtime wages earned, and unpaid meal period and premium wages, and deprived them of the information necessary to identify discrepancies in Defendants’ reported data.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Defendants failed to timely pay Ms. Cordero and other aggrieved employees all of their final wages at the time of separation, which included, among other things, underpaid minimum and overtime wages, and meal and rest period premium wages. Additionally, Defendants violated Labor Code §§ 201-203 by, among other unlawful acts, issuing paycards as final payment of wages to employees who have been discharged and/or resigned without such employees’

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April 17, 2023

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authorization. As alleged herein, these paycards required fees for usage and did not allow employees to access all of the monies contained on such cards in violation of Labor Code § 212.

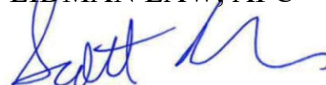
Pursuant to Labor Code § 203, Defendants' failure to pay all final wages due to their aggrieved employees was willful and, consequently, entitles the aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Defendants failed to pay their final wages after their separation, up to a maximum of thirty days.

As an "aggrieved employee," Ms. Cordero will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Ms. Cordero's own investigation, and on information and belief, Defendants committed the following Labor Code violations:

- a) Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Ms. Cordero and the aggrieved employees all overtime compensation earned;
- b) Defendants violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Ms. Cordero and the aggrieved employees the statutory minimum wage for all hours worked;
- c) Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Ms. Cordero and the aggrieved employees;
- d) Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Ms. Cordero and the aggrieved employees;
- e) Defendants violated Labor Code § 226 by failing to furnish Ms. Cordero and the aggrieved employees with accurate and compliant itemized wage statements;
- f) Defendants violated Labor Code § 204 by failing to pay Ms. Cordero and the aggrieved employees all earned wages at least twice during each calendar month;
- g) Defendants violated Labor Code § 1174 by failing to maintain accurate records on behalf of Ms. Cordero and the aggrieved employees; and
- h) Defendants violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Ms. Cordero and other aggrieved employees.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
LIDMAN LAW, APC



Scott M. Lidman

EXHIBIT B

EXHIBIT B

LIDMAN LAW

2155 CAMPUS DRIVE, SUITE 150, EL SEGUNDO, CA 90245
OFFICE: (424) 322-4772
FAX: (424) 322-4775

January 24, 2024

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

**VIA U.S. CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

Oldcastle APG, Inc.
Oldcastle APG West, Inc.
c/o Karin M. Cogbill & Sean Bothamley
JACKSON LEWIS, P.C.
160 W. Santa Clara Street, Suite 400
San Jose, California 95113
Attorneys for Defendants

Re: *Cristina Cordero v. Oldcastle APG, Inc. et al.*

To Whom It May Concern:

Please be advised that this law firm represents Cristina Cordero in claims arising from her employment with Oldcastle APG, Inc., a Delaware corporation and Oldcastle APG West, Inc., a Colorado corporation (“Defendants”). Ms. Cordero is an “aggrieved employee” as defined by Labor Code sections 2699, *et seq.* due to Defendants’ numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated.

For purposes of this letter, an “aggrieved employee” should be considered to include all current and former hourly-paid employees in California who worked, at least in part, during the one year immediately preceding April 17, 2023, the date of our prior letter, through the date of trial, the date judgment is entered, the date of settlement and/or other date approved by the Court.

By this letter, Ms. Cordero hereby supplements her correspondence to the LWDA dated April 17, 2023 (the “LWDA letter”). Attached hereto as **Exhibit A** is a true and correct copy of the LWDA letter and is incorporated herein by reference. In addition to the Labor Code violations identified in the LWDA letter, Ms. Cordero alleges Defendant is also liable for the following:

Overtime Violations Based on Miscalculation of Regular Rate

Defendants were required to pay Ms. Cordero and other Aggrieved Employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 1194(a) and 1198; the Wage Order 1, § 3. According to Labor Code § 510(a), “Any work in

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excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.” This Section further provides, “Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee.”

During Ms. Cordero’s employment with Defendants, Ms. Cordero received non-discretionary bonuses, \$1.00/hour shift differentials, and/or other forms of pay not excludable as a matter of law when calculating an employee’s regular rate (hereinafter the aforementioned forms of pay are collectively referred to as “Incentive Pay”). Despite Defendant’s payment of Incentive Pay to Ms. Cordero and other Aggrieved Employees, Defendants’ policies and/or procedures failed to include all forms of Incentive Pay when calculating the regular rate of pay, thereby causing Ms. Cordero and other Aggrieved Employees to be underpaid all of their required overtime wages. As a result, Defendants failed to pay Ms. Cordero and other Aggrieved Employees all required overtime wages.

Meal Period Premium Wages Violations

Labor Code § 226.7 (“If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”). Although Ms. Cordero and other Aggrieved Employees were not provided with all legally-compliant meal periods to which they were entitled, Defendants failed to compensate Ms. Cordero and other Aggrieved Employees with the required meal period premium at their regular rate for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

Failure to Pay Sick Pay at the Legal Pay Rate

Defendants’ pattern, practice and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement, pursuant to Labor Code §§ 246, 248.5 and/or Labor Code §§ 2699, *et seq.*, to recovery by Ms. Cordero and other Aggrieved Employees, in a civil action, to the extent allowed by law.

Labor Code §246(a) states: "(a) An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section." Labor Code§ 246(b)(1) states: "An employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later, subject to the use and accrual limitations set forth in this section." Labor Code §246(l) states: "For the purposes of this section, an employer shall calculate paid sick leave using any of the following calculations: (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek. (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment. (3) Paid sick time for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time."

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Defendants, as a matter of established company policy and procedure during the relevant time period: (a) administered a uniform company policy and practice as to the pay policies regarding Ms. Cordero and other Aggrieved Employees; and (b) failed to pay Ms. Cordero and other Aggrieved Employees for paid sick days in a manner that fully complies with Labor Code § 246(l), failed to pay sick days at the regular rate of pay, and/or unlawfully paid sick days at the straight time or base rate of pay.

As an “aggrieved employee,” Ms. Cordero has initiated a civil action on behalf of herself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations previously alleged in her April 17, 2023 letter, and will amend her civil action with respect to the additional wage and hour violations alleged herein. Based on Ms. Cordero’s own investigation, and on information and belief, Defendants committed the following Labor Code violation, in addition to the violations set forth in Ms. Cordero’s LWDA letter:

- a) Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Ms. Cordero and other Aggrieved Employees all overtime compensation earned;
- b) Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to pay meal period premiums at the regular rate to Ms. Cordero and other aggrieved employees; and
- c) Defendants violated Labor Code § 246 by failing to pay Ms. Cordero and other Aggrieved Employees sick pay at the legal pay rate.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
LIDMAN LAW, APC



Scott M. Lidman

EXHIBIT A

EXHIBIT A

LIDMAN LAW

2155 CAMPUS DRIVE, SUITE 150, EL SEGUNDO, CA 90245

OFFICE: (424) 322-4772

FAX: (424) 322-4775

April 17, 2023

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

VIA U.S. CERTIFIED MAIL – RETURN

RECEIPT REQUESTED

OldCastle APG West, Inc., a Colorado
corporation
c/o CSC – Lawyers Incorporating Service
2710 Gateway Oaks Dr., Ste. 150N
Sacramento, CA 95833

VIA U.S. CERTIFIED MAIL – RETURN

RECEIPT REQUESTED

OldCastle APG, Inc., a Delaware corporation
c/o CSC – Lawyers Incorporating Service
2710 Gateway Oaks Dr., Ste. 150N
Sacramento, CA 95833

Re: *Cristina Cordero v. OldCastle APG, Inc., et al.*

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For purposes of this letter, an “aggrieved employee” should be considered to include all current and former hourly-paid employees in California who worked, at least in part, during the one year immediately preceding the date of this letter through the date of trial, the date judgment is entered, the date of settlement and/or other date approved by the Court.

Ms. Cordero, a former non-exempt employee, was employed by Defendants from approximately March 2022 through approximately November 28, 2022. During her employment, Ms. Cordero worked as an Operations Coordinator.

During her employment with Defendants, Ms. Cordero generally worked Monday through Friday, 8 hour shifts and often times worked over 10 or 12 hours. Therefore, Ms. Cordero would often work more than eight (8) hours per day and/or forty (40) hours per week.

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April 17, 2023

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During her employment with Defendants, Ms. Cordero and other hourly, non-exempt employees would keep track of their time worked by entering their time into Kronos. Ms. Cordero is informed and believes, and based thereon alleges, that Defendants maintained a policy and practice of requiring hourly, non-exempt employees to track their worktime to the minute and failing to pay Ms. Cordero and other hourly, non-exempt employees based on the time recorded in Kronos. As a result, Defendants failed to pay Ms. Cordero and the other hourly, non-exempt employees all required minimum and overtime wages.

Throughout Ms. Cordero's employment with Defendants, Ms. Cordero and other hourly, non-exempt employees were not provided all required meal periods due to Defendants' meal period policies/practices which fail to provide uninterrupted, duty-free 30-minute meal periods prior to the start of the fifth hour of work. Specifically, due to the work demands imposed by Defendants, Defendants often provided meal periods that were either late or short or failed to provide a required meal period altogether. Moreover, when Ms. Cordero and other hourly, non-exempt employees worked in excess of 10.0 hours in a shift, Defendants failed to provide a second uninterrupted, duty-free 30-minute meal period in violation of California law.

Although Ms. Cordero and other hourly, non-exempt employees were not provided with all legally-compliant meal periods to which they were entitled, Defendants failed to compensate Ms. Cordero and other hourly, non-exempt employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief during at least a portion of the class period, Defendants maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally compliant meal period was not provided to Ms. Cordero and their non-exempt employees.

Ms. Cordero and other non-exempt employees were also not authorized and permitted to take all legally required and compliant rest periods due to Defendants' rest period policies and practices. Specifically, due to Defendants' practices of understaffing and the work demands imposed by Defendants, Defendants did not authorize and permit one rest period for every four hours worked, or major fraction thereof.

On those occasions when Ms. Cordero and other hourly, non-exempt employees were not authorized and permitted to take all legally-compliant rest periods to which they were entitled, Defendants failed to compensate Ms. Cordero and other hourly, non-exempt employees with the required rest period premium for each workday in which they experienced a rest period violation as mandated by Labor Code § 226.7 Further, upon information and belief during at least a portion of the class period, Defendants maintained no payroll code or other mechanism for the payment of rest period premium payments under Labor Code § 226.7 in the event that a legally compliant rest period was not provided to their non-exempt employees.

As a result of Defendants' failure to pay all minimum wages, overtime wages, as well as meal period premium wages and rest period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Ms. Cordero and other hourly, non-exempt employees. Further, Defendants face independent liability as the wage statements were inaccurate because they did not list the proper overtime rates.

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April 17, 2023

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As described above, Defendants committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 1 ("Wage Order 1"):

Overtime Violations

Defendants were required to pay their aggrieved employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 1194(a) and 1198; the Wage Order 1, § 3. According to Labor Code § 510(a), "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." This Section further provides, "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated equal to one and one-half times their regular rate of pay for all overtime hours worked. As explained above, during her employment with Defendants, Ms. Cordero and other aggrieved employees would keep track of their time worked by entering their time into Kronos. Ms. Cordero is informed and believes, and based thereon alleges, that Defendants maintained a policy and practice of requiring employees to track their worktime to the minute and failing to pay Ms. Cordero and other aggrieved employees based on the time recorded in Kronos. As a result, Defendants failed to pay Ms. Cordero and other aggrieved employees all required minimum and overtime wages.

Minimum Wage Violations

Defendants were required to pay their aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1194; 1194.2, 1197; The Wage Order 1, § 4. The aggrieved employees were not paid for all hours worked due to Defendants' timekeeping and compensation practices. As alleged above, during Ms. Cordero's employment with Defendants, she typically worked in excess of 8 hours per workday and/or 40 hours per work week, and therefore, had Ms. Cordero been properly paid for all of the time that she actually worked, she would have been paid additional overtime wages. Moreover, Ms. Cordero often worked in excess of 12 hours in a shift but was not properly compensated at her double time rate for such hours. This practice by Defendants resulted in Defendants not properly tracking the time worked by Ms. Cordero and aggrieved employees, and also resulted in Defendants paying them less than they were owed for the work they performed, including failing to pay them for all required minimum wages.

Meal Period Violations

As alleged above, Defendants failed to provide their aggrieved employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 1, § 11. As described above,

LWDA

April 17, 2023

Page 4 of 5

due to the work demands imposed by Defendants, Defendants often provided meal periods that were either late or short or failed to provide a required meal period altogether. Moreover, when Ms. Cordero worked in excess of 10.0 hours in a shift, Defendants failed to provide a second uninterrupted, duty-free 30-minute meal period in violation of California law. Therefore, the aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”). Although the aggrieved employees were not provided with all legally-compliant meal periods to which they were entitled, Defendants failed to compensate them with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

Rest Period Violations

Defendants also failed to authorize and permit their aggrieved employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 1, § 12. As alleged above, Defendants’ rest period policies and practices fail to authorize and permit the aggrieved employees to take a net paid 10-minute rest period for every four hours worked, or *major fraction thereof*, due to Defendants’ practices of understaffing and the work demands imposed by Defendants. As a result, the aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest period is not provided.”)

Wage Statement Violations

Defendants knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish their aggrieved employees with accurate and complete, itemized wage statements that included, among other requirements, all minimum and overtime wages earned, total gross wages earned, total net wages earned, and meal and rest period premium wages, in violation of Labor Code § 226 *et seq.* Further, Defendants face independent liability as the wage statements were inaccurate because they did not list the proper overtime rates. Defendants’ failure to furnish their aggrieved employees with complete and accurate, itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all minimum and overtime wages earned, and unpaid meal period and premium wages, and deprived them of the information necessary to identify discrepancies in Defendants’ reported data.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Defendants failed to timely pay Ms. Cordero and other aggrieved employees all of their final wages at the time of separation, which included, among other things, underpaid minimum and overtime wages, and meal and rest period premium wages. Additionally, Defendants violated Labor Code §§ 201-203 by, among other unlawful acts, issuing paycards as final payment of wages to employees who have been discharged and/or resigned without such employees’

LWDA

April 17, 2023

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authorization. As alleged herein, these paycards required fees for usage and did not allow employees to access all of the monies contained on such cards in violation of Labor Code § 212.

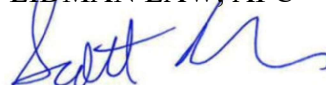
Pursuant to Labor Code § 203, Defendants' failure to pay all final wages due to their aggrieved employees was willful and, consequently, entitles the aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Defendants failed to pay their final wages after their separation, up to a maximum of thirty days.

As an "aggrieved employee," Ms. Cordero will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Ms. Cordero's own investigation, and on information and belief, Defendants committed the following Labor Code violations:

- a) Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Ms. Cordero and the aggrieved employees all overtime compensation earned;
- b) Defendants violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Ms. Cordero and the aggrieved employees the statutory minimum wage for all hours worked;
- c) Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Ms. Cordero and the aggrieved employees;
- d) Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Ms. Cordero and the aggrieved employees;
- e) Defendants violated Labor Code § 226 by failing to furnish Ms. Cordero and the aggrieved employees with accurate and compliant itemized wage statements;
- f) Defendants violated Labor Code § 204 by failing to pay Ms. Cordero and the aggrieved employees all earned wages at least twice during each calendar month;
- g) Defendants violated Labor Code § 1174 by failing to maintain accurate records on behalf of Ms. Cordero and the aggrieved employees; and
- h) Defendants violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Ms. Cordero and other aggrieved employees.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
LIDMAN LAW, APC



Scott M. Lidman

EXHIBIT C

EXHIBIT C

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Attorneys for Plaintiff
CRISTINA CORDERO

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

CRISTINA CORDERO, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

OLDCASTLE APG, INC., a Delaware
corporation; OLDCASTLE APG WEST,
INC., a Colorado corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No.: CIVSB2308695

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

- (1) FAILURE TO PAY ALL MINIMUM
WAGES OWED (LABOR CODE §§
1194, 1194.2, 1197);**
- (2) FAILURE TO PAY ALL
OVERTIME WAGES OWED
(LABOR CODE §§ 204, 510, 558,
1194, 1198);**
- (3) FAILURE TO PROVIDE MEAL
PERIODS (LABOR CODE §§ 226.7,
512, 558);**
- (4) FAILURE TO AUTHORIZE AND
PERMIT REST PERIODS (LABOR
CODE §§ 226.7, 516);**
- (5) FAILURE TO PROVIDE
ACCURATE, ITEMIZED WAGE
STATEMENTS (LABOR CODE §
226 *et seq.*);**

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- (6) FAILURE TO TIMELY PAY ALL WAGES UPON TERMINATION (LABOR CODE §§ 201-203);**
- (7) UNFAIR COMPETITION (BUS & PROF CODE § 17200 *et seq.*);**
- (8) CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 *et seq.*); and**
- (9) FAILURE TO PAY SICK PAY WAGES AT THE CORRECT RATE OF PAY (LABOR CODE § 246)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

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3
4 Plaintiff Cristina Cordero (“Plaintiff”), on behalf of herself and all others similarly
5 situated, hereby brings this Second Amended Class and Representative Action Complaint
6 (“SAC”) against OldCastle APG, Inc., a Delaware corporation; OldCastle APG West, Inc., a
7 Colorado corporation; and DOES 1 to 100, inclusive (collectively “Defendants”), and on
8 information and belief alleges as follows:

9 **JURISDICTION**

10 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this
11 SAC for recovery of unpaid wages and penalties under California Business and Professions Code
12 § 17200 *et. seq.*, Labor Code §§ 201-203, 204, 212, 218 *et seq.*, 226, 226.7, 246 510, 512, 516,
13 558, 1194, 1194.2, 1197, 1198, and Industrial Welfare Commission Wage Order 1 (the “Wage
14 Order 1”), in addition to seeking declaratory relief and restitution. This SAC is brought pursuant
15 to California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants’
16 violations of the California Labor Code because the amount in controversy exceeds this Court’s
17 jurisdictional minimum.

18 **VENUE**

19 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§
20 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the
21 County of San Bernardino. Defendants own, maintain offices, transact business, have agent(s)
22 within the County of San Bernardino, and/or otherwise are found within the County of San
23 Bernardino, and Defendants are within the jurisdiction of this Court for purposes of service of
24 process.

25 **PARTIES**

26 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
27 Plaintiff was a California resident. During the four years immediately preceding the filing of the
28 lawsuit in this action and within the statute of limitations periods applicable to each cause of

1 action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff
2 was, and is, a victim of Defendants' policies and/or practices complained of herein, lost money
3 and/or property, and has been deprived of the rights guaranteed by Labor Code §§ 201-203, 204,
4 212, 218.5, 218.6, 226, 226.7, 246, 510, 512, 516, 558, 1194, 1194.2, 1197, 1198, and California
5 Business and Professions Code § 17200 *et seq.* ("Unfair Competition Law" or "UCL"); and Wage
6 Order 1, which sets employment standards for the occupations in the manufacturing, which
7 includes the industry in which Plaintiff worked for Defendants.

8 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
9 years preceding the filing of the lawsuit and continuing to the present, Defendants did (and
10 continue to do) business by being the largest manufacturer of architectural building products in
11 North America. Defendants employed Plaintiff and other, similarly-situated non-exempt
12 employees within San Bernardino County and the state of California and, therefore, were (and
13 are) doing business in San Bernardino County and the State of California.

14 5. Plaintiff does not know the true names or capacities, whether individual, partner,
15 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
16 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
17 amend this FAC when such true names and capacities are discovered. Plaintiff is informed, and
18 believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
19 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
20 and proximately caused Plaintiff and the Classes (as defined in Paragraph 20) to be subject to the
21 unlawful employment practices, wrongs, injuries and damages complained of herein.

22 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
23 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

24 7. At all times herein mentioned, each of said Defendants participated in the doing
25 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
26 Defendants, and each of them, were the agents, servants, and employees of each and every one of
27 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
28 were acting within the course and scope of said agency and employment. Defendants, and each

1 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
2 omissions complained of herein.

3 8. At all times mentioned herein, Defendants, and each of them, were members of
4 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
5 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
6 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
7 members of the Classes.

8 **GENERAL FACTUAL ALLEGATIONS**

9 9. Plaintiff, a former non-exempt employee, was employed by Defendants from
10 approximately March 2022 through approximately November 28, 2022. During her employment,
11 Plaintiff worked as an Operations Coordinator.

12 10. During her employment with Defendants, Plaintiff generally worked Monday
13 through Friday, 8 hour shifts and often times worked over 10 or 12 hours. Therefore, Plaintiff
14 would often work more than eight (8) hours per day and/or forty (40) hours per week.

15 11. During her employment with Defendants, Plaintiff and other non-exempt
16 employees would keep track of their time worked by entering their time into Kronos. Plaintiff is
17 informed and believes, and based thereon alleges, that Defendants maintained a policy and
18 practice of requiring non-exempt employees to track their worktime to the minute and failing to
19 pay Plaintiff and other non-exempt employees based on the time recorded in Kronos. As a result,
20 Defendants failed to pay Plaintiff and the other non-exempt employees all required minimum and
21 overtime wages.

22 12. While working for Defendants, Plaintiff routinely worked in excess of eight hours
23 per workday and/or more than forty hours per workweek, but did not receive overtime
24 compensation equal to one and one-half times their regular rate of pay for working overtime
25 hours. Specifically, Plaintiff received non-discretionary bonuses, shift differentials and/or other
26 forms of pay not excludable as a matter of law when calculating an employee's regular rate
27 (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive Pay").
28 Despite Defendants' payment of Incentive Pay to Plaintiff and other non-exempt employees,

Defendants' policies and/or procedures failed to include all forms of Incentive Pay when calculating the regular rate of pay, thereby causing Plaintiff and other non-exempt employees to be underpaid all of their required overtime wages. As a result, Defendants failed to pay Plaintiff and other non-exempt employees all required overtime wages. In addition, despite Defendants' payment of Incentive Pay to Plaintiff and other non-exempt employees, Defendants' policies and/or procedures failed to include all forms of Incentive Pay when calculating the regular rate of pay for purposes of paying sick pay in a manner that fully complies with Labor Code § 246(l) in that Defendants failed to pay sick days at the regular rate of pay and unlawfully paid sick days at the straight time or base rate of pay.

13. Throughout Plaintiff's employment with Defendants, Plaintiff was not provided all required meal periods due to Defendants' meal period policies/practices which fail to provide uninterrupted, duty-free 30-minute meal periods prior to the start of the fifth hour of work. Specifically, due to the work demands imposed by Defendants, Defendants often provided meal periods that were either late or short or failed to provide a required meal period altogether. Moreover, when Plaintiff worked in excess of 10.0 hours in a shift, Defendants failed to provide a second uninterrupted, duty-free 30-minute meal period in violation of California law.

14. Although Plaintiff was not provided with all legally-compliant meal periods to which she was entitled, Defendants failed to compensate Plaintiff with the required meal period premium for each workday in which she experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief during at least a portion of the class period, Defendants maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally compliant meal period was not provided to Plaintiff and their non-exempt employees. Further, upon information and belief, Defendants did not pay meal period premium wages at the regular rate.

15. Plaintiff was also not authorized and permitted to take all legally required and compliant rest periods due to Defendants' rest period policies and practices. Specifically, due to Defendants' practices of understaffing and the work demands imposed by Defendants, Defendants did not authorize and permit one rest period for every four hours worked, or *major*

1 *fraction thereof.*

2 16. On those occasions when Plaintiff was not authorized and permitted to take all
3 legally-compliant rest periods to which she was entitled, Defendants failed to compensate
4 Plaintiff with the required rest period premium for each workday in which she experienced a rest
5 period violation as mandated by Labor Code § 226.7 Further, upon information and belief during
6 at least a portion of the class period, Defendants maintained no payroll code or other mechanism
7 for the payment of rest period premium payments under Labor Code § 226.7 in the event that a
8 legally compliant rest period was not provided to their non-exempt employees.

9 17. As a result of Defendants' failure to pay all minimum wages, overtime wages, as
10 well as meal period premium wages and rest period premium wages, Defendants maintained
11 inaccurate payroll records and issued inaccurate wage statements to Plaintiff. Further, Defendants
12 face independent liability as the wage statements were inaccurate because they did not list the
13 proper overtime rates.

14 18. As a result of Defendants' failure to pay all minimum and overtime wages and
15 meal and rest period premium wages, Defendants failed to pay all wages owed to Plaintiff upon
16 her termination of employment with Defendants. Additionally, Defendants violated Labor Code
17 §§ 201-203 by, among other unlawful acts, issuing paycards as final payment of wages to
18 employees who have been discharged and/or resigned without such employees' authorization. As
19 alleged herein, these paycards required fees for usage and did not allow employees to access all
20 of the monies contained on such cards in violation of Labor Code § 212.

21 19. As a further result of Defendants' failure to pay overtime wages and as a result of
22 Defendants' failure to pay Plaintiff and other non-exempt employees' their sick pay at their
23 regular rate of pay pursuant to Labor Code section 246(1), Defendants failed to pay all wages
24 owed to Plaintiff and other former non-exempt employees upon their separation of employment
25 with Defendants.

26
27 **CLASS ACTION ALLEGATIONS**

28 20. **Class Definitions:** Plaintiff brings this action on behalf of herself and the

1 following Classes pursuant to § 382 of the Code of Civil Procedure:

- 2 a. The Minimum Wage Class: consists of all of Defendants' current and former non-
3 exempt employees in California who were subject to Defendants' timekeeping
4 policies/practices, during the four years preceding the filing of the lawsuit through
5 the present.
- 6 b. The Overtime Class: consists of all of Defendants' current and former non-exempt
7 employees in California who worked more than eight hours per day and/or forty
8 hours per week and subject to Defendants' timekeeping policies/practices, during
9 the four years immediately preceding the filing of this lawsuit through the present
10 date.
- 11 c. The Meal Period Class consists of all of Defendants' current and former non-
12 exempt employees who: (i) worked at least one shift in excess of 5.0 hours, during
13 the four years immediately preceding the filing of the lawsuit through the present.
- 14 d. The Rest Period Class consists of all of Defendants' current and former non-
15 exempt employees in California who worked at least one shift in excess of 3.5
16 hours during the four years immediately preceding the filing of the lawsuit through
17 the present.
- 18 e. The Wage Statement Class consists of members of the: (i) Overtime Class; (ii)
19 Minimum Wage Class; (iii) Meal Period Class; (iv) Rest Period Class; and/or (v)
20 Sick Pay Class, during the one year immediately preceding the filing of the lawsuit
21 through the present.
- 22 f. The Waiting Time Penalty Class consists of Defendants' formerly employed
23 members of the Minimum Wage Class, Overtime Class, Meal Period Class, Rest
24 Period Class, Sick Pay Class, and/or who were paid via a paycard without their
25 written authorization or consent in California, during the three years immediately
26 preceding the filing of the lawsuit through the present.
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28

g. The UCL Class consists of members of the: (i) Minimum Wage Class; (ii) Overtime Class; (iii) Meal Period Class; (iv) Rest Period Class; (v) Wage Statement Class; (vi) Waiting Time Penalty Class; (vii) Sick Pay Class.

h. The Sick Pay Class consists of all of Defendants' current and former non-exempt employees in California who were subject to Defendants' timekeeping policies/practices, during the four years preceding the filing of the lawsuit through the present, and who were paid sick pay at less than their regular rate of pay.

21. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court, to amend or modify the description of the various classes with greater specificity or further division into subclasses or limitation to particular issues.

22. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than ninety (90) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

23. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members. Those common questions include, without limitation:

i. Whether Defendants' timekeeping policies and/or practices resulted in the failure to properly compensate members of the Overtime and Minimum Wage Classes for all hours actually worked;

ii. Whether Defendants violated the applicable Labor Code provisions including, but not limited to §§ 510 and 1194 by requiring overtime work and not paying for said work according to the overtime laws of the State of California;

iii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;

iv. Whether Defendants authorized and permitted all legally compliant rest periods to

members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;

v. Whether Defendants provided accurate, itemized wage statements to members of the Classes;

vi. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Class at the time of their separation of employment were lawful;

vii. Whether Defendants engaged in unlawful, unfair, illegal, and/or deceptive business practices by and through the wage and hour policies and practices described above, and whether as a result Defendants owe the classes restitution; and

viii. Whether Defendants failed to pay members of the Sick Pay Class their sick pay at their regular rate of pay pursuant to Labor Code section 246(l);

24. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform timekeeping, minimum wage payment, overtime wage payment, meal and rest period policies and practices, and final pay policies and practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

25. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the lawsuit. As alleged herein, Plaintiff, like the members of the Classes, was not provided all legally required minimum and overtime wages, was not provided with all required meal periods, was not authorized and permitted to take all required rest periods, did not receive meal and rest period premium wages when she was not provided compliant meal and rest periods, was not provided with accurate,

1 itemized wage statements, was not paid all wages due at the time of termination; and was no paid
2 sick pay at her regular rate of pay.

3 26. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
4 to represent fairly and adequately the interests of the members of the Classes. Moreover,
5 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of
6 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-
7 and-hour class actions in state and federal courts in the past and are committed to vigorously
8 prosecuting this action on behalf of the members of the Classes.

9 27. **Superiority:** The California Labor Code is broadly remedial in nature and serves
10 an important public interest in establishing minimum working conditions and standards in
11 California. These laws and labor standards protect the average working employee from
12 exploitation by employers who have the responsibility to follow the laws and who may seek to
13 take advantage of superior economic and bargaining power in setting onerous terms and
14 conditions of employment. The nature of this action and the format of laws available to Plaintiff
15 and members of the Classes make the class action format a particularly efficient and appropriate
16 procedure to redress the violations alleged herein. If each employee were required to file an
17 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
18 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
19 their vastly superior financial and legal resources. Moreover, requiring each member of the
20 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
21 employees who would be disinclined to file an action against their former and/or current employer
22 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
23 employment. Further, the prosecution of separate actions by the individual class members, even
24 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
25 with respect to the individual class members against Defendants herein; and which would
26 establish potentially incompatible standards of conduct for Defendants; and/or legal
27 determinations with respect to individual class members which would, as a practical matter, be
28 dispositive of the interest of the other class members not parties to adjudications or which would

1 substantially impair or impede the ability of the class members to protect their interests. Further,
2 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
3 individual prosecution considering all of the concomitant costs and expenses attending thereto.
4 As such, the Classes identified in Paragraph 20 are maintainable as a Class under § 382 of the
5 Code of Civil Procedure.

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8 **FIRST CAUSE OF ACTION**

9 **FAILURE TO PAY ALL MINIMUM WAGES OWED**

10 **(AGAINST ALL DEFENDANTS)**

11 28. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

12 29. This cause of action is brought pursuant to Labor Code §§ 204, 558, 1194, 1197
13 and 1198 which provide that all non-exempt employees are entitled to all minimum wages for all
14 hours worked, and provide a private right of action for the failure to pay all minimum wage
15 compensation for all work performed.

16 30. At all times relevant herein, Defendants were required to properly compensate
17 Plaintiff and the members of the Minimum Wage Class for all hours worked pursuant to
18 California Labor Code §§ 1194, 1197 and 1198, and the Wage Order 1. The Wage Order 1,
19 Section 4 requires an employer to pay to every employee on the established payday for the period
20 involved not less than the applicable minimum wage for all hours worked in the payroll period.
21 Defendants caused Plaintiff and the members of the Minimum Wage Class to work hours in a
22 workweek but did not properly compensate Plaintiff and the members of the Minimum Wage
23 Class at least minimum wages for such hours.

24 31. At all times relevant herein, Defendants lacked good faith and had no reasonable
25 grounds for believing that their practices in failing to pay all minimum wages owed at the
26 applicable rate was not a violation of any provision of the Labor Code relating to minimum wage,
27 or an order of the Industrial Welfare Commission. Defendants therefore, in addition to owing
28 minimum wages to Plaintiff and the members of the Minimum Wage Class, also owe liquidated

1 damages in an amount equal to the wages unlawfully unpaid, and interest thereon, pursuant to
2 Labor Code § 1194.2.

3 32. The foregoing practices and policies are unlawful and create entitlement to
4 recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid
5 amount of minimum wages owing, including interest thereon, as well as statutory penalties,
6 liquidated damages, civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code
7 §§ 204, 218.5, 218.6, 558, 1194, 1194.2, 1197, 1197.1 and 1198, the Wage Order 1, California
8 Code of Civil Procedure § 1021.5 California Code of Civil Procedure § 1021.5, and Civil Code
9 §§ 3287(b) and 3289.

10 **SECOND CAUSE OF ACTION**

11 **FAILURE TO PAY ALL OVERTIME WAGES OWED**

12 **(AGAINST ALL DEFENDANTS)**

13 33. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

14 34. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194
15 and 1198 which provide that all non-exempt employees are entitled to all overtime wages for all
16 overtime worked (hours in excess of 8 in one day and/or 40 in one week), and provide a private
17 right of action for the failure to pay all overtime compensation for overtime work performed.

18 35. At all times relevant herein, Defendants were required to properly compensate
19 Plaintiff and the members of the Overtime Class for all overtime hours worked pursuant to
20 California Labor Code §§ 510 and 1194, and the Wage Order 1. Labor Code § 510 and the Wage
21 Order 1, Section 3 require an employer to pay an employee "one and one-half (1½) times the
22 regular rate of pay" for work in excess of 8 hours per workday and/or in excess of 40 hours per
23 workweek. Labor Code § 510 and the Wage Order 1, Section 3 also require an employer to pay
24 an employee double the employee's regular rate for work in excess of 12 hours each workday
25 and/or in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants
26 caused Plaintiff and the members of the Overtime Class to work in excess of 8 hours in a workday
27 and/or 40 hours in a workweek but did not properly compensate Plaintiff and the members of the
28 Overtime Class at one and one-half their regular rate of pay for such hours. Plaintiff is further

1 informed and believes that Defendants failed to incorporate all non-discretionary Incentive Pay
2 into the regular rate of pay of members of the Overtime Class, resulting in members of the
3 Overtime Class being underpaid for overtime hours worked.

4 36. The foregoing practices and policies are unlawful and create entitlement to
5 recovery by Plaintiff and the members of the Overtime Class in a civil action for the unpaid
6 amount of overtime premium owing, including interest thereon, as well as statutory penalties,
7 civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code §§ 204, 210, 216,
8 218.5, 218.6, 510, 558, 1194 and 1198, the Wage Order 1, California Code of Civil Procedure §
9 1021.5 California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

10 **THIRD CAUSE OF ACTION**

11 **FAILURE TO PROVIDE MEAL PERIODS**

12 **(AGAINST ALL DEFENDANTS)**

13 37. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

14 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants
15 failed in their affirmative obligation to provide all of their non-exempt employees in California,
16 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
17 in accordance with the mandates of the California Labor Code and the Wage Order 1, § 11.
18 Despite Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and
19 members of the Meal Period Class at their respective regular rates of pay, in accordance with
20 California Labor Code §§ 204, 210, 226.7, and 512.

21 39. As a result, Defendants are responsible for paying premium compensation for meal
22 period violations pursuant to Labor Code §§ 226.7, 512, and 558, and the Wage Order 1, including
23 interest thereon, statutory penalties, civil penalties, and costs of suit.

24 **FOURTH CAUSE OF ACTION**

25 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

26 **(AGAINST ALL DEFENDANTS)**

27 40. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

28 41. The Wage Order 1, § 12 and California Labor Code §§ 226.7, 516 and 558

1 establish the right of employees to be authorized and permitted to take a paid rest period of at
2 least ten (10) minutes net rest time for each four (4) hour period worked, or *major fraction thereof*.

3 42. As alleged herein, Defendants failed to authorize and permit Plaintiff and members
4 of the Rest Period Class to take all required rest periods.

5 43. The foregoing violations create an entitlement to recovery by Plaintiff and
6 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
7 owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according
8 to California Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

9 **FIFTH CAUSE OF ACTION**

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

11 **(AGAINST ALL DEFENDANTS)**

12 44. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

13 45. Plaintiff is informed and believes, and based thereon alleges, that Defendants
14 knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Plaintiff
15 and the Wage Statement Class Members with accurate, itemized wage statements that included
16 among other requirements, accurate total gross wages earned, meal and rest period premiums, and
17 total net wages earned in violation of Labor Code § 226 *et seq.*

18 46. Defendants' failure to furnish Plaintiff and the members of the Wage Statement
19 Class with complete and accurate, itemized wage statements resulted in actual injury, as said
20 failures led to, among other things, the non-payment of all of minimum and overtime wages
21 earned and non-payment of their meal and rest period premiums, and deprived them of the
22 information necessary to identify discrepancies in Defendants' reported data.

23 47. Defendants' failures created an entitlement to Plaintiff and members of the Wage
24 Statement Class in a civil action for damages and/or penalties pursuant to Labor Code § 226,
25 including statutory penalties civil penalties, reasonable attorneys' fees, and costs according to suit
26 pursuant to Labor Code § 226 *et seq.*

27 **SIXTH CAUSE OF ACTION**

28 **FAILURE TO PAY ALL WAGES UPON TERMINATION**

(AGAINST ALL DEFENDANTS)

48. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

49. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of separation of employment in the event the employer discharges the employee or the employee provides at least 72 hours of notice of their intent to quit. In the event the employee provides less than 72 hours of notice of their intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

50. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to timely pay Plaintiff and members of the Waiting Time Penalty Class all final wages due to them at their separation from employment, including, all minimum and/or overtime wages and meal and rest period premium wages. Further, Defendants paid final wages in the form of a paycard. Plaintiff and members of the Waiting Time Penalty Class did not give authorization or consent to receive wages in form of a paycard. As alleged herein, the paycard required Plaintiff and members of the Waiting Time Penalty Class to incur fees to use, was not fully cashable, and/or not usable at all financial institutions. Thus, the paycard did not actually compensate former employees for all wages owed.

51. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members of the Waiting Time Penalty Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203.

52. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting Time Penalty Class their earned wages upon separation from employment results in a continued payment of wages up to thirty days from the time the wages were due.

53. Therefore, Plaintiff and members of the Waiting Time Penalty Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION**(AGAINST ALL DEFENDANTS)**

54. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

55. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by failing to properly pay all minimum and overtime wages, provide all required meal periods and authorize and permit all required rest periods, or pay premium payments in lieu thereof.

56. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiff and continues to deprive members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

57. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for herself and on behalf of the members of the Classes, seeks full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

58. The acts complained of herein occurred within the last four years immediately preceding the filing of the lawsuit in this action.

59. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current non-exempt employees, and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which she is entitled to recover under Code of Civil Procedure § 1021.5.

EIGHTH CAUSE OF ACTION**LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004****(AGAINST ALL DEFENDANTS)**

60. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

61. Defendants have committed several Labor Code violations against Plaintiff and other Aggrieved Employees. Plaintiff, an “Aggrieved Employee” within the meaning of Labor Code § 2698 et seq., acting on behalf of himself and other Aggrieved Employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, the other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to: (1) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (2) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a) Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Plaintiff and the aggrieved employees all overtime compensation earned;
- b) Defendants violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Plaintiff and the aggrieved employees the statutory minimum wage for all hours worked;
- c) Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Plaintiff and the aggrieved employees;
- d) Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Plaintiff and the aggrieved employees;
- e) Defendants violated Labor Code § 226 by failing to furnish Plaintiff and the aggrieved employees with accurate and compliant itemized wage statements;
- f) Defendants violated Labor Code § 204 by failing to pay Plaintiff and the aggrieved employees all earned wages at least twice during each calendar month;
- g) Defendants violated Labor Code § 1174 by failing to maintain accurate records on behalf of Plaintiff and the aggrieved employees;

- 1 h) Defendants violated Labor Code §§ 201, 202 and 203 by failing to timely pay
2 all final wages due to Plaintiff and other aggrieved employees; and
3 i) Defendants violated Labor Code § 246 by failing to pay Plaintiff and other
4 Aggrieved Employees sick pay at the correct legal pay rate;
5

6 62. On April 17, 2023 and January 24, 2024, Plaintiff notified Defendants via certified
7 mail and the California Labor and Workforce Development Agency (“LWDA”) via e-
8 mail, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a
9 claim for civil penalties under California Labor Code § 2698 et seq. with respect to
10 violations of the California Labor Code identified in Paragraph 61 (a)-(i). Attached hereto as
11 **Exhibit 1** is a true and correct copy of the April 17, 2023 and January 24, 2024,
12 correspondences. Now that sixty-five days have passed from Plaintiff notifying Defendants of
13 these violations, Plaintiff has exhausted her administrative requirements for bringing a claim
14 under the Labor Code Private Attorneys General Act with respect to these violations.

15 63. Plaintiff was compelled to retain the services of counsel to file this court action to
16 protect her interests and the interests of other aggrieved employees, and to assess and collect the
17 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, whi
18 ch she is entitled to recover under California Labor Code § 2699(g).

19 **NINTH CAUSE OF ACTION**

20 **FAILURE TO PAY SICK PAY WAGES**

21 **(AGAINST ALL DEFENDANTS)**

22 64. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

23 65. Cal Lab. Code § 233 provides that an employer must permit an employee to use
24 accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee’s then current rate
25 of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to sick pay wages for
26 use of accrued sick leave pursuant to Cal Lab. Code § 246.5. Specifically, once accrued sick
27 leave is used as paid sick time, an employee has a vested right to sick pay wages, which an
28 employer must calculate and compensate based on one of two calculations: (i) “Paid sick time for

1 nonexempt employees shall be calculated in the same manner as the regular rate of pay for the
2 workweek in which the employee uses paid sick time, whether or not the employee actually works
3 overtime in that workweek,” or (ii) “Paid sick time for nonexempt employees shall be calculated
4 by dividing the employee’s total wages, not including overtime premium pay, by the employee’s
5 total hours worked in the full pay periods of the prior 90 days of employment.”.

6 66. As a matter of policy and practice, Plaintiff, is informed and believes, and that
7 basis states, that Defendants pay sick pay wages to Plaintiff and the other members of the Sick
8 Pay Class at the incorrect rate of pay. Plaintiff and the other members of the Sick Pay Class
9 regularly use accrued sick leave in the workweeks in which they also earn non-hourly
10 remuneration. As a matter of policy and practice, Defendants pay sick pay wages to Plaintiff and
11 the other members of the Sick Pay Class at the base hourly pay, as opposed to the regular rate of
12 pay, which would consider all non- hourly remuneration in addition to base hourly wages, or the
13 rate resulting from dividing the employee’s total wages, not including overtime premium pay, by
14 the employee’s total hours worked in the full pay periods of the prior 90 days of employment. As
15 a result, Defendant underpaid sick pay wages to Plaintiff and the other members of the Sick Pay
16 Class.

17 67. Cal. Lab. Code § 204 provides that wages generally are due and payable twice
18 during each calendar month and are to be paid no later than the payday for the next regular payroll
19 period. Consistent with Cal. Lab. Code § 204, Cal. Lab. Code § 246 specifically requires that,
20 upon use of accrued sick leave, vested sick pay wages are due and to be paid no later than the
21 payday for the next regular payroll period after accrued sick leave is used as paid sick time.
22 Similarly, Cal. Lab. Code § 201 provides that if an employer discharges an employee, wages
23 earned and unpaid at the time of discharge are due and payable immediately. Cal. Lab. Code §
24 202 provides that an employee is entitled to receive all unpaid wages no later than 72 hours after
25 an employee quits his or her employment, unless the employee has given 72-hour notice of his or
26 her intention to quit, in which case the employee is entitled to his or her wages at the time of
27 quitting. The Labor Code penalizes untimely payments. For example, Cal. Lab. Code § 203
28 provides that if an employer willfully fails to pay wages owed in accordance with Cal. Lab. Code

§§ 201-202, then the wages of the employee shall continue as a penalty from the due date, and at the same rate until paid, but the wages shall not continue for more than thirty (30) days.

68. As alleged herein and as a matter of policy and practice, Defendant routinely underpays sick pay wages and thus did not timely pay Plaintiff and the other members of the Sick Pay Class all owing and underpaid sick pay wages. As a result, Defendant violates Cal. Lab. Code § 246, among other Labor Code provisions. Because Defendants willfully fail to timely pay Plaintiff and the other members of the Sick Pay Class all sick pay wages due, Defendant is subject to applicable penalties.

PRAYER

WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1194, 1194.2 and 1197;
5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
8. Upon the Fifth Cause of Action, for statutory wage statement penalties pursuant to Labor Code § 226 *et seq.*;
9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to Labor Code § 203;
10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the Class of all money and/or property unlawfully acquired by Defendants by means of any acts or

practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;

11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (3) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; and/or (4) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code violations cited in Paragraph 61 (a)-(i) above.

12. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code § 218.6 and Civil Code §§ 3287 and 3289;

13. Upon the Ninth Cause of Action, for penalties, compensatory, consequential, general and special damages according to proof pursuant to Labor Code § 246;

14. On all causes of action, for attorneys' fees and costs as provided by Labor Code § 218.5 and Code of Civil Procedure § 1021.5 and all other applicable statutes; and

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

Dated: Respectfully submitted,
LIDMAN LAW, APC

By:



Scott M. Lidman

Milan Moore
Attorneys for Plaintiff
CRISTINA CORDERO

1 //

2 //

3 //

4 **DEMAND FOR JURY TRIAL**

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

6
7 Dated:

LIDMAN LAW, APC

Respectfully submitted,

8
9 By:



Scott M. Lidman

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11 Milan Moore
12 Attorneys for Plaintiff
13 CRISTINA CORDERO
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EXHIBIT 1

EXHIBIT 1

LIDMAN LAW

2155 CAMPUS DRIVE, SUITE 150, EL SEGUNDO, CA 90245
OFFICE: (424) 322-4772
FAX: (424) 322-4775

January 24, 2024

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

VIA U.S. CERTIFIED MAIL – RETURN

RECEIPT REQUESTED

Oldcastle APG, Inc.
Oldcastle APG West, Inc.
c/o Karin M. Cogbill & Sean Bothamley
JACKSON LEWIS, P.C.
160 W. Santa Clara Street, Suite 400
San Jose, California 95113
Attorneys for Defendants

Re: *Cristina Cordero v. Oldcastle APG, Inc. et al.*

To Whom It May Concern:

Please be advised that this law firm represents Cristina Cordero in claims arising from her employment with Oldcastle APG, Inc., a Delaware corporation and Oldcastle APG West, Inc., a Colorado corporation (“Defendants”). Ms. Cordero is an “aggrieved employee” as defined by Labor Code sections 2699, *et seq.* due to Defendants’ numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated.

For purposes of this letter, an “aggrieved employee” should be considered to include all current and former hourly-paid employees in California who worked, at least in part, during the one year immediately preceding April 17, 2023, the date of our prior letter, through the date of trial, the date judgment is entered, the date of settlement and/or other date approved by the Court.

By this letter, Ms. Cordero hereby supplements her correspondence to the LWDA dated April 17, 2023 (the “LWDA letter”). Attached hereto as **Exhibit A** is a true and correct copy of the LWDA letter and is incorporated herein by reference. In addition to the Labor Code violations identified in the LWDA letter, Ms. Cordero alleges Defendant is also liable for the following:

Overtime Violations Based on Miscalculation of Regular Rate

Defendants were required to pay Ms. Cordero and other Aggrieved Employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 1194(a) and 1198; the Wage Order 1, § 3. According to Labor Code § 510(a), “Any work in

excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.” This Section further provides, “Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee.”

During Ms. Cordero’s employment with Defendants, Ms. Cordero received non-discretionary bonuses, \$1.00/hour shift differentials, and/or other forms of pay not excludable as a matter of law when calculating an employee’s regular rate (hereinafter the aforementioned forms of pay are collectively referred to as “Incentive Pay”). Despite Defendant’s payment of Incentive Pay to Ms. Cordero and other Aggrieved Employees, Defendants’ policies and/or procedures failed to include all forms of Incentive Pay when calculating the regular rate of pay, thereby causing Ms. Cordero and other Aggrieved Employees to be underpaid all of their required overtime wages. As a result, Defendants failed to pay Ms. Cordero and other Aggrieved Employees all required overtime wages.

Meal Period Premium Wages Violations

Labor Code § 226.7 (“If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”). Although Ms. Cordero and other Aggrieved Employees were not provided with all legally-compliant meal periods to which they were entitled, Defendants failed to compensate Ms. Cordero and other Aggrieved Employees with the required meal period premium at their regular rate for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

Failure to Pay Sick Pay at the Legal Pay Rate

Defendants’ pattern, practice and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement, pursuant to Labor Code §§ 246, 248.5 and/or Labor Code §§ 2699, *et seq.*, to recovery by Ms. Cordero and other Aggrieved Employees, in a civil action, to the extent allowed by law.

Labor Code §246(a) states: "(a) An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section." Labor Code§ 246(b)(1) states: "An employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later, subject to the use and accrual limitations set forth in this section." Labor Code §246(l) states: "For the purposes of this section, an employer shall calculate paid sick leave using any of the following calculations: (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek. (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment. (3) Paid sick time for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time."

Defendants, as a matter of established company policy and procedure during the relevant time period: (a) administered a uniform company policy and practice as to the pay policies regarding Ms. Cordero and other Aggrieved Employees; and (b) failed to pay Ms. Cordero and other Aggrieved Employees for paid sick days in a manner that fully complies with Labor Code § 246(l), failed to pay sick days at the regular rate of pay, and/or unlawfully paid sick days at the straight time or base rate of pay.

As an “aggrieved employee,” Ms. Cordero has initiated a civil action on behalf of herself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations previously alleged in her April 17, 2023 letter, and will amend her civil action with respect to the additional wage and hour violations alleged herein. Based on Ms. Cordero’s own investigation, and on information and belief, Defendants committed the following Labor Code violation, in addition to the violations set forth in Ms. Cordero’s LWDA letter:

- a) Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Ms. Cordero and other Aggrieved Employees all overtime compensation earned;
- b) Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to pay meal period premiums at the regular rate to Ms. Cordero and other aggrieved employees; and
- c) Defendants violated Labor Code § 246 by failing to pay Ms. Cordero and other Aggrieved Employees sick pay at the legal pay rate.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
LIDMAN LAW, APC



Scott M. Lidman

EXHIBIT A

EXHIBIT A

LIDMAN LAW

2155 CAMPUS DRIVE, SUITE 150, EL SEGUNDO, CA 90245

OFFICE: (424) 322-4772

FAX: (424) 322-4775

April 17, 2023

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

**VIA U.S. CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

OldCastle APG West, Inc., a Colorado
corporation
c/o CSC – Lawyers Incorporating Service
2710 Gateway Oaks Dr., Ste. 150N
Sacramento, CA 95833

**VIA U.S. CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

OldCastle APG, Inc., a Delaware corporation
c/o CSC – Lawyers Incorporating Service
2710 Gateway Oaks Dr., Ste. 150N
Sacramento, CA 95833

Re: *Cristina Cordero v. OldCastle APG, Inc., et al.*

To Whom It May Concern:

Please be advised that this law firm represents Cristina Cordero in claims arising from her employment with OldCastle APG, Inc., a Delaware corporation and OldCastle APG West, Inc., a Colorado corporation (“Defendants”). Ms. Cordero is an “aggrieved employee” as defined by Labor Code sections 2699, *et seq.* due to Defendants’ numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated.

For purposes of this letter, an “aggrieved employee” should be considered to include all current and former hourly-paid employees in California who worked, at least in part, during the one year immediately preceding the date of this letter through the date of trial, the date judgment is entered, the date of settlement and/or other date approved by the Court.

Ms. Cordero, a former non-exempt employee, was employed by Defendants from approximately March 2022 through approximately November 28, 2022. During her employment, Ms. Cordero worked as an Operations Coordinator.

During her employment with Defendants, Ms. Cordero generally worked Monday through Friday, 8 hour shifts and often times worked over 10 or 12 hours. Therefore, Ms. Cordero would often work more than eight (8) hours per day and/or forty (40) hours per week.

During her employment with Defendants, Ms. Cordero and other hourly, non-exempt employees would keep track of their time worked by entering their time into Kronos. Ms. Cordero is informed and believes, and based thereon alleges, that Defendants maintained a policy and practice of requiring hourly, non-exempt employees to track their worktime to the minute and failing to pay Ms. Cordero and other hourly, non-exempt employees based on the time recorded in Kronos. As a result, Defendants failed to pay Ms. Cordero and the other hourly, non-exempt employees all required minimum and overtime wages.

Throughout Ms. Cordero's employment with Defendants, Ms. Cordero and other hourly, non-exempt employees were not provided all required meal periods due to Defendants' meal period policies/practices which fail to provide uninterrupted, duty-free 30-minute meal periods prior to the start of the fifth hour of work. Specifically, due to the work demands imposed by Defendants, Defendants often provided meal periods that were either late or short or failed to provide a required meal period altogether. Moreover, when Ms. Cordero and other hourly, non-exempt employees worked in excess of 10.0 hours in a shift, Defendants failed to provide a second uninterrupted, duty-free 30-minute meal period in violation of California law.

Although Ms. Cordero and other hourly, non-exempt employees were not provided with all legally-compliant meal periods to which they were entitled, Defendants failed to compensate Ms. Cordero and other hourly, non-exempt employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief during at least a portion of the class period, Defendants maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally compliant meal period was not provided to Ms. Cordero and their non-exempt employees.

Ms. Cordero and other non-exempt employees were also not authorized and permitted to take all legally required and compliant rest periods due to Defendants' rest period policies and practices. Specifically, due to Defendants' practices of understaffing and the work demands imposed by Defendants, Defendants did not authorize and permit one rest period for every four hours worked, or major fraction thereof.

On those occasions when Ms. Cordero and other hourly, non-exempt employees were not authorized and permitted to take all legally-compliant rest periods to which they were entitled, Defendants failed to compensate Ms. Cordero and other hourly, non-exempt employees with the required rest period premium for each workday in which they experienced a rest period violation as mandated by Labor Code § 226.7 Further, upon information and belief during at least a portion of the class period, Defendants maintained no payroll code or other mechanism for the payment of rest period premium payments under Labor Code § 226.7 in the event that a legally compliant rest period was not provided to their non-exempt employees.

As a result of Defendants' failure to pay all minimum wages, overtime wages, as well as meal period premium wages and rest period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Ms. Cordero and other hourly, non-exempt employees. Further, Defendants face independent liability as the wage statements were inaccurate because they did not list the proper overtime rates.

As a result of Defendants' failure to pay all minimum and overtime wages and meal and rest period premium wages, Defendants failed to pay all wages owed to Ms. Cordero and other hourly, non-exempt employees upon termination of employment with Defendants. Additionally, Defendants violated Labor Code §§ 201-203 by, among other unlawful acts, issuing paycards as final payment of wages to employees who have been discharged and/or resigned without such employees' authorization. As alleged herein, these paycards required fees for usage and did not allow employees to access all of the monies contained on such cards in violation of Labor Code § 212.

As described above, Defendants committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 1 ("Wage Order 1"):

Overtime Violations

Defendants were required to pay their aggrieved employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 1194(a) and 1198; the Wage Order 1, § 3. According to Labor Code § 510(a), "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." This Section further provides, "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated equal to one and one-half times their regular rate of pay for all overtime hours worked. As explained above, during her employment with Defendants, Ms. Cordero and other aggrieved employees would keep track of their time worked by entering their time into Kronos. Ms. Cordero is informed and believes, and based thereon alleges, that Defendants maintained a policy and practice of requiring employees to track their worktime to the minute and failing to pay Ms. Cordero and other aggrieved employees based on the time recorded in Kronos. As a result, Defendants failed to pay Ms. Cordero and other aggrieved employees all required minimum and overtime wages.

Minimum Wage Violations

Defendants were required to pay their aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1194; 1194.2, 1197; The Wage Order 1, § 4. The aggrieved employees were not paid for all hours worked due to Defendants' timekeeping and compensation practices. As alleged above, during Ms. Cordero's employment with Defendants, she typically worked in excess of 8 hours per workday and/or 40 hours per work week, and therefore, had Ms. Cordero been properly paid for all of the time that she actually worked, she would have been paid additional overtime wages. Moreover, Ms. Cordero often worked in excess of 12 hours in a shift but was not properly compensated at her double time rate for such hours. This practice by Defendants resulted in Defendants not properly tracking the time worked by Ms. Cordero and aggrieved employees, and also resulted in Defendants paying them less than they were owed for the work they performed, including failing to pay them for all required minimum wages.

Meal Period Violations

As alleged above, Defendants failed to provide their aggrieved employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 1, § 11. As described above,

due to the work demands imposed by Defendants, Defendants often provided meal periods that were either late or short or failed to provide a required meal period altogether. Moreover, when Ms. Cordero worked in excess of 10.0 hours in a shift, Defendants failed to provide a second uninterrupted, duty-free 30-minute meal period in violation of California law. Therefore, the aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”). Although the aggrieved employees were not provided with all legally-compliant meal periods to which they were entitled, Defendants failed to compensate them with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

Rest Period Violations

Defendants also failed to authorize and permit their aggrieved employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 1, § 12. As alleged above, Defendants’ rest period policies and practices fail to authorize and permit the aggrieved employees to take a net paid 10-minute rest period for every four hours worked, or *major fraction thereof*, due to Defendants’ practices of understaffing and the work demands imposed by Defendants. As a result, the aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest period is not provided.”)

Wage Statement Violations

Defendants knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish their aggrieved employees with accurate and complete, itemized wage statements that included, among other requirements, all minimum and overtime wages earned, total gross wages earned, total net wages earned, and meal and rest period premium wages, in violation of Labor Code § 226 *et seq.* Further, Defendants face independent liability as the wage statements were inaccurate because they did not list the proper overtime rates. Defendants’ failure to furnish their aggrieved employees with complete and accurate, itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all minimum and overtime wages earned, and unpaid meal period and premium wages, and deprived them of the information necessary to identify discrepancies in Defendants’ reported data.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Defendants failed to timely pay Ms. Cordero and other aggrieved employees all of their final wages at the time of separation, which included, among other things, underpaid minimum and overtime wages, and meal and rest period premium wages. Additionally, Defendants violated Labor Code §§ 201-203 by, among other unlawful acts, issuing paycards as final payment of wages to employees who have been discharged and/or resigned without such employees’

authorization. As alleged herein, these paycards required fees for usage and did not allow employees to access all of the monies contained on such cards in violation of Labor Code § 212.

Pursuant to Labor Code § 203, Defendants' failure to pay all final wages due to their aggrieved employees was willful and, consequently, entitles the aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Defendants failed to pay their final wages after their separation, up to a maximum of thirty days.

As an "aggrieved employee," Ms. Cordero will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Ms. Cordero's own investigation, and on information and belief, Defendants committed the following Labor Code violations:

- a) Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Ms. Cordero and the aggrieved employees all overtime compensation earned;
- b) Defendants violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Ms. Cordero and the aggrieved employees the statutory minimum wage for all hours worked;
- c) Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Ms. Cordero and the aggrieved employees;
- d) Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Ms. Cordero and the aggrieved employees;
- e) Defendants violated Labor Code § 226 by failing to furnish Ms. Cordero and the aggrieved employees with accurate and compliant itemized wage statements;
- f) Defendants violated Labor Code § 204 by failing to pay Ms. Cordero and the aggrieved employees all earned wages at least twice during each calendar month;
- g) Defendants violated Labor Code § 1174 by failing to maintain accurate records on behalf of Ms. Cordero and the aggrieved employees; and
- h) Defendants violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Ms. Cordero and other aggrieved employees.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
LIDMAN LAW, APC



Scott M. Lidman

EXHIBIT D

EXHIBIT D

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

CRISTINA CORDERO, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

OLDCASTLE APG, INC., a Delaware corporation;
OLDCASTLE APG WEST, INC., a Colorado
corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No. CIVSB2308695

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

To: All current and former non-exempt, hourly employees of Defendants Oldcastle APG, Inc. and/or Oldcastle APG West, Inc. who worked in California at any time between April 17, 2019 and **the date of preliminary approval of this Settlement Agreement**. Collectively, these employees will be referred to as "Settlement Class Members."

**PLEASE READ THIS NOTICE CAREFULLY
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. In exchange for the settlement payment, you will release claims against the Defendants as detailed below. Your estimated Settlement Award is explained in the accompanying Notice of Settlement Award. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, you must notify the Settlement Administrator as explained below.
Exclude Yourself	To exclude yourself, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive no money from the Settlement of Class Claims. However, if you are an PAGA Employee who requests exclusion, you will still receive a small amount as your share of the PAGA civil penalties described below. Instructions are set forth below.
Object	Write to the Court about why you do not agree with the Settlement, and/or appear at the Final Approval Hearing to make an oral objection. Directions are provided below.

Why should you read this notice?

The Court has granted preliminary approval of a proposed class action settlement (the "Settlement") entitled *Cristina Cordero, on behalf of herself and on behalf of all persons similarly situated, v. Oldcastle APG, Inc., a Delaware corporation, Oldcastle APG West, Inc., a Colorado corporation, and Does 1-100*, San Bernardino

Superior Court Case No. CIVSB2308695 (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

You may be entitled to money from this Settlement. Defendants Oldcastle APG, Inc. and Oldcastle APG West, Inc. (“Defendants”) records show that you were employed by either entity as a non-exempt employee in California at some time between April 17, 2019 and the date of preliminary approval of this Settlement Agreement (the “Class Period”). The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment.

What is this case about?

Plaintiff Cristina Cordero (“Plaintiff”) brought this Lawsuit against Defendants, seeking to assert claims on behalf of a class of current and former non-exempt employees who worked for Defendants in California at any time between April 17, 2019 and the date of preliminary approval of this Settlement Agreement. Plaintiff is known as the “Class Representative,” and her attorneys, who also represent the interests of all Settlement Class members, are known as “Class Counsel.”

The Lawsuit alleges that Defendants failed to provide Settlement Class members all minimum and/or overtime wages, failed to provide all legally required meal periods, failed to authorize and permit all legally required rest periods, failed to provide accurate, itemized wage statements, failed to pay all wages upon termination of employment, and failed to pay sick pay. As a result of the foregoing alleged violations, Plaintiff also alleges that Defendants engaged in unfair business practices and are liable for civil penalties under the California Labor Code Private Attorney General Act of 2004 (“PAGA”).

Defendants deny that they have done anything wrong. Defendants further deny that they owe Settlement Class members any wages, restitution, penalties, or other damages. No Court has made any determination as to the factual allegations in the Lawsuit. Rather, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Defendants, and they expressly deny all liability.

The Court has not ruled that Defendants violated any laws or whether Plaintiff or any other person is entitled to damages or other relief. However, to avoid additional expense, inconvenience, and interference with their business operations, Defendants have concluded that it is in their best interests and the interests of Settlement Class members to settle the Lawsuit on the terms summarized in this Notice. After Defendants provided relevant information to Class Counsel, the Settlement was reached after mediation and arm’s-length negotiations between the Parties.

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

If you are still employed by Defendants, your decision about whether to participate in the Settlement will not affect your employment. California law and Defendants’ policies strictly prohibit unlawful retaliation.

Defendants will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class member because of the Settlement Class member’s decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for the Plaintiff / Settlement Class Members:	Attorneys for Defendants:
LIDMAN LAW, APC	Karin M. Cogbill Sean M. Bothamley

Scott M. Lidman slidman@lidmanlaw.com Milan Moore mmoore@lidmanlaw.com 2155 Campus Drive, Suite 150 El Segundo, California 90245 Tel: (424) 322-4772 Fax: (424) 322-4775 www.lidmanlaw.com HAINES LAW GROUP, APC Paul K. Haines phaines@haineslawgroup.com 155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 www.haineslawgroup.com	JACKSON LEWIS P.C. 160 W. Santa Clara St., Suite 400 San Jose, CA 95113 Tel: (408) 579-0404 Fax: (408) 454-0290 Email: Karin.Cogbill@jacksonlewis.com Sean.Bothamley@jacksonlewis.com
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What are the terms of the Settlement?

On **[INSERT DATE OF PRELIMINARY APPROVAL]**, the Court preliminarily certified a class, for settlement purposes only, of all current and former non-exempt of Defendants who worked at any time in California during the time period between April 17, 2019 and **the date of preliminary approval of this Settlement Agreement**. Settlement Class members who do not opt out of the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Defendants as described below.

Defendants have agreed to pay \$1,009,000.00 (the “Gross Settlement Amount”) to fully resolve all claims in the Lawsuit, which includes payments to Settlement Class members, attorneys’ fees and expenses, payment to the Labor Workforce Development Agency (“LWDA”), settlement administration costs, and the Class Representative’s Service Award.

The following deductions from the Gross Settlement Amount will be requested by the Parties:

Settlement Administration Costs. The Court has approved **Phoenix Settlement Administrators** to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. The Court has approved setting aside an amount not to exceed **\$.00** from the Gross Settlement Amount to pay the Settlement administration costs.

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of the Settlement Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Gross Settlement Amount. Settlement Class members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for fees of up to one-third of the Gross Settlement Amount, which is estimated to be \$336,336.33, as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement in an amount not to exceed \$20,000.00 for verified costs Class Counsel incurred in connection with the Lawsuit.

Service Award to Class Representative. Class Counsel will ask the Court to award the Class Representative a service award in the amount not to exceed \$7,500.00, to compensate her for her services and extra work provided on behalf of the Settlement Class members.

LWDA Payment. Class Counsel will ask the Court to approve a payment in the total amount of \$50,000.00 as and for alleged civil penalties, payable pursuant to the California Labor Code Private Attorney General Act (“PAGA”). Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or Thirty-Seven Thousand

Five Hundred Dollars and Zero Cents (\$37,500.00) will be payable to the LWDA, and the remaining twenty-five percent (25%), or Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00), will be payable to certain Settlement Class members who qualify as PAGA Employees as the "PAGA Amount," as described below.

Calculation of Individual Settlement Class Members' Settlement Award. After deducting the Court-approved amounts above, the balance of the Gross Settlement Amount will form the Net Settlement Amount ("NSA"), which will be distributed to all Settlement Class members who do not submit a valid and timely Request for Exclusion (described below). The NSA is estimated at approximately \$<< >>, to be shared among an up to << >> estimated Settlement Class members. The NSA will be divided as follows:

- (i) Each participating Settlement Class member shall receive a portion of the Net Settlement Amount proportionate to the number of workweeks that he or she worked as a non-exempt employee during the Class Period, which will be calculated by multiplying the Net Settlement Amount by a fraction, the numerator of which is the Settlement Class member's number of workweeks worked as a non-exempt employee during the Class Period, and the denominator of which is the total workweeks worked as non-exempt employees by all participating Settlement Class members during the Class Period.

PAGA Amount. In addition, Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00) of the Gross Settlement Amount has been designated as the "PAGA Amount" as described above. Each PAGA Employee shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked during the time period between April 17, 2022 and the date of preliminary approval of this Settlement Agreement ("PAGA Period") which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Employee's number of workweeks worked as a non-exempt employee during this time period, and the denominator of which is the total number of workweeks worked by all PAGA Employees. The payments to PAGA Employees shall be reported as penalties on a Form 1099.

Payments to Settlement Class Members. If the Court grants final approval of the Settlement, Settlement Awards will be mailed to all Settlement Class members who did not submit a valid and timely Request for Exclusion.

If you submit a Request for Exclusion, you will still receive a proportionate share of the PAGA Amount regardless of whether you exclude yourself from the Settlement if you are also a PAGA Employee.

Each member of the Settlement Class who receives a Settlement Award must cash the check within 180 days from the date the Settlement Administrator mails it. Any funds payable to Settlement Class Members whose checks were not cashed within 180 days after mailing will be transferred to Katherine and George Alexander Community Law Center, a *cy pres*, designated by the Parties.

Payment by Defendants of Gross Settlement Amount. The Gross Settlement Amount shall be deposited by Defendants into a qualified settlement fund set up by the Settlement Administrator for the benefit of participating Settlement Class members and PAGA Employees. Defendants agree to deposit the Gross Settlement Amount with the Settlement Administrator within thirty (30) calendar days after the "Effective Date" which is defined as the latter of: (a) the Court's final approval of the settlement if no objections by or on behalf of Settlement Class members have been filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; or (c) the final resolution of any appeal that has been filed.

Within ten (10) calendar days following Defendants' deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate Settlement Award and PAGA Award amounts and provide the same to counsel for the Parties for review and approval, using employee ID numbers to maintain the confidentiality of employees. Within seven (7) calendar days of approval by counsel for the Parties, the Settlement Administrator will prepare and mail Settlement Awards, less applicable taxes and withholdings, to participating Settlement Class members, all PAGA Awards and PAGA employees, and the portion of the PAGA allocation payable to the LWDA has been mailed to the LWDA. Settlement Awards are expected to be disbursed in [insert estimated month and year].

Allocation and Taxes. For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: Sixty-Seven percent (67%) as penalties and interest; and Thirty-Three percent (33%) as wages.

PAGA Awards shall be allocated One Hundred percent (100%) as penalties. The Settlement Administrator will be responsible for issuing to participating Settlement Class members and PAGA Employees IRS Forms W-2 for amounts deemed “wages” and IRS Forms 1099 for the amounts allocated as penalties and interest. Each Settlement Class member who receives a Settlement Award, and each PAGA Employee who receives a PAGA Award, will be responsible for correctly characterizing the payment for tax purposes and for payment of any taxes owing on said amount. Notwithstanding the treatment of the payments to each Settlement Class member or PAGA Employee above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans. The Settlement Administrator, Defendants and their counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court approves the Settlement, the Settlement Class, and each Settlement Class member who has not submitted a timely and valid Request for Exclusion, will fully and forever completely release and discharge Defendants, and all of their past and present officers, directors, owners, shareholders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys (collectively the “Released Parties”), from all claims, demands, rights, liabilities and causes of action that are/were pled in the operative complaint in the Action (which is the Second Amended Complaint), or which could have been pled in the operative complaint in the Action (which is the Second Amended Complaint) based on the factual allegations therein, that arose during the Class Period including but not limited to the following claims: (a) failure to pay all overtime wages owed; (b) failure to pay all minimum wages owed; (c) failure to authorize and permit rest periods, or premium pay for non-compliant rest periods; (d) failure to provide meal periods, or premium pay for non-compliant meal periods; (e) failure to issue accurate, itemized wage statements; (f) failure to pay all wages upon termination; (g) failure to pay sick pay leave; and (h) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above (collectively, the “Released Class Claims”).

The time period of the Released Claims shall be the same time period as the Class Period.

PAGA Release and PAGA Employees. If the Court approves the Settlement, all PAGA Employees, including Plaintiff individually and as a representative for the State of California and on its behalf, will release and forever discharge all claims, demands, rights, liabilities and causes of action for civil penalties under California Labor Code Private Attorneys General Act of 2004 against the Released Parties based on (as alleged in the letters to the LWDA on April 17, 2023 and [insert date] and the operative complaint (which is the Second Amended Complaint) for violations of California Labor Code sections 201-203, 204, 212, 218 *et seq.*, 226, 226.7, 246 510, 512, 516, 558, 1194, 1194.2, 1197, 1198 and applicable Industrial Welfare Commission Wage Orders, and for: (a) failure to pay all overtime wages owed; (b) failure to pay all minimum wages owed; (c) failure to authorize and permit rest periods, or premium pay for non-compliant rest periods; (d) failure to provide meal periods, or premium pay for non-compliant meal periods; (e) failure to issue accurate, itemized wage statements; (f) failure to pay all wages upon termination; and (g) failure to pay sick pay leave. (collectively, “PAGA Released Claims”).

The time period of the PAGA Released Claim is April 17, 2022 and the date of preliminary approval of this Settlement Agreement (“PAGA Period”).

You cannot submit a Request for Exclusion from the PAGA Release.

The releases are null and void if Defendant fails to fully fund the Settlement. The releases identified herein shall become effective on the date on which Defendant fully funds the Settlement (“Effective Date of the Release”). Upon the Effective Date of the Release, all Class Members shall be deemed to have, and by operation of Judgment shall have, released, waived and relinquished the Released Claims.

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

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your share of the Settlement based on the proportionate number of workweeks you worked during the Class Period (as explained above), and as stated in the accompanying Notice of Settlement Award. You also will be bound by the Settlement, including the release of claims stated above.

If your address is incorrect or has changed, you must notify the Settlement Administrator. It is your responsibility to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or a settlement payment. The Settlement Administrator is: _____ (800) _____.

What other options do I have?

Dispute Information in Notice of Settlement Award. Your award is based on the proportionate number of workweeks you worked during the Class Period, and the number of workweeks you worked during the PAGA Period, if any. The information contained in Defendants' records regarding all of these factors, along with your estimated Settlement Award, is listed on the accompanying Notice of Settlement Award. If you disagree with the information in your Notice of Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than <<RESPONSE DEADLINE>>. Send disputes directly to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>.

DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class members. The Settlement Administrator's decision regarding any dispute will be final. If a resolution cannot be reached by and among the Parties and the Settlement Administrator, the Court will render all final decisions on disputes.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement of class claims, you may exclude yourself by sending to the Settlement Administrator a written "Request for Exclusion from the Class Action Settlement" letter or card postmarked no later than <<RESPONSE DEADLINE>>, with your name, address, telephone number, last four digits of your social security number, your signature, and a statement indicating that you would like to be excluded from the Class Action Settlement. The Request for Exclusion should state something to the effect of:

"I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *CORDERO v. OLDCASTLE APG, INC.* LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT."

Send the Request for Exclusion directly to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>. Any person who files a timely Request for Exclusion from the Settlement shall, upon receipt by the Settlement Administrator, no longer be a Settlement Class member, shall be barred from participating in any portion of the Settlement, and shall receive no benefits from the Settlement, except as to the PAGA release.

If you submit a Request for Exclusion, you will only be excluded from the Released Claims. You cannot submit a Request for Exclusion from the PAGA Release. You will receive a proportionate share of the PAGA Payment regardless of whether you exclude yourself from the Settlement if you were employed and worked between April 17, 2022 and the date of preliminary approval of this Settlement Agreement.

Do not submit both a Dispute and a Request for Exclusion. If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you may mail a written objection to the Settlement Administrator. Your written objection must

include your name, address, as well as contact information for any attorney representing you regarding your objection, the case name and number, each specific reason in support of your objection, and any legal or factual support for each objection together with any evidence in support of your objection. Written objections must be postmarked on or before <<RESPONSE DEADLINE>>. Send written objections directly to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>.

If you choose to object to the Settlement, you may also appear at the Final Approval Hearing scheduled for <<FINAL APPROVAL HEARING DATE/TIME>> in Department S-26 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, California 92415. You have the right to appear either remotely, in person or through your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before <<RESPONSE DEADLINE>>. All objections or other correspondence must state the name and number of the case (*Cristina Cordero v. Oldcastle APG, Inc.*, San Bernardino County Superior Court, Case No. CIVSB2308695).

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class members who do not object.

What is the next step?

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

Any changes to date, time, or location of the Final Approval Hearing will be posted on the Settlement Administrator's website (<http://.com>). The Court's final judgment will also be posted on the Settlement Administrator's website.

How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, California 92415. You may get more details by examining the Court's file on the Court Access website for the California Superior Court for the County of San Bernardino (<https://cap.sb-court.org/login>) and entering the Case No. CIVSB2308695. You may also contact Class Counsel using the contact information listed above for more information.

PLEASE DO NOT CALL OR WRITE THE COURT, DEFENDANTS OR THEIR ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS

REMINDER AS TO TIME LIMITS

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

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

NOTICE OF SETTLEMENT AWARD

Cristina Cordero, on behalf of herself and on behalf of all persons similarly situated, v. *Oldcastle APG, Inc.*, a Delaware corporation;
Oldcastle APG West, Inc., a Colorado corporation

SAN BERNARDINO COUNTY SUPERIOR COURT, CASE NO. CIVSB2308695

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

(I) Please type or print your name:

(First, Middle, Last)

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

Former Names (if any)

New Street Address

City

State

Zip Code

(III) Information Used to Calculate Your Individual Settlement Award:

According to the records of Defendants Oldcastle APG, Inc. and Oldcastle APG West, Inc. ("Defendants"):

- (a) You were employed by Defendants and worked a total of [] workweeks between April 17, 2019 and the date of preliminary approval of this Settlement Agreement.
- (b) You were employed by Defendants and worked a total of [] workweeks between April 17, 2022 and the date of preliminary approval of this Settlement Agreement.

Based on the above, your Individual Settlement Award is estimated to be \$ [].

(IV) If you disagree with the workweek counts in either (a) or (b) in Section (III) above, please explain why in the space provided below and include copies of any supporting evidence or documentation with this form:

If you dispute the above information from Defendants' records, Defendants' records will control unless you are able to provide documentation that establishes that Defendants' records are mistaken. If there is a dispute about whether Defendants' information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved by the Parties and the Settlement Administrator as described in the "Notice of Pendency of Class Action and Proposed Settlement" that accompanies this Form. Any unresolved disputes will be submitted to the Court for a final determination.

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