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Attorneys for Plaintiffs, on a representative basis and on behalf of all others similarly situated

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

VICTOR MEDINA and FRANCISCO
CRUZ, individually, on a representative basis,
and on behalf of all others similarly situated;

Plaintiff,

vs.

HOWARD ROOFING COMPANY, INC., a
California Corporation; and DOES 1 through
20, inclusive;

Defendants.

Case No.: CIVSB2312233
*[Assigned to Hon. Jessica Morgan, Dept S26,
for all purposes]*

**DECLARATION OF BRIAN J. MANKIN
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing

Date: June 26, 2024
Time: 8:30 a.m.
Dept.: S26

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I manage the employment department within my firm where I am also a Partner. I represent Plaintiff in this action, and I am thoroughly familiar with and have personal knowledge

1 of all of the facts set forth herein. I submit this declaration in support of Plaintiffs' Motion for
2 Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would
3 competently testify thereto.

4 **COUNSEL'S EXPERIENCE**

5 2. I have been a member, in good standing, of the State Bar of California since 2001.
6 I am admitted to practice in the United States District Courts for the Central and Southern
7 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
8 courts in California.

9 3. I have handled over 500 employee vs. employer litigation matters during my 21
10 years in practice. Over the last 15 years, my practice has almost entirely consisted of
11 representing employees, the majority of which has included class action and representative
12 action wage and hour matters. In total, I have handled over 250 class action and representative
13 action wage/hour cases, and have been appointed by the court as class counsel and have received
14 final court approval and judgment in close to half of those actions to date, and anticipate
15 receiving final approval in many more of those in the future.

16 4. As part of these settlements and judgments, I have recovered in excess of \$250
17 million in damages for my clients and the class members (who often work as nurses, ambulance
18 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
19 countless other trades). As of the end of last year, my team and I held the record for the largest
20 known PAGA-only case in California's history as of that time - a \$12.5 million-dollar court
21 approved settlement, which followed extensive litigation, summary adjudication and writs to the
22 CA Supreme Court against a Fortune 50 company (*Garcia v. Macy's*, San Bernardino Superior
23 Court).

24 5. I have tried two class and PAGA cases against Fortune 100 companies. In 2018, I
25 was lead counsel in a PAGA case that my firm tried to the bench in the Orange County Superior
26 Court and received a \$425,000 judgment. In 2019, I was co-counsel in a class action case
27 against Walmart that was tried to the jury in District Court for the Central District, wherein the
28 jury awarded Plaintiffs over \$6 million. Following the successful outcome in trial, both cases

1 were appealed.

2 6. I was named by the LA Times as one “Southern California Leading Lawyers” in
3 the May 2023 issue of Consumer Attorney’s of Southern California (a recognition given to 17
4 employment/labor law attorneys in 2023). Additionally, over the last five consecutive years, I
5 have been selected by my peers as a “Super Lawyer” in Employment Litigation, a distinction that
6 only 5% of lawyers receive.

7 **BRIEF SUMMARY OF THE SETTLEMENT**

8 7. Following a contested mediation, Plaintiffs and Defendant (collectively, the
9 “Parties”) continued additional negotiations and eventually entered into a Class Action and
10 PAGA Settlement Agreement and Release of Claims resolving the wage and hour claims of the
11 putative class (the “Settlement Agreement” or “S.A.”), which is attached hereto as **Exhibit 1**.
12 The Settlement Agreement seeks to release and discharge Defendant from the claims brought
13 against it in exchange for Defendants’ agreement to pay \$970,000 on a non-reversionary, non-
14 claims made basis (each Class Member will receive his/her share of the Net Settlement Amount
15 without having to submit a claim form or take any action, except for those who opt-out).
16 Plaintiffs seek to represent a class of all current and former non-exempt employees who worked
17 for Defendant in California during the Class Period of May 30, 2019, through May 4, 2024.
18 Under the terms of the Settlement Agreement, Defendant will not oppose Class Counsel’s
19 application for a reasonable award of attorneys’ fees not to exceed one-third of the Settlement
20 Amount, Class Counsel’s litigation expenses not to exceed \$25,000, Settlement Administrator
21 Costs of \$9,500, PAGA Penalties of \$50,000 of which \$37,500 will be paid to the LWDA and
22 the remaining \$12,500 will be paid to the Aggrieved Employees, and a service award not to
23 exceed \$10,000 to Plaintiff Medina and \$10,000 to Plaintiff Cruz. After subtracting these
24 deductions from the Settlement Amount, approximately \$542,166.67 will be available to pay
25 individual settlement amounts to approximately 500 Class Members who do not opt-out of the
26 settlement, as follows:

27 ///

28 ///

Gross Settlement Amount	\$ 970,000.00
Attorneys' Fees (1/3)	\$ 323,333.33
Litigation Costs (not to exceed)	\$ 25,000.00
Administrator Costs	\$ 9,500.00
PAGA Penalties	\$ 50,000.00
Class Representatives Service Awards	\$ 20,000.00
Net Settlement Amount	\$ 542,166.67

8. Assuming 500 Class Members, the average payment to each Class Member will be approximately \$1,084.33 (\$542,166.67 / 500). However, the actual payment will be calculated on a pro-rata basis according to the number of Weeks Worked by each Class Member during the Class Period, with each Work Week having a value of approximately \$22.59 (\$542,166.67 / 24,000 estimated Work Weeks).

9. Each Class Member will receive the Class Notice explaining the nature of the case, and the process for participating, objecting and opting-out, and advising of his/her estimated settlement payment and the number of Weeks Worked he/she is credited with working during the Class Period. (The proposed Notice is attached hereto as **Exhibit 2**).

PROCEDURAL BACKGROUND

10. My office has performed considerable work and diligently investigated and prosecuted this case to a successful conclusion. Our work has resulted in the creation of a significant settlement fund for the benefit of the Class. We efficiently communicated and exchanged information informally with Defense counsel which enabled the parties to successfully settle the case. Because of the risks involved in litigating the case and the contested legal and factual issues, my office believes this settlement to be fair, reasonable, and adequate.

11. After being retained by Plaintiff Medina, we submitted on May 30, 2023, a letter to the California Labor Workforce Development Agency (the "LWDA") for civil penalties under the Private Attorney General Act of 2004 (the "PAGA") (see **Exhibit 3** attached hereto), and simultaneously sent a letter to Defendant requesting the production of Plaintiff's personnel and timekeeping records to further evaluate the wage and hour claims. The LWDA ultimately declined to assert jurisdiction over the PAGA, thereby giving Plaintiff the right to bring PAGA claims.

1 12. That same day, we filed a putative class action against Defendant, and once the
2 65-day waiting period ran, we filed a First Amended Complaint to add PAGA claims.

3 13. In the fall of 2023, we learned of the Cruz Action that was pending in Los
4 Angeles Superior Court, and after discussions with Cruz’s counsel, the Plaintiffs agreed to join
5 forces and proceed in a consolidated manner.

6 14. Defendant retained counsel and immediately began to defend the cases. Then,
7 after discussions among counsel and to avoid a costly class certification battle, the Parties agreed
8 to attend private mediation.

9 15. In preparation for the mediation, the Parties informally exchanged documents and
10 information that allowed both sides to calculate the potential damages and evaluate potential risk,
11 including policies and procedures pertaining to each claim alleged, and statistics relating to the
12 number of current and former employees, number of shifts, weeks worked and other things.
13 Defendant also provided their written policies and practices and a robust sampling of payroll and
14 timekeeping records for Class Members. This information enabled both parties to take a deep
15 dive into the claims. Additionally, during this process, Plaintiffs and their counsel analyzed,
16 researched, and investigated the potential issues, including matters related to the calculation of
17 damages, trial, and appellate issues and risks.

18 16. On March 4, 2024, Plaintiffs and Defendant participated in mediation before
19 Todd Smith, a well-respected wage-and-hour mediator. The mediation was successful, and the
20 Parties reached a global settlement that resolved all claims brought by both Plaintiffs, and both
21 Plaintiffs agreed to proceed in one Consolidated Action in this Court and thereby dismiss the Los
22 Angeles Superior Court matter without prejudice. The Parties memorialized the terms of the
23 settlement in a long-form Settlement Agreement and, pursuant to the terms of the settlement, the
24 Parties now seek preliminary approval of the Settlement.

25 **THE WAGE AND HOUR CLAIMS, CLASS COUNSEL’S INVESTIGATION, AND**
26 **EVALUATION OF THE SETTLEMENT**

27 17. The putative Class in this case consists of approximately 500 similarly situated
28 non-exempt workers who worked for Defendant in California at any time during the Class

1 Period. Plaintiffs alleged numerous wage and hour violations on behalf of the Class Members.
2 However, Defendant vigorously contested and denied each of Plaintiffs' material allegations on
3 the merits and as to the propriety of a class action or PAGA representative action.

4 18. In preparation for mediation, Peter Carlson, a senior associate within my firm, my
5 co-counsel and I formulated a damages model and risk analysis based upon detailed data
6 obtained through informal discovery and information exchanges. The summary of the claims
7 below is based on calculations by our expert and us, and the risks that we potentially faced,
8 giving significant credit to the defenses that Defendants raised or would like raise in further
9 proceedings.

10 19. Following the informal exchange and other information provided by Defendant,
11 we estimated the following data points through the date of mediation: (1) 420 class members, (2)
12 220 class members that separated from employment during the 3-year lookback for Labor Code
13 § 203, (3) a projected 23,418 workweeks and 107,722 shifts worked through mediation, and (4)
14 approximately 9,632 wage statements through the date of mediation. From these metrics, and
15 when factoring in claim certification probabilities and liability probabilities, we formulated
16 detailed damages models to value the claims in preparation for mediation and to reach a realistic
17 and reasonable resolution.

18 20. Here, there were several categories of claims alleged by Plaintiffs, including but
19 not limited to: (1) unpaid wage claims under various theories, (2) meal and rest break violations,
20 (3) derivative claims for waiting time and wage statement penalties due to the other alleged
21 violations, (4) unreimbursed expense claims, and (5) PAGA claims (many of which arose out of
22 the underlying class claims).

23 21. As to the unpaid wage claims, Plaintiffs alleged various distinct theories of
24 liability. First, Plaintiffs alleged that Defendant paid at the base rate of pay instead of overtime
25 for certain tasks, despite that the employee worked over 8 hours in a day or 40 in a week.
26 Second, Plaintiffs alleged that Defendant failed to pay all required overtime due to a practice of
27 paying the Class two or more base rates in a week, yet paying overtime at the "rate in effect"
28 method instead of the "weighted average" method. Third, Plaintiffs argued that Defendant failed

1 to pay for all compensable hours worked when traveling to a job site or when there was “gap
2 time” between two different tasks for timekeeping purposes. Fourth, Plaintiffs alleged that
3 Defendant failed to pay all required “reporting time pay” when Class Members were required to
4 arrive at job sites, only to be sent home without work (or compensation) because the company
5 determined that they would not perform work on that day. In total, we estimated the maximum
6 value of these unpaid wages to be approximately \$550,000.

7 22. However, Defendant vehemently opposed these unpaid wage claims on the merits
8 and as to the propriety of class certification. Moreover, in addition to its other defenses on the
9 merits, Defendants argued that Plaintiffs would be unable to meet its evidentiary burden at
10 summary judgment and/or trial because Plaintiffs and the Class would be unable to introduce
11 evidence as to the amount of unpaid wages (since certain claims are not apparent from the
12 timekeeping records alone), thus defeating liability.

13 23. Due to these defenses and arguments, Plaintiffs assigned a 30% risk for these
14 unpaid wage claims at the class certification stage. And, due to the defenses as to the merits,
15 Plaintiffs assigned an additional 30% merits-based risk to each claim. In sum, Plaintiffs’ counsel
16 calculated the risk-adjusted value of the unpaid wage claims as \$269,500.

17 24. Plaintiffs also alleged meal and rest break claims against Defendant. Given the
18 total number of shifts at issue (an estimate of 107,722), and when incorporating violation rates
19 from expert review of the timekeeping records and other evidence, Plaintiffs’ counsel estimated a
20 55.6% violation rate for meal breaks and a 50% violation rate for rest breaks, leading to 59,893
21 alleged meal violations and 53,861 alleged rest break violations. This established a maximum
22 potential value for these claims of \$3,309,103 (113,754 violations multiplied by the average
23 hourly rate of \$29.09 as the applicable premium rate under § 226.7).

24 25. However, Defendant raised numerous arguments in response to this claim,
25 including that it maintained fully compliant written policies and specifically authorized the Class
26 Members to take meal and rest breaks, meaning that no one had a reason or cause to miss a break
27 or take a short/late break. Therefore, Defendant asserted that a fact-finder would have to
28 determine for each Class Member whether a break was missed and why, and why a break was

1 noncompliant or nonexistent, because if it was by the employee's choice, no liability attaches to
2 Defendant. These defenses are factored into Plaintiffs' analysis in two ways. First, these issues
3 raise questions regarding whether the meal and rest break claims could be certified, and Plaintiffs
4 placed a 40% risk at the class certification stage for meal periods and a 50% risk for rest breaks.
5 Second, these defenses also go toward the merits given the evidentiary question of proving the
6 number of meal and rest violations. As such, Plaintiffs placed a 40% risk on the merits for meal
7 breaks, and an additional 50% risk on the merits for rest breaks, setting the risk-adjusted value
8 for the combined meal and rest break claims at \$1,018,927.

9 26. Plaintiffs also alleged claims for waiting time penalties and wage statement
10 violations. The maximum values for these claims were as follows: (1) \$1,535,952 for waiting
11 time penalties [220 former employees x \$232.72 average daily pay x 30 days], and (2) \$950,700
12 for wage statement violations [9,632 wage statements at the \$50/\$100 formula under § 226(e)].

13 27. But Defendant raised a variety of defenses to these derivative claims that
14 impacted the valuation. Namely, as to the wage statement violations, Defendant argued that its
15 wage statements did not violate Labor Code § 226, and even if there was a "technical" violation,
16 that Plaintiffs would be unable to prove the required "knowing and intentional" and "injury"
17 elements. Based on these facts and defenses, Plaintiffs placed a 30% risk at class certification
18 and estimated another 40% risk the merits, leading to a risk-adjusted value of \$399,294 for the
19 wage statement claims.

20 28. Then, as to the waiting time penalty claim, Plaintiffs' valuation had to account for
21 the fact that this claim was derivative of the unpaid wage and meal/rest break claims (*e.g.*, the
22 unpaid wage premiums) and, if those claims failed at certification or on the merits, there would
23 be no waiting time penalties owed, so the same risks for those claims applied to this claim.
24 Furthermore, even if the unpaid wage and/or meal/rest claims succeeded at certification and on
25 the merits, Plaintiffs would have to prove that the violations (if any existed) were "willful" under
26 the meaning of Labor Code § 203. And, here, Defendant argued that there could not be a finding
27 of a "willful" violation since they had compliant written policies and any deviations therefrom
28 were inadvertent and unintentional. As a result of this analysis, Plaintiffs' counsel applied a 30%

1 risk at class certification and a 40% risk on the merits, leading to a risk-adjusted value of
2 \$645,100.

3 29. Finally, Plaintiffs alleged that Defendant required the Class Members to purchase,
4 provide, and maintain their own tools and equipment to carry out tasks for Defendant, without
5 reimbursement. Plaintiffs calculated the maximum potential unreimbursed expenses as \$210,000
6 based on \$500 in unreimbursed expenses per Class Member. However, Defendant disputed that
7 it failed to reimburse expenses and argued that Class Members were provided all tools and
8 equipment needed to perform their tasks. Thus, Defendant argued that any expenses (if any were
9 incurred) were not “reasonable” or “necessary” and, thus, Defendant did not have an obligation
10 to reimburse for such expenses. Given the fact-intensive nature of this claim, and possible
11 individualized issues, Plaintiffs placed a 50% risk at the class certification stage and a 50% risk
12 on the merits. This resulted in a risk-adjusted value of \$52,500 for the expense claim.

13 30. In sum, when factoring in the defenses and risks of ongoing litigation, Plaintiffs
14 estimate the risk-adjusted class recovery as follows:

15	• Unpaid Wage Claims	\$ 269,500
16	• Meal and Rest Break Claims	\$ 1,018,927
17	• Wage Statement Claims	\$ 399,294
18	• Waiting Time Penalty Claims \$	\$ 645,100
19	• Unreimbursed Expense Claims	<u>\$ 52,500</u>
20	• Total Risk Adjusted Penalties and Damages	\$ 2,385,321

21 **THE SETTLEMENT IS FAIR, JUST, AND REASONABLE**

22 31. The settlement was the product of extensive arm’s length negotiations, facilitated
23 by an experienced mediator. Though cordial and professional, the settlement negotiations were
24 adversarial and non-collusive in nature. The settlement reached is the product of substantial
25 effort by the parties and their counsel. Although we believed that there was a possibility of
26 certifying the claims, we recognized the potential risk, expense, and complexity posed by
27 litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or
28 on the damages awarded, and/or on an appeal that can take several more years to litigate.

1 32. The settlement will result in a fair payment to each class member based on the
2 number of Weeks Worked during the Class Period. As set forth hereinabove, Plaintiffs and their
3 counsel have diligently investigated the claims and defenses on behalf of the Class Members and
4 worked to achieve a resolution of the claims to maximize the recovery by avoiding further
5 expenditure of attorneys' fees and costs. After evaluating the significant risks attendant with
6 further litigation described above and weighing them against the benefits of a known
7 compromise and settlement as set forth in the Settlement Agreement, settlement on the terms
8 agreed to is believed to be in the best interest of Plaintiff and the Class, and is a fair and
9 reasonable resolution of the claims alleged.

10 33. Plaintiffs' counsel brought to bear a great deal of experience in negotiating the
11 settlement of this case. As detailed herein, Plaintiffs' counsel engaged in the necessary discovery
12 and investigation, making it possible to exercise informed judgment throughout the settlement
13 process, including significant document review (e.g. documents pertaining to Defendant's
14 policies and procedures, personnel documents, among others), and conducted an extensive
15 analysis of the detailed class-wide data provided by Defendant.

16 34. Based on my experience in other cases, including wage and hour matters, I
17 believe I am qualified to evaluate the class claims and viability of defenses in this class action.
18 In this case, the recovery for each class member is reasonable, fair, and adequate, and a
19 settlement at this time is in the best interests of the class. The settlement provides each class
20 member with compensation for the alleged violations when viewed in relation to the costs and
21 risks inherent in obtaining class certification and proceeding to trial.

22 35. Plaintiffs' counsel, as well as Defendant's counsel, fully endorse the terms and
23 conditions of the settlement as set forth in the abovementioned Settlement Agreement.

24 36. Of course, the settlement amount represents a compromise figure, taking into
25 account the various risks surrounding class certification and the merits of Defendants' asserted
26 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
27 members, with no reversion to Defendants.

28 ///

1 **PLAINTIFFS' REQUESTED ENHANCEMENT PAYMENT**

2 37. Plaintiffs seek an enhancement payment of \$10,000 each Plaintiff for their service
3 to the class, which I believe is fair and warranted. The Plaintiffs each came forward in an effort
4 to effectuate a policy and practice change that benefitted all other Class Members, and to recover
5 unpaid wages. They each assumed significant risk in bringing this litigation—namely, had they
6 lost, they would have been ordered to pay Defendant's costs.

7 38. Plaintiffs provided invaluable assistance to my office and the Class in this case,
8 including providing factual background for the Class Complaint; reviewing the litigation
9 documents; providing information and documents about Defendant's policies and practices;
10 participating in phone calls to discuss litigation and settlement strategy; and reviewing the
11 settlement documents. Plaintiffs agreed to participate in this case with no guarantee of personal
12 benefit. At final approval, Plaintiffs will submit a comprehensive declaration setting forth all of
13 the reasons why he believes that the service award should be approved.

14 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE**
15 **REQUESTED FEES AND COSTS**

16 39. As set forth above, I have handled over 250 class and representative actions, have
17 been appointed as class counsel and have successfully resolved over half of those cases, and
18 many others remain pending and will successfully resolve in the future.

19 40. When this case was taken on a contingency fee basis, with my firm agreeing to
20 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
21 course of this litigation, my firm and my co-counsel paid all costs including filing fees, court
22 costs, research fees, and mediation costs. There was never a guarantee that we would recoup
23 those expenditures.

24 41. It is my experience that attorney fee awards of one-third of a common fund
25 settlement is the standard in California. In this case, Plaintiffs' counsel agreed to seek one-third
26 of the Settlement Amount for attorneys' fees. Defendant does not oppose this fee request. The
27 fee is further warranted because it is within the range of reasonableness typically awarded in
28 class actions. The litigation costs are reasonably capped at \$25,000 and will be based on the

1 actual amount of costs incurred at the time of final approval.

2 **SETTLEMENT ADMINISTRATOR**

3 42. The parties request that the Court appoint Phoenix Settlement Administrators to
4 serve as the Settlement Administrator. Phoenix is experienced in administering class action
5 settlements, and has provided a proposal to administer this settlement for a total of \$9,500, which
6 is attached hereto as **Exhibit 4**.

7 **SUBMISSION TO THE LWDA**

8 43. Plaintiffs have concurrently submitted the settlement to the LWDA in accordance
9 with Labor Code § 2699(1)(2). The proof of submission is attached hereto as **Exhibit 5**.

10 **EXHIBITS AND CONCLUSION**

11 44. A true and correct copy of the Settlement Agreement is attached as **Exhibit 1**.

12 45. The proposed Class Notice is attached as **Exhibit 2**.

13 46. Plaintiff Medina's Notice to the LWDA is attached as **Exhibit 3**.

14 47. Phoenix's proposal to administer the Settlement is attached hereto as **Exhibit 4**.

15 48. The LWDA's confirmation of receipt of this Motion Packet, including
16 declarations and exhibits, is attached hereto as **Exhibit 5**.

17 49. For the foregoing reasons, it is respectfully requested that the Court grant
18 preliminary approval of the settlement as being fair, reasonable, and in the best interests of the
19 class, as well as preliminarily approve the requested attorneys' fees, costs, and enhancement
20 payment to the Class Representatives.

21 I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct. Executed on June 3, 2024 at Riverside, California.

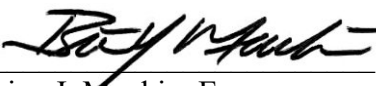
23
24 By: 
25 Brian J. Mankin, Esq.
26
27
28

EXHIBIT “1”

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Attorneys for Defendant HOWARD ROOFING COMPANY

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

VICTOR MEDINA and FRANCISCO
CRUZ, individually, on a representative basis,
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vs.

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20, inclusive;

Defendants.

Case No.: CIVSB2312233

*[Assigned to Hon. Jessica Morgan, Dept S26,
for all purposes]*

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

1 This Class Action Settlement Agreement and Release of Claims (the “Agreement”) is
2 entered into by and between Plaintiffs Victor Medina and Francisco Cruz, individually and on
3 behalf of all others similarly situated, and on behalf of the State of California, and Defendant
4 Howard Roofing Company, Inc., and is approved by their respective counsel of record, subject to
5 the terms and conditions hereof and the Court’s approval.

6 **A. Definitions**

7 1. “Action” or “Lawsuit” means and refers to the case entitled *Medina v. Howard*
8 *Roofing Company, Inc.* San Bernardino County Superior Court, Case No. CIVSB2312233,
9 initiated on May 30, 2023, and the case entitled *Cruz v. Howard Roofing Company, Inc.* Los
10 Angeles Superior Court, Case No. 23STCV15380.¹

11 2. “Administrator” means and refers to Phoenix Settlement Administrators , the
12 neutral third-party class action settlement administrator agreed to by the Parties, that will provide
13 the Notice to the Class Members and distribute the settlement amounts as described in this
14 Agreement.

15 3. “Administration Costs” means the costs payable from the Gross Settlement
16 Amount to the Administrator for its reasonable fees and expenses in administering this
17 Settlement, including, but not limited to, printing, distributing, and tracking documents for this
18 Settlement, tax reporting, and deposit of the employee and employer share of payroll taxes,
19 unclaimed property due diligence, reporting and remittance obligations, distributing the
20 Settlement Amount, and providing necessary reports and declarations, as requested by the
21 Parties. The Administration Costs shall be paid from the Gross Settlement Amount, including, if
22 necessary, any such costs in excess of the amount represented by the Administrator as being the
23 maximum costs necessary to administer the Settlement.

24 4. “Aggrieved Employee(s)” means all California citizens currently and formerly
25 employed by Defendant as a non-exempt employee who worked for Defendant in the State of
26 California at any time during the PAGA Period (or, if any such person is incompetent, deceased,
27

28

¹ On May 14, 2024, Plaintiff Francisco Cruz requests dismissal, without prejudice, of the *Cruz* lawsuit filed in Los Angeles Superior Court.

or unavailable due to military service, the person’s legal representative or successor in interest evidenced by reasonable verification).

5. “Agreement” or “Settlement Agreement” or “Settlement” shall mean this Class Action and PAGA Settlement Agreement and Release of Claims.

6. “Class” is defined all current and former non-exempt employees who worked for Defendant in California during the Class Period (or, if any such person is incompetent, deceased, or unavailable due to military service, the person’s legal representative or successor in interest evidenced by reasonable verification).

7. “Class Member(s)” or “Settlement Class Member” refers to individual members of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

8. “Class Counsel” refers to Brian Mankin and Peter Carlson of Lauby, Mankin & Lauby LLP and Daniel J. Hyun and David Alami of Torus LLP.

9. “Class Data” means a complete list that Defendant will diligently and in good faith compile from their records and provide to the Administrator on one spreadsheet which shall include, for each Class Member, the individual’s full name, last known address, Social Security Number, dates of employment, and total Weeks Worked during the PAGA Period and the Class Period.

10. “Class Period” is deemed to be any time during the period of May 30, 2019, through May 4, 2024.

11. “Class Representatives” or “Plaintiffs” means and refers to Plaintiffs Victor Medina and Francisco Cruz.

12. “Complaint” refers to the operative second amended class and PAGA representative action complaint filed in the Action.

13. “Court” (or “Judge”) means the California Superior Court, County of San Bernardino.

14. “Defendant” means and refers to Howard Roofing Company, Inc.

1 15. “Defendant’s Counsel” or “Defense Counsel” means and refers to O’Hagan &
2 Meyer.

3 16. “Effective Date” means the latest of the following dates: (i) if no Class Member
4 timely and properly intervenes, or files a motion to vacate the judgment approving the Settlement
5 Agreement under Code of Civil Procedure § 663, then 60 days following the date of the Court’s
6 Notice of Entry of Order regarding Final Approval of the Settlement and the judgment is final;
7 (ii) if a Class Member intervenes, or files a motion to vacate the judgment approving the
8 Settlement Agreement, then sixty-one (61) calendar days following the date the Court enters an
9 order granting Final Approval, assuming no appeal is filed; or (iii) if a timely appeal is filed, then
10 the date of final resolution of that appeal or other collateral attack (including any requests for
11 rehearing and/or petitions for *certiorari*), resulting in final judicial approval of the Settlement.

12 17. “Escalator Clause:” Defendant represents that, as of March 4, 2024, the Class
13 Members worked approximately 23,418 Work Weeks during the Class Period. Should the total
14 number of Work Weeks in the Class Period exceed 25,760 (which is 10% more than Defendant’s
15 representation), then Defendant shall have the option of either (i) increasing the Gross Settlement
16 Amount by \$41.42 (Settlement Amount divided by 23,418) for each additional workweek above
17 25,760, or (ii) changing the end date of the Class Period to a date for which there are no more
18 than 25,760 workweeks. However, if Defendant elects to change the end date of the Class
19 Period, then: (i) Defendant must make that election at least 10 days prior to Plaintiffs filing their
20 motion for preliminary approval, and (ii) in no event shall Defendant be permitted to change the
21 end date to a date prior to March 4, 2024 (the date of mediation).

22 18. “Final Approval” refers to the order of the Court granting final approval of this
23 Settlement Agreement and entering a judgment approving this Agreement on substantially the
24 terms provided herein or as may be modified by subsequent agreement of the Parties.

25 19. “Gross Settlement Amount” is \$970,000.00, which is the total amount Defendant
26 agrees to pay under the Settlement, subject to the Escalator Clause and exclusive of Defendant’s
27 obligation to fund their share of payroll taxes, as further discussed in Paragraph 49(c) below.
28

1 20. “Individual Class Payment” refers to each Participating Class Members *pro rata*
2 share of the Net Settlement Amount calculated according to the number of workweeks worked
3 during the Class Period, as further discussed in Paragraph 49(c) below.

4 21. “Individual PAGA Payment” refers to each Aggrieved Employees *pro rata* share
5 of 25% of the PAGA Penalties calculated according to the number of pay periods worked during
6 the PAGA period, as further discussed in Paragraph 49(h) below.

7 22. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 49(b)
8 below.

9 23. “Notice” means the notice of proposed class settlement that will be mailed to the
10 Class Members and which will advise each Class Member of the settlement and his or her
11 estimated Individual Class Payment and Individual PAGA Payment and will further advise of the
12 setting of a Final Approval Hearing. The Notice is attached as Exhibit A and incorporated by
13 reference into this Agreement.

14 24. “Objecting Class Member” means a Class Member, other than Plaintiffs, who
15 submits a valid and timely objection to the terms of this Agreement, pursuant to Paragraph 70(c)
16 below.

17 25. “PAGA Penalties” means the total amount that the Parties have agreed to pay to
18 the Labor and Workforce Development Agency (“LWDA”), allocated 75% (\$37,500) to the
19 LWDA, in connection with the California Labor Code Private Attorneys General Act of 2004
20 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”), as well as the Individual PAGA Payment allocated
21 25 % (\$12,500) to the Aggrieved Employees.

22 26. “PAGA Period” is deemed to be any time during the period of May 30, 2022,
23 through May 4, 2024.

24 27. “Participating Class Member” means any and all Class Members who are deemed
25 to participate and receive an Individual Class Payment and do not opt-out by submitting timely
26 valid Requests for Exclusion.

27 28. “Parties” means Plaintiffs and Defendant, collectively.
28

1 29. “Preliminary Approval Date” means the date the Court approves the Settlement
2 Agreement and enters the Preliminary Approval Order.

3 30. “Preliminary Approval Order” means the proposed judicial Order Granting
4 Preliminary Approval of the Settlement to be entered by the Court, upon the application or
5 motion of the Plaintiffs, preliminarily approving this Settlement and providing for the issuance of
6 the Notice to the Class, an opportunity to opt out of the Settlement, an opportunity to submit
7 timely objections to the Settlement, and setting a final approval hearing on the fairness of the
8 terms of Settlement, including approval of attorneys’ fees and costs. Provided that the motion is
9 consistent with the terms herein, Defendant will not object to Plaintiffs’ motion for preliminary
10 approval but will be provided with an opportunity to review and comment upon the motion
11 before it is filed.

12 31. “QSF” means the Qualified Settlement Fund set up by the Administrator for the
13 benefit of the Participating Class Members and Aggrieved Employees, and from which the
14 settlement payments shall be made.

15 32. “Released Class Claims” or “Class Claims” by the Participating Class Members
16 upon Final Approval of the Settlement will include all causes of action and claims that were
17 alleged in the Actions or reasonably could have been alleged based on the facts and legal theories
18 contained in the complaints filed, including the operative Complaint, including all of the
19 following claims for relief: (i) failure to pay all regular rate wages, minimum wages, straight
20 time wages, and overtime wages due; (ii) failure to provide compliant meal periods; (iii) failure
21 to provide compliant rest breaks and recovery/cool down periods; (iv) failure to timely pay
22 wages during employment; (v) failure to provide complete, accurate wage statements; (vi) failure
23 to pay wages timely at time of termination or resignation; (vii) failure to reimburse or indemnify
24 necessary business expenses; (viii) failure to pay sick leave and/or vacation pay; (ix) failure to
25 pay reporting time pay; (x) failure to provide fresh drinking water and (xi) unfair business
26 practices that could have been premised on the claims, causes of action or legal theories of relief
27 described above or any of the claims, causes of action or legal theories of relief pleaded in the
28 operative complaint. The Class Members who cash their Settlement Checks further acknowledge

1 they are releasing any claims under the Fair Labor Standards Act (“FLSA”) directly based on or
2 arising out of the Released Class Claims. Additionally, this definition of “Released Class
3 Claims” expressly excludes all claims for vested benefits, wrongful termination, unemployment
4 insurance, disability, social security, workers’ compensation, claims while classified as exempt,
5 and claims outside of the Class Period.

6 33. “Released PAGA Claims” or “PAGA Claims” means all causes of action and
7 claims for civil penalties under the California Labor Code Private Attorneys General Act of 2004
8 that were alleged in the operative complaint in the Actions or reasonably could have been alleged
9 based on the facts contained in the operative complaint in the Actions, including claims for civil
10 penalties based on the following: (i) failure to pay all regular rate wages, minimum wages,
11 straight time wages, and overtime wages due; (ii) failure to provide compliant meal periods; (iii)
12 failure to provide compliant rest breaks; (iv) failure to timely pay wages during employment; (v)
13 failure to provide complete, accurate wage statements; (vi) failure to pay wages timely at time of
14 termination or resignation; (vii) failure to reimburse or indemnify necessary business expenses;
15 (viii) failure to pay sick leave and/or vacation pay; (ix) failure to pay reporting time pay (x)
16 failure to provide fresh drinking water (xi) failure to maintain records in accordance with Labor
17 Code Section 1174; and/or (xi) claims, causes of action or legal theories of relief seeking civil
18 penalties under the California Labor Code Private Attorneys General Act of 2004 plead in the
19 operative Complaint and underlying LWDA exhaustion letters.

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

24 35. “Release Period” shall be the time period governing the Released Class Claims,
25 which shall be the same as the Class Period.

26 36. “Response Deadline” is 30 calendar days from the date the Notice is mailed to the
27 Class Members, and shall be the last date on which Class Member may: (a) mail Requests for
28 Exclusion from the Settlement, or (b) mail his/her/their Objection to the Settlement. Class

Members to whom notice packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline or an additional 14 calendar days from the date of re-mailing, whichever is later.

37. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 70(a) below.

38. “Service Payment” or “Service Award” means the amount approved by the Court to be paid to the Class Representatives in addition to their Individual Class Payments as Participating Class Members and Individual PAGA Payments as Aggrieved Employees.

39. “Work Weeks” or “Weeks Worked” in the context of a Class Member means any and all Work Weeks during the Class Period during which the Class Member worked at least one day in California for Defendant. Likewise, in the context of Aggrieved Employees, it means any and all weeks worked during the PAGA Period during which the Aggrieved Employee worked at least one day in California for Defendant.

B. General Terms

40. On May 30, 2023, Plaintiff Medina filed a putative class action complaint against Defendant in San Bernardino County Superior Court. Plaintiff later filed a first amended complaint, alleging putative class and representative PAGA claims, including: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to reimburse business expenses, (f) failure to timely pay wages upon separation of employment, (g) failure to provide accurate itemized wage statements, (h) unfair and unlawful competition, and (i) related claims under PAGA.

41. On June 30, 2023, Plaintiff Cruz filed a separated class action against Defendant in Los Angeles County Superior Court, entitled *Francisco Cruz v. Howard Roofing Company Incorporated*, Los Angeles County Superior Court Case No. 23STCV15380, which generally alleged the same wage-and-hour violations as Plaintiff Medina’s action.

42. On March 4, 2024, the Parties attended private mediation with Todd Smith, Esq., and reached this Settlement. As part of the Settlement, the Parties agreed to consolidate Plaintiff Cruz’s action and claims into Plaintiff Medina’s action by filing a second amended complaint to

1 add Francisco Cruz as a plaintiff and to add any claims in Plaintiff's Cruz's action that were not
2 already included within Plaintiff's Medina's action. After the Court approved the Parties
3 stipulation in this regard, Plaintiffs filed the operative second amended complaint on April 10,
4 2024. On May 14, 2024, Francisco Cruz filed his a request for dismissal, without prejudice, of
5 his later filed lawsuit in Los Angeles Superior Court.

6 43. Defendant denies Plaintiffs' claims and allegations and contends that the Action is
7 not suitable for class certification. The Court has not granted class certification.

8 44. The Class Representatives believe they can proceed with the representative and
9 class claims, that the Action is meritorious, and that class certification is appropriate.

10 45. The Parties have conducted a thorough investigation into the facts of the Action.
11 This includes conducting an extensive exchange of informal discovery, including a sampling of
12 payroll and timekeeping records for Class Members. Class Counsel is both knowledgeable about
13 and has done extensive research with respect to the applicable law and potential defenses to the
14 claims of the Class. Class Counsel has diligently pursued an investigation of the Class
15 Members' claims against Defendant. Based on the foregoing data and on their own independent
16 investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendant
17 for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable,
18 and adequate and is in the best interest of the Class Members in light of all known facts and
19 circumstances, including the risk of significant delay and uncertainty associated with litigation,
20 various defenses asserted by Defendant, and numerous potential appellate issues.

21 46. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
22 to be performed or judgment to be entered pursuant to the terms of the Settlement and
23 Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of
24 any statute or law or liability on the claims or allegations in the Action.

25 47. Stipulation for Class Certification. For settlement purposes only, Defendant will
26 stipulate that the Participating Class Members may be conditionally certified as a Class. This
27 stipulation to certification is in no way an admission that class action certification is proper and
28 shall not be admissible in this or in any other action except for the sole purposes of enforcing this

1 Agreement. Should, for whatever reason, the Court fail to issue Final Approval, the Parties'
2 stipulation to class certification as part of the Settlement shall become null and void *ab initio* and
3 shall have no bearing on, and shall not be admissible in connection with, the issue of whether
4 certification would be appropriate in a non-settlement context. Defendant expressly reserves its
5 rights and declares that it would continue to oppose class certification and the substantive merits
6 of the case should the Court fail to issue Final Approval. Plaintiffs expressly reserves their rights
7 and declare that they will continue to pursue class certification and a trial should the Court fail to
8 issue Final Approval.

9 **C. Terms of Settlement**

10 48. The financial terms of the Settlement are as follows:

11 (a) Settlement Amount: The Parties agree to settle this Action for the Gross
12 Settlement Amount of \$970,000, subject to the Escalator Clause and Defendant's obligation to
13 separately pay the share of payroll taxes owed on the wage portion of the Individual Class
14 Payments, which is the maximum amount that will be paid by Defendant and includes Individual
15 Class Payments, Class Counsel's Attorneys' Fees and Costs Award, the Service Payments to the
16 Class Representatives, Administration Costs, and PAGA Penalties. The Administrator will
17 disburse the entire Gross Settlement Amount without asking or requiring Participating Class
18 Members or Aggrieved Employees to submit any claim as a condition of payment.

19 (b) Net Settlement Amount: The "Net Settlement Amount" is defined as the
20 Gross Settlement Amount less the following payments in the amounts approved by the Court:
21 Attorneys' Fees and Costs Award, the Service Payments to the Class Representatives as awarded
22 by the Court, the Administration Expenses and Costs, and PAGA Penalties. If the Court reduces
23 the Attorneys' Fees and Costs Award, Service Award, or Administrator Costs, or either increases
24 or decreases the amount allocated to the PAGA Penalties, the difference shall be placed in the
25 Net Settlement Amount and allocated to the Class.

26 (c) Individual Class Payments for the Class will be calculated and apportioned
27 from the Net Settlement Amount based on the number of Weeks Worked by a Class Member
28 during the Class Period. Each specific Individual Class Payment will be calculated by: (a)

1 dividing the Net Settlement Amount by the total number of Weeks Worked by all Participating
2 Class Members during the Class Period, and (b) multiplying the result by each Participating
3 Class Members' Weeks Worked. The entire Net Settlement Amount will be disbursed to all
4 Participating Class Members. If there are any valid and timely Requests for Exclusion, the
5 Settlement Administrator shall proportionally increase the Individual Class Payment for each
6 Participating Class Member according to the number of Weeks Worked, so that the amount
7 actually distributed to Participating Class Members equals one hundred percent (100%) of the
8 Net Settlement Amount.

9 (d) Allocation of Individual Class Payments: The Individual Class Payments
10 to Participating Class Members will be allocated as follows: 10% will be allocated as wages
11 subject to withholding of all applicable local, state and federal taxes (the "Wage Portion"); and
12 90% will be allocated for interest and statutory penalties (pursuant to, *e.g.*, California Labor
13 Code sections 203, 210, 226) from which no taxes will be withheld (the "Non-Wage Portion").
14 The Administrator will issue to each Participating Class Member an Internal Revenue Service
15 Form W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with
16 respect to the penalties and interest allocations. Participating Class Members assume full
17 responsibility and liability for any employee taxes owed on their Individual Class Payment. The
18 Parties and their attorneys cannot provide and will not provide any advice regarding tax
19 obligations. Participating Class Members should consult with their tax advisors concerning the
20 tax consequences of the payments they receive under the Settlement.

21 (e) Service Payments to Class Representatives: The amount, if any, awarded
22 to each Class Representative as a Service Payment will be set by the Court in its discretion, not
23 to exceed \$10,000 each, in exchange for the services that Plaintiffs performed on behalf of the
24 Class. Defendant agrees not to oppose this request for Service Payments that do not exceed
25 \$10,000. The Service Payments to the Class Representatives will be paid out of the Gross
26 Settlement Amount. The Class Representatives will be issued an IRS Form 1099 in connection
27 with these payments and shall be solely and legally responsible to pay all applicable taxes on this
28 payment. The Parties agree that any amount awarded as the Service Payments to the Class

Representatives less than the requested amount shall not be a basis for Class Counsel to void this Settlement Agreement. Should the Court approve a lesser amount for the Service Payments, the difference shall be added to the Net Settlement Amount to be distributed to the Participating Class Members. The Administrator will pay the Class Representative Service Payments. Plaintiffs assume full responsibility for employee taxes owed on the Class Representative Service Payments.

(f) Attorneys' Fees and Costs Award: Defendant agrees to not oppose a request by Class Counsel to the Court for an award of attorneys' fees of up to one-third of the Gross Settlement Amount, plus reasonable litigation costs not to exceed \$25,000 ("Attorney's Fees and Cost Award"). Defendant agrees not to oppose any contention by Class Counsel that attorneys' fees should be based on the common fund theory. The Attorney's Fee and Cost Award shall be paid from the Gross Settlement Amount, and, except for this award, Defendant shall have no further obligation to pay any attorneys' fees, costs, or expenses to Class Counsel. Should the Court approve a lesser amount than what is sought by Class Counsel, the difference shall be added to the Net Settlement Amount to be distributed to the Participating Class Members. Any Court order awarding less than the amount sought by Class Counsel shall not be grounds to rescind the Settlement Agreement or otherwise void the Settlement. The Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and costs awarded by the Court. Class Counsel assumes full responsibility and liability for taxes owed on the Attorneys' Fees and Costs Award and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these payments.

(g) Administration Costs: The fees and other charges of the Administrator will be paid from the Settlement Amount, not to exceed \$9,500, unless (1) the Escalator Clause is triggered (whereby any reasonable increase in Administration Costs shall be paid from the increased Settlement Amount, subject to Court approval), or (2) as otherwise approved by all Parties and the Court.

1 (h) PAGA Penalties: The Parties agree that \$50,000 is allocated to PAGA
2 Penalties (the “PAGA Payment”), and is to be paid from the Gross Settlement Amount, subject
3 to Court approval. Of this amount, \$37,500 (75%) shall be paid to the LWDA in satisfaction of
4 civil penalties under the Private Attorney General Act of 2004 (“PAGA”) (the “LWDA
5 Payment”). The remaining \$12,500 (25%) will form the Individual PAGA Payments to the
6 Aggrieved Employees, which shall be calculated and allocated pro-rata on a Work Week basis,
7 which will be treated entirely as civil penalties and shall be reported as required on an IRS Form
8 1099. Class Counsel shall give proper notice to the LWDA of the Settlement. Aggrieved
9 Employees assume full responsibility and liability for any taxes owed on their Individual PAGA
10 Payment.

11 (i) Tax Liability: Class Counsel and Defendant make no representations as to
12 the tax treatment or legal effect of settlement amounts called for hereunder, and Plaintiffs and the
13 Class Members are not relying on any statement or representation by Class Counsel or Defendant
14 in this regard. Plaintiffs, Participating Class Members, and Aggrieved Employees understand
15 and agree that they will be solely responsible for the payment of any taxes and penalties assessed
16 on their respective Individual Class Payments and Individual PAGA Payments, described herein.
17 Forms 1099 will be distributed in the manner required by the Internal Revenue Code of 1986 (the
18 “Code”) and consistent with this Agreement. If the Code, the regulations promulgated
19 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes
20 set forth in this Section may be modified in a manner to bring Defendant into compliance with
21 any such changes. Plaintiffs, Participating Class Members, and Aggrieved Employees
22 understand and agree that they will be solely responsible for the payment of any taxes and
23 penalties assessed on their respective payments described herein.

24 (j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
25 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY”
26 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
27 PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO
28 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR

1 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
2 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
3 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
4 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
5 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
6 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
7 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
8 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
9 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
10 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
11 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
12 ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
13 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
14 ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
15 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
16 ADVISOR'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
17 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
18 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
19 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

20 (k) "Non-Reversionary" Settlement. This is a "non-reversionary" settlement.
21 Under no circumstances will any portion of the Settlement Amount revert to Defendant.
22 Participating Class Members and Aggrieved Employees will not have to make a claim in order to
23 receive an Individual Class Payment or Individual PAGA Payment. Distributions, in the form of
24 Individual Class Payment or Individual PAGA Payments will be made directly to each
25 Participating Class Member and Aggrieved Employee. The Administrator shall be responsible
26 for accurately and timely reporting and remittance obligations with respect to unclaimed funds as
27 a result of a Participating Class Member and/or Aggrieved Employee not cashing any checks
28 delivered pursuant to the Settlement by the check cashing deadline, as set forth herein.

1 (l) Class Counsel and Plaintiffs believe that the Settlement is fair and
2 reasonable and will so represent same to the Court.

3 **D. Release by the Participating Class Members**

4 49. Upon entry of the Final Approval Order and Defendant's funding of the Gross
5 Settlement Amount and the required employer-side payroll taxes, and except as to such rights or
6 claims as may be created by this Agreement, Plaintiffs and the Participating Class Members will
7 forever completely release and discharge the Released Parties from the Released Class Claims
8 for the Class Period.

9 50. Each Participating Class Member will be deemed to have made the foregoing
10 release of the Released Class Claims as defined in paragraph 32 as if by manually signing it.

11 51. Class Representatives, on behalf of themselves and the Class, acknowledge and
12 agree that the claims for unpaid wages and untimely payment of wages in the Action are
13 disputed, and that the payments set forth herein constitute payment of all sums allegedly due to
14 them. Class Representatives, on behalf of themselves and the Class, acknowledge and agree that
15 Labor Code § 206.5 is not applicable to the Parties or Settlement. Labor Code § 206.5 provides
16 in pertinent part as follows: "An employer shall not require the execution of any release of any
17 claim or right on account of wages due, or to become due, or made as an advance on wages to be
18 earned, unless payment of those wages has been made."

19 **E. Release of PAGA Claims**

20 52. Upon entry of the Final Approval Order and Defendant's funding of the Gross
21 Settlement Amount and the required employer-side payroll taxes, and except as to such rights or
22 claims as may be created by this Agreement, Plaintiffs and Aggrieved Employees will forever
23 completely release and discharge the Released Parties from the Released PAGA Claims for the
24 Release Period

25 53. Each Aggrieved Employee will be deemed to have made the foregoing release of
26 the Released PAGA Claims as defined in paragraph 33 as if by manually signing it.

1 54. Regardless of submitting a valid Request for Exclusion, neither Plaintiffs nor any
2 Aggrieved Employee shall have the right to opt-out or otherwise exclude themselves from
3 releasing the Released PAGA Claims.

4 55. It is the intent of the Parties that the Final Approval Order shall have full
5 equitable and collateral estoppel and res judicata effect to the fullest extent permitted by law.

6 **F. Release by Plaintiffs and Class Representatives**

7 56. The Class Representatives do hereby, for themselves and their spouses, heirs,
8 successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators,
9 guardians, personal representatives, and assigns forever and completely release and discharge
10 Defendant and the Released Parties from any and all charges, complaints, claims, liabilities,
11 obligations, promises, agreements, controversies, damages, actions, causes of action, suits,
12 rights, demands, costs, losses, debts, and expenses (including back wages, statutory penalties,
13 civil penalties, liquidated damages, exemplary damages, interest, attorneys' fees, and costs) of
14 any nature whatsoever, from the beginning of time through the execution of this Agreement,
15 whether known or unknown, suspected or unsuspected, including but not limited to all claims
16 arising out of, based upon, or relating to Class Representatives' employment with Defendant or
17 the remuneration for or termination of such employment (the "Class Representatives' Claims").
18 The Release of Class Representatives' Claims is expressly conditioned on and subject to the
19 terms of the separate individual settlement agreements entered into by and among Plaintiffs and
20 Defendant.

21 57. Without limiting the generality of the foregoing, this general release by Plaintiffs
22 includes all federal, state and local statutory claims, federal and state common law claims
23 (including but not limited to those for contract, tort and equity), including without limitation the
24 Americans with Disabilities Act, Age Discrimination in Employment Act, Title VII of the Civil
25 Rights Act of 1964 (as amended), 42 USC sec. 1981, 42 USC sec. 1983, the Fair Labor
26 Standards Act, the Employment Retirement Security Income Act of 1974, the California
27 Constitution, the California Fair Employment and Housing Act, the California Unfair
28

1 Competition Act (California Business and Professions Code section 17200 et seq.), and the
2 California Labor Code.

3 58. Plaintiffs agree that there is a risk that any injury that they may have suffered by
4 reason of Defendant and the Released Parties' relationship with them might not now be known,
5 and there is a further risk that said injuries, whether known or unknown at the date of this
6 Settlement Agreement, might possibly become progressively worse, and that as a result thereof
7 further damages may be sustained. Nevertheless, Plaintiffs agree to forever and fully release and
8 discharge Defendant and the Released Parties, and understands that by the execution of this
9 Settlement Agreement no further claims for any such injuries that existed at the time of the
10 execution of this Settlement Agreement may ever be asserted by Plaintiffs with respect to claims
11 arising in the time period from the beginning of time to the execution of this Settlement
12 Agreement.

13 59. Plaintiffs expressly waive and relinquish all rights and benefits afforded by
14 Section 1542 of the Civil Code of the State of California and do so understanding and
15 acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code
16 of the State of California states:

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

22 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
23 full and complete release and discharge of all parties, the Plaintiffs expressly acknowledge that
24 this Settlement Agreement is intended to include in its effect, without limitation, all claims that
25 Plaintiffs knew of, as well as all claims that they do not know or suspect to exist in his favor
26 against the Released Parties, or any of them, for the time period from the beginning of time to the
27 execution of this Settlement Agreement, and that this Settlement Agreement contemplates the
28 extinguishment of any such Plaintiffs' Claims. Notwithstanding the above, the general release by

the Plaintiffs shall not extend to claims for workers' compensation benefits, claims for unemployment benefits, claims for state disability benefits, or other claims that may not be released by law.

G. Interim Stay of Proceedings

60. Pending completion of all of the prerequisites necessary to effectuate this Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action except such as is necessary to effectuate the Settlement.

H. Notice Process and Settlement Administration

61. Appointment of Administrator. The Parties have agreed to the appointment of the Administrator to perform the duties of a settlement administrator, including mailing the Notice, using standard devices to obtain forwarding addresses, independently reviewing and verifying documentation associated with any claims or opt-out requests, resolving any disputes regarding the calculation or application of the formula for determining the Individual Class Payment and Individual PAGA Payments, drafting and mailing the settlement checks to Participating Class Members and Aggrieved Employees, issuing all necessary tax forms, and performing such other tasks as set forth herein or as the Parties mutually agree or that the Court orders. The Parties have verified that as condition of appointment, the Administrator agrees to be bound by this Agreement, and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of the Administration Costs.

62. Disputes Regarding Administration. Any and all disputes relating to administration of the Settlement by the Administrator (except for disputes regarding Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Agreement, until Plaintiffs and Defendant notify the Court that all payments and obligations contemplated by this Agreement have been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the dispute without the necessity of Court intervention. The Administrator shall also be responsible for issuing to Plaintiffs, Participating Class Members, and Aggrieved Employees, and Class

1 Counsel any Tax Forms as may be required by law for all amounts paid pursuant to this
2 Agreement.

3 63. Class Data. Not later than twenty-one (21) days after entry of the Preliminary
4 Approval Order, Defendant shall provide the Class Data to the Administrator. The Administrator
5 will run a check of the Class Members' addresses against those on file with the U.S. Postal
6 Service's National Change of Address List. The Class Data provided to the Administrator will
7 remain confidential and will not be used or disclosed to anyone, except as required by applicable
8 tax authorities, pursuant to Defendant's express written consent, or by order of the Court.

9 64. Total Workweeks. Based on review of its records, as of March 4, 2024,
10 Defendant estimated the Class Members collectively worked at total of 23,418 Workweeks. No
11 later than five (5) business days after receipt of the Class Data, the Administrator shall notify
12 Class Counsel that the list has been received and state the number of Class Members, Aggrieved
13 Employees, Workweeks, and Pay Periods in the Class Data. At least 5 days prior to mailing the
14 Notice, the Administrator shall provide a spreadsheet to Class Counsel and Defense Counsel
15 containing a preliminary calculation of all payments to be paid from the Settlement Amount,
16 including the estimated Individual Class Payments to each Class Member and Individual PAGA
17 Payments to each Aggrieved Employee (a person's name shall be redacted and a control number
18 used in place of the name). In the event that the total Workweeks worked by all Class Members
19 exceeds 25,760, (23,418 plus 10% of 23, 418), and triggers the Escalator Clause, the
20 Administrator shall notify the Parties of the increased total of Workweeks and Defendant shall
21 have the option of either (i) increasing the Gross Settlement Amount by \$41.42 (Gross
22 Settlement Amount divided by 23,418) for each additional Workweek above 25,760, or (ii)
23 changing the end date of the Class Period to a date for which there are no more than 25,760
24 Workweeks. The Administrator shall also update the Notice to reflect the any changes due to the
25 Escalator Clause.

26 65. Notice to Class Members. The Notice, as approved by the Court, shall be sent by
27 the Administrator to the Class Members, by first class mail, in English and Spanish, within ten
28 (10) calendar days following the Administrator's receipt of the Class Data. The Administrator

1 shall use standard devices, including a skip trace, to obtain forwarding addresses of Class
2 Members if any envelopes are returned.

3 66. Returned Notice Packets. The Administrator will take steps to ensure that the
4 Notice is received by all Class Members, including utilization of the National Change of Address
5 Database maintained by the United States Postal Service to review the accuracy of and, if
6 possible, update a mailing address. Notices will be re-mailed to any Class Member for whom an
7 updated address is located within ten (10) calendar days following both the Administrator
8 learning of the failed mailing and its receipt of the updated address. The Notice shall be identical
9 to the original Notice, except that it shall notify the Class Member that the exclusion (opt-out)
10 request or objection must be returned by the later of the Response Deadline or fifteen (15) days
11 after the remailing of the Notice.

12 67. Presumption Regarding Receipt of Notice. It will be conclusively presumed that
13 if an envelope has not been returned to Administrator by the Response Deadline that the Class
14 Member received the Notice.

15 68. Disputes Regarding Class Data. Class Members are deemed to participate in the
16 Settlement unless they wish to exclude themselves (opt-out). Aggrieved Employees may not opt
17 out of the Released PAGA Claims. The Notice will inform Class Members of his/her estimated
18 Individual Class Payment and Individual PAGA Payment, as well as the number of weeks he/she
19 worked during the Class Period and the PAGA Period. Class Members may dispute their Weeks
20 Worked if they feel they should be credited with more Weeks Worked in the Class Period and/or
21 PAGA Period in California than Defendant's records show by timely submitting evidence to the
22 Administrator. Each Class Member shall have until the Response Deadline (plus an additional 14
23 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class
24 Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice.
25 Defendant's records will be presumed determinative absent reliable evidence to rebut
26 Defendant's records, but the Administrator will evaluate the evidence submitted by the Class
27 Member. The Administrator must encourage the challenging Class Member to submit supporting
28 documentations. In the absence of any contrary documentation, the Administrator is entitled to

1 presume that the Workweeks and/or PAGA Pay Periods contained in the Class Notice are correct
2 as long as they are consistent with the Class Data. The Administrator's determination of each
3 Class Member's allocation of Workweeks and/or PAGA Pay Periods shall be final and not
4 appealable or otherwise susceptible to challenge. The Administrator shall promptly provide
5 copies of all challenges to calculation of Workweeks and/or PAGA Pay Periods to Counsel and
6 the Administrator's determination of the challenges. Class members will have until the
7 Response Deadline to object or opt out, unless extended by the Court. Class Members and
8 Aggrieved Employees will have until the Response Deadline to dispute Workweeks, object or
9 opt out, unless extended by the Court.

10 69. Declaration of Due Diligence. The Administrator shall provide counsel for the
11 Parties, at least 25 days prior to the final approval hearing, a declaration of due diligence and
12 proof of mailing with regard to the mailing of the Notice. The Administrator's declaration of
13 due diligence shall be suitable for filing in Court and attest to the Administrator's due diligence
14 and compliance with all of its obligations under this Agreement, including but not limited to, its
15 mailing of the Class Notice, the Class Notices returned as undelivered, the re-mailing of Class
16 Notices, attempts to locate Class Members, the total number of Requests for Exclusion from
17 Settlement it received, the number of written objections, and attach the objections and a list of
18 the employees that opted-out (if any.). The Administrator will supplement its declaration as
19 needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the
20 Administrator's declaration(s) in Court.

21 70. Class Members' Rights. Each Class Member will be fully advised of the
22 Settlement, the ability to timely object to the settlement, and the ability to timely opt-out or
23 timely request exclusion from the Class Claims portion of the Settlement. The Notice will
24 inform the Class Members of the Court-established deadlines for filing objections or requesting
25 exclusion from the Settlement in accordance with the following guidelines:

26 (a) Requests for Exclusion from Class. Any Class Member, other than
27 Plaintiffs, may request to be excluded from the Class by submitting a "Request for Exclusion" to
28 the Administrator, postmarked on or before the Response Deadline. To be valid, the Request for

1 Exclusion must be timely postmarked by the Response Deadline. The Request for Exclusion
2 should state:

3 “I WISH TO BE EXCLUDED FROM THE CLASS IN THE
4 HOWARD ROOFING LAWSUIT. I UNDERSTAND THAT IF I
5 ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I
6 WILL NOT RECEIVE MY INDIVIDUAL CLASS PAYMENT
7 FROM THIS LAWSUIT.”

8 To be valid, any Request for Exclusion must include the full name, address, telephone
9 number, last four digits of the social security number or date of birth, and signature of the Class
10 Member requesting exclusion. The Request for Exclusion must be returned by mail to the
11 Administrator at the specified address set forth in the Notice. Any such Request must be made in
12 accordance with the terms set forth in the Notice. A Request for Exclusion via mail will be
13 timely only if postmarked by the Response Deadline, unless the Parties otherwise agree in
14 writing. Any Class Member who timely requests exclusion in compliance with these
15 requirements: (i) will not have any rights under this Agreement, including the right to object,
16 appeal or comment on the Settlement; (ii) will not be entitled to receive the Individual Class
17 Payment under this Agreement; and (iii) will not be bound by this Agreement, or the Judgment.
18 Any Class Member who is an Aggrieved Employee who requests timely exclusion will still be
19 subject to the Released PAGA Claims to the fullest extent permitted by law and receive an
20 Individual PAGA Payment. Because future PAGA claims are subject to claim preclusion upon
21 entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are
22 deemed to release the claims identified in Section E of this Agreement and are eligible for
23 Individual PAGA Payment. All Parties and their counsel, including Defendant’s respective
24 members, member managers, owners, officers, and directors, shall not encourage or solicit opt-
25 outs or objections, directly or indirectly, through any means.

26 (b) Binding Effect on Participating Class Members. All Participating Class
27 Members will: (i) be bound by the terms and conditions of this Agreement, the Judgment, and
28 the releases set forth herein; and (ii) except as otherwise provided herein, will be deemed to have

1 waived all objections and oppositions to the fairness, reasonableness, and adequacy of the
2 Settlement.

3 (c) Objections to Settlement. Only Participating Class Members may object
4 to the class action components of the Settlement and/or this Agreement. Any Participating Class
5 Member, other than Plaintiffs, who does not submit a valid and timely Request for Exclusion
6 may object to the terms of this Agreement. To object, a Participating Class Member shall inform
7 the Administrator, in writing, of his or her objection which must be postmarked by the Response
8 Deadline at the address set forth in the Notice. Such written objection shall include the
9 Objecting Class Member's full name, address, telephone number, last four digits of the social
10 security number or date of birth, signature, and dates of employment with Defendant, in addition
11 to the case name and number, the basis for the objection, including any legal support and each
12 specific reason in support of the objection, as well as any documentation or evidence in support
13 thereof, and, if the Objecting Participating Class Member is represented by counsel, the name
14 and address of his or her counsel. The Administrator shall provide objections, if any, to Class
15 Counsel and Defense Counsel within three (3) calendar days of receipt, and the Administrator
16 shall attach the same to its declaration of due diligence and file with the Court prior to the Final
17 Approval Hearing. An Objecting Participating Class Member remains eligible to receive
18 monetary compensation from the Settlement. Plaintiffs and Defendant shall not be responsible
19 for any fees, costs, or expenses incurred by an Objecting Participating Class Member and/or his
20 or her counsel related to any objections to the Settlement. In the alternative, Participating Class
21 Members may appear in Court (or hire an attorney to appear in Court) to present verbal
22 objections at the Final Approval hearing. Submitting an objection does not preserve the right to
23 appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record
24 by timely and properly intervening or filing a motion to vacate the judgment under Code of Civil
25 Procedure § 663. Non-Participating Class Members have no right to object to any of the class
26 action components of the Settlement.

27 (d) Failure to Object. Any Participating Class Member who does not timely
28 and properly become a party of record by objecting or filing a motion to vacate the judgment

1 waives any and all rights to appeal from the Judgment, including all rights to any post-judgment
2 proceeding and appellate proceeding, such as a motion to vacate judgment, motion for new trial,
3 a motion under California Code of Civil Procedure section 473, and extraordinary writs.

4 (e) Responses to Objections. Each Party retains the right to respond to any
5 objection raised by a Participating Class Member, including the right to file responsive documents
6 in Court. Counsel for the Parties may file a response to any objections submitted by an Objecting
7 Participating Class Member at least five (5) court days before the date of the Final Approval
8 Hearing, or as otherwise ordered or accepted by the Court.

9 (f) Participating Class Members will have until the Response Deadline to
10 object or submit a Request for Exclusion to the Administrator by U.S. Mail. The Administrator
11 shall disclose jointly to Class Counsel and Defense Counsel what objections or Requests for
12 Exclusion were timely submitted on a weekly basis, and upon the request of Class Counsel or
13 Defense Counsel.

14 (g) Defendant's Right to Withdraw. If the number of timely and valid
15 Requests for Exclusion identified in the Exclusion List exceeds 5% of the total of all Class
16 Members, Defendant may, but is not obligated to, elect to withdraw from the Settlement. The
17 Parties agree that, if Defendant withdraws, the Settlement shall be void *ab initio*, have no force
18 or effect whatsoever, and that neither Party will have any further obligation to perform under this
19 Agreement; provided, however, Defendant will remain responsible for paying all Settlement
20 Administration Expenses incurred to that point. Defendant must notify Class Counsel and the
21 Court of its election to withdraw not later than seven (7) days after the Administrator sends the
22 final Exclusion List to Defense Counsel. Late elections will have no effect.

23 71. Funding of the Gross Settlement Amount. Defendant shall deposit the Gross
24 Settlement Amount, plus Defendant's share of payroll taxes owed on Individual Class Payments,
25 with the Administrator no later than 20 days after the Effective Date.

26 72. Distribution of Funds. No later than 14 calendar days after the deposit of the
27 Settlement Amount by Defendant, the Administrator shall mail via First Class U.S. Mail, postage
28 prepaid the Individual Class Payments to the Participating Class Members, the Individual PAGA

1 Payments to the Aggrieved Employees, the payment to Class Counsel for the Attorneys' Fees
2 and Costs Award, any Service Payment to the Class Representative, the payment to the LWDA
3 for PAGA Penalties, and will pay itself the Administration Costs. The Administrator's
4 disbursement of the Class Counsel's Attorneys' Fees and Costs payment and the Class
5 Representatives' Service Payments shall not precede disbursement of Individual Class Payment
6 and Individual PAGA Payments.

7 73. Deadline for Cashing Settlement Checks. Participating Class Members and
8 Aggrieved Employees shall have 180 calendar days after mailing by the Administrator to cash
9 their settlement checks. The face of each check shall prominently state the date (typically one
10 hundred and eighty (180) days after the date of mailing) when the check will be voided. The
11 Administrator will cancel all checks not cashed by the void date. The Administrator will send
12 checks for Individual Settlement Payments to all Participating Class Members (including those
13 for whom Class Notice was returned undelivered). The Administrator will send checks for
14 Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class
15 Members who qualify as Aggrieved Employees (including those for whom Class Notice was
16 returned undelivered). The Administrator may send Participating Class Members a single check
17 combining the Individual Class Payment and the Individual PAGA Payment. The release will be
18 binding upon all Participating Class Members who do not cash their checks within the 180-day
19 period. In the event that any settlement check is returned to the Administrator within 180 days of
20 mailing, the Administrator will, within five (5) business days of receipt of the returned settlement
21 check, perform a skip trace to locate the individual, and notify Defense Counsel and Class
22 Counsel of the results. If a new address is located by these means, the Administrator will have
23 ten (10) business days to re-issue the check. The Administrator need not take further steps to
24 deliver checks to Class Members whose re-mailed checks are returned as undelivered. Neither
25 Defendant, Defense Counsel, Class Counsel, Plaintiffs, nor the Administrator will have any
26 liability for lost or stolen settlement checks, forged signatures on settlement checks, or
27 unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a
28 Participating Class Member and/or Aggrieved Employee notifies the Administrator that he or she

believes that a settlement check has been lost or stolen, the Administrator shall immediately stop payment on such check. If the check in question has not been negotiated prior to the stop payment order, the Administrator will issue a replacement check. If any Participating Class Member's or Aggrieved Employee's check is not cashed within the time periods noted above, the check will be void and a stop-payment will be issued, and the Administrator shall issue the unclaimed funds to the California State Controller's Office in the name of the Class Member.

I. Duties of the Parties Prior to the Court's Approval

74. Promptly after execution of this Agreement, Plaintiffs will move the Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order accomplishing the following:

- (a) Approving as to form and content the proposed Notice;
- (b) Directing the mailing of the Notice by first class mail to the Class Members;
- (c) Preliminarily approving this Settlement;
- (d) Preliminarily certifying the class for purposes of this Settlement;
- (e) Advising the LWDA of the proposed Settlement; and
- (f) Scheduling the Final Approval Hearing on the issue of whether this Settlement should be finally approved as fair, reasonable and adequate. Plaintiff will prepare the first draft of the Preliminary Approval. Plaintiff shall provide a draft of the Motion for Preliminary Approval and Proposed Order to Defense Counsel not later than seven (7) days prior to filing the Motion for Preliminary Approval. Class Counsel and Defense Counsel will expeditiously meet and confer via e-mail or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Preliminary Approval. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than sixty (60) days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval Order to the Administrator and LWDA.

1 If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the
2 supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously
3 work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to
4 resolve the disagreement. If the Court does not grant Preliminary Approval or conditions
5 Preliminary Approval on any material change to this Agreement, Class Counsel and Defense
6 Counsel will expeditiously work together on behalf of the Parties by meeting in person or by
7 telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's
8 concerns.

9 **J. Duties of the Parties Following Court's Final Approval**

10 75. Not later than sixteen (16) court days before the calendared Final Approval
11 Hearing, Plaintiffs will file in Court, a motion for final approval of the Settlement that includes a
12 request for approval of the PAGA settlement under Labor Code section 2699, subd. (1), a
13 Proposed Final Approval Order and a proposed Judgment. In connection with the Final Approval
14 Hearing provided for in this Agreement, Class Counsel shall submit a proposed Final Approval
15 Order:

16 (a) Approving the Settlement, adjudging the terms thereof to be fair,
17 reasonable and adequate, and directing consummation of its terms and provisions;

18 (b) Approving Class Counsel's application for an award of attorneys' fees and
19 reimbursement of litigation costs and expenses, Service Payments to the Class Representatives,
20 and the payment to the Administrator for costs of administering the settlement; and

21 (c) Entering judgment approving settlement.

22 Plaintiff shall provide drafts of these documents to Defense Counsel not later than seven (7) days
23 prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will
24 expeditiously meet and confer in person or by telephone, and in good faith, to resolve any
25 disagreements concerning the Motion for Final Approval.

26 **K. Duty to Cooperate & Voiding the Agreement**

27 76. If the Court does not grant Final Approval or conditions Final Approval on any
28 material change to the Settlement (including, but not limited to, the scope of release to be granted

by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payments, Class Counsel Attorneys' Fees and Costs Payment, and/or Administrator Expenses Payment shall not constitute a material change to the Agreement within the meaning of this paragraph. The Parties agree the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law. If the Court fails or refuses to issue the Final Approval Order or fails to approve any material condition of this Agreement which effects a fundamental change of the Settlement, the entire Agreement shall be rendered voidable and unenforceable as to all Parties herein at the option of either Party.

77. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Attorneys' Fees and Costs Payment set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

78. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate,

reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

79. If the Settlement is voided or fails for any reason, Plaintiffs and Defendant will have no further obligations under the Settlement, including any obligation by Defendant to pay the Settlement Amount, or any amounts that otherwise would have been owed under this Settlement.

80. If the Settlement is voided or fails for any reason, any costs incurred by the Administrator shall be borne equally by Defendant and Plaintiffs, unless otherwise specified in this Agreement.

L. Other Terms

81. Waiver. The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

82. Parties' Authority. The signatories hereto represent that they are fully authorized to enter into this Agreement and bind the Parties hereto to the terms and conditions hereof.

83. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as practicable after execution of this Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and Defense Counsel, take all necessary steps to secure the Court's preliminary and final approval of the settlement, and the final entry of judgment.

84. No Prior Assignments. The Parties hereto represent, covenant, and warrant that they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights released and discharged by this Agreement.

1 85. No Admission of Liability, Class Certification or Representative Manageability
2 for Other Purposes. This Agreement represents a compromise and settlement of highly disputed
3 claims. Defendant denies any and all liability to Plaintiffs and/or any Class Member and/or
4 Aggrieved Employee in this Action, as to any and all causes of action that were asserted or that
5 might have been asserted in this Action. Nothing in this Agreement is intended or should be
6 construed as an admission by Defendant that any of the allegations in the Action and/or
7 Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor
8 should it be intended or construed as an admission by Plaintiff's that Defendant's defenses in the
9 Action have merit. Nonetheless, Plaintiffs and Defendant wish to settle and compromise the
10 matters at issue in the Operative Complaint to avoid further substantial expense and the
11 inconvenience and distraction of protracted and burdensome litigation. Plaintiffs and Defendant
12 have taken into account the uncertainty and risks inherent in litigation, and without conceding
13 any infirmity in the claims and defenses that they has asserted or could assert against each other,
14 have determined that it is desirable and beneficial that Plaintiffs' claims be settled in the manner
15 and upon the terms and conditions set forth in this Agreement. The Parties agree that class
16 certification and representative treatment is for purposes of this Settlement only. If, for any
17 reason the Court does not grant Preliminary Approval, Final Approval or enter Judgment,
18 Defendant reserves the right to contest certification of any class for any reasons, and Defendant
19 reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to
20 move for class certification on any grounds available and to contest Defendant's defenses. The
21 Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on,
22 and will not be admissible in connection with, any litigation (except for proceedings to enforce
23 or effectuate the Settlement and this Agreement).

24 86. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
25 Order, nothing contained herein, nor the consummation of this Agreement, is to be construed or
26 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of
27 Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
28 Agreement with the intention of avoiding further disputes and litigation with the attendant

1 inconvenience and expenses. This Agreement is a settlement document, and it, along with all
2 related documents such as the notices, and motions for preliminary and final approval, shall,
3 pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be
4 inadmissible in evidence in any proceeding, except an action or proceeding to approve the
5 settlement, and/or interpret or enforce this Agreement.

6 87. No Publicity. The Parties will not publicize the Settlement or disclose it to third
7 parties prior to the Court granting Preliminary Approval, except as required or necessary to
8 effectuate its terms and comply with law. After the Final Approval Date, Class Counsel and
9 Class Representatives agree that they will not discuss the Settlement with the media, any
10 settlement and verdict reporting service, any social media postings or other Internet postings.
11 Nothing herein shall be construed to prevent Class Counsel from the public filing of motions or
12 other case materials in the Action related to seeking and obtaining Court approval of this
13 Settlement and the related awards of attorneys' fees and costs, or to communications with Class
14 Members or their representatives about this Settlement, including through the posting of Court-
15 filed documents on Class Counsel's websites for access solely by the Class Members, or to
16 prevent the Parties or their representatives from communicating with financial or legal advisors
17 regarding the Settlement. In response to any media inquiry, Class Counsel may state only that
18 the Action has been settled on terms mutually agreeable to the Parties.

19 88. Non-Disparagement. Plaintiffs agree not to make any untruthful, malicious,
20 disparaging or defamatory statements, allegations, comments or communications, regardless of
21 form (whether written, oral, electronic, including but not limited to Glassdoor, Yelp, or
22 otherwise), regarding the Defendants. Plaintiffs further agree not to encourage authorize any
23 such statements, allegations, comments or communications to be made by others on their behalf.
24 To the extent Plaintiffs have posted any negative comments about the Defendants on Glassdoor,
25 Yelp, or other websites, Plaintiffs agree to request that these comments be removed and to
26 provide a copy of such request to Defense Counsel within thirty (30) calendar days of the
27 execution of this Agreement.
28

1 89. Notices. Unless otherwise specifically provided herein, all notices, demands or
2 other communications given hereunder shall be in writing and shall be deemed to have been duly
3 given as of the third business day after mailing by United States registered or certified mail,
4 return receipt requested, addressed:

5 *To the Class:*

6 Brian J. Mankin
7 **brian@lmlfirm.com**
8 Lauby, Mankin & Lauby LLP
9 5198 Arlington Ave, PMB 513
 Riverside, CA 92504
 Tel: (951) 320-1444 | Fax: (951) 320-1445

10 *To Defendant:*

11 Matthew Sgnilek
12 **msgnilek@ohaganmeyer.com**
13 O'HAGAN & MEYER
14 3200 Park Center Drive, Suite 700
 Costa Mesa, CA 92626
 Tel: (949) 942-8500 | Fax: (949) 942-8510

15 90. Construction. The Parties hereto agree that the terms and conditions of this
16 Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and
17 that this Agreement shall not be construed in favor of or against any Party by reason of the extent
18 to which any Party or his or its counsel participated in the drafting of this Agreement. Plaintiffs
19 and Defendant expressly waive the common-law and statutory rule of construction that
20 ambiguities should be construed against the drafter of an agreement and further agree, covenant,
21 and represent that the language in all parts of this Agreement shall be in all cases construed as a
22 whole, according to its fair meaning.

23 91. Captions and Interpretations. Paragraph titles or captions contained herein are
24 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
25 describe the scope of this Agreement or any provision hereof. Each term of this Agreement is
26 contractual and not merely a recital.

27 92. Modification. This Agreement may not be changed, altered, or modified, except
28 in writing and signed by the Parties hereto, and approved by the Court. This Settlement

1 Agreement may not be discharged except by performance in accordance with its terms or by a
2 writing signed by all of the Parties hereto.

3 93. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
4 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall
5 provide written notice to the other Party and allow an opportunity to cure the alleged
6 deficiencies, and Plaintiffs and Defendant may agree to seek the help of the Mediator to resolve
7 any dispute they are unable to resolve informally. During this period, the Parties shall bear their
8 own attorneys' fees and costs. This provision shall not apply to any legal action or other
9 proceeding instituted by any person or entity other than Plaintiffs or Defendant.

10 94. Choice of Law. This Settlement Agreement shall be governed by and construed,
11 enforced and administered in accordance with the laws of the State of California, without regard
12 to its conflicts-of-law rules.

13 95. Integration Clause. This Settlement Agreement contains the entire agreement
14 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
15 or contemporaneous agreements, understandings, representations, and statements, whether oral
16 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
17 hereunder may be waived except in writing.

18 96. Binding On Assigns. This Agreement shall be binding upon and inure to the
19 benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
20 successors and assigns.

21 97. Integration. Upon execution by all Parties and their counsel, this Agreement
22 together with its attached exhibits shall constitute the entire agreement between the Parties
23 relating to the Settlement, superseding any and all oral representations, warranties, covenants, or
24 inducements made to or by any Party.

25 98. Waiver of Reemployment. Plaintiffs acknowledge that they have no intent to
26 apply for employment and/or re-employment with Defendant. Plaintiffs further acknowledge that
27 Defendant has the right to refuse to rehire Plaintiffs for non-discriminatory and non-retaliatory
28

1 reasons and Plaintiffs acknowledge that Defendant's position is that such legitimate non-
2 discriminatory and non-retaliatory reasons exist.

3 99. No Prior Assignments. The Parties separately represent and warrant that they have
4 not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
5 encumber to any person or entity and portion of any liability, claim, demand, action, cause of
6 action, or right released and discharged by the Party in this Settlement.

7 100. No Tax Advice. Neither Plaintiffs, Class Counsel, Defendant nor Defense
8 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
9 Settlement be relied upon as such within the meaning of United States Treasury Department
10 Circular 230 (31 CFR Part 10, as amended) or otherwise.

11 101. Applicable Law. All terms and conditions of this Agreement and its exhibits will
12 be governed by and interpreted according to the internal laws of the state of California, without
13 regard to conflict of law principles.

14 102. Confidentiality. To the extent permitted by law, all agreements made, and orders
15 entered during Action and in this Agreement relating to the confidentiality of information shall
16 survive the execution of this Agreement.

17 103. Use and Return of Class Data. Information provided to Class Counsel pursuant to
18 Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class
19 Counsel by Defendant in connection with the mediation, other settlement negotiations, or in
20 connection with the Settlement, may be used only with respect to this Settlement, and no other
21 purpose, and may not be used in any way that violates any existing contractual agreement,
22 statute, or rule of court.

23 104. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
24 because the members of the Class are numerous, it is impossible or impractical to have each
25 Class Member execute this Agreement. The Notice will advise all Class Members of the binding
26 nature of the release provided herein and such shall have the same force and effect as if this
27 Agreement were executed by each Class Member.
28

105. Counterparts. This Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

Dated: Jun 2, 2024

PLAINTIFF AND CLASS REPRESENTATIVE


Victor medina (Jun 2, 2024 08:28 PDT)

Victor Medina

Dated: 05/29/2024

PLAINTIFF AND CLASS REPRESENTATIVE


Francisco Cruz (May 29, 2024 10:50 PDT)

Francisco Cruz

Dated: _____

DEFENDANT HOWARD ROOFING COMPANY, INC.

By: _____ (name)
_____ (title)

APPROVED AS TO FORM:

Dated: 6/3/2024

CLASS COUNSEL

LAUBY, MANKIN & LAUBY LLP


Brian J. Mankin
Attorneys for Plaintiffs

Dated: May 29, 2024

CLASS COUNSEL

TORUS LLP


Daniel J. Hyun
Attorneys for Plaintiffs

Dated: _____

DEFENSE COUNSEL
O'HAGAN & MEYER

Matthew C. Sgnilek, Esq.
Attorneys for Defendant

105. Counterparts. This Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

Dated: _____

PLAINTIFF AND CLASS REPRESENTATIVE

Victor Medina

Dated: _____

PLAINTIFF AND CLASS REPRESENTATIVE

Francisco Cruz

Dated: 5/31/2024

DEFENDANT HOWARD ROOFING COMPANY, INC.

RON MALEKOW

By: RON MALEKOW (name)
EVP (title)

APPROVED AS TO FORM:

Dated: _____

CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP

Brian J. Mankin
Attorneys for Plaintiffs

Dated: _____

CLASS COUNSEL
TORUS LLP

Daniel J. Hyun
Attorneys for Plaintiffs

Dated: 05/31/2024

DEFENSE COUNSEL
O'HAGAN & MEYER

Matthew C. Sgnilek, Esq.
Attorneys for Defendant

EXHIBIT “2”

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT

Medina and Cruz v. Howard Roofing Company, Inc.
(San Bernardino County Superior Court, Case No. CIVSB2312233)

***The San Bernardino County Superior Court authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from an employee class action lawsuit for alleged violations of the California Labor Code (the “Action”) filed against Defendant Howard Roofing Company, Inc. (“Defendant”).

The Action was filed by Victor Medina and Francisco Cruz (“Plaintiffs” or “Class Representatives”) and seeks payment of (1) unpaid wages, statutory damages and penalties, interest and attorneys’ fees on behalf of all Class Members, who are defined as “all current and former non-exempt employees who worked for Defendant in California during the Class Period (which is May 30, 2019, through **May 4, 2024**); and (2) penalties under the California Private Attorneys General Act (“PAGA”) on behalf of all Aggrieved Employees, who are defined as “all current and former non-exempt, employees who worked for Defendant in California during the PAGA Period (which is May 30, 2022, through **May 4, 2024**). (Plaintiffs and Defendant shall be collectively referred to as the “Parties.”)

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant to fund Individual Class Payments to Class Members, and (2) a PAGA Settlement requiring Defendant to fund Individual PAGA Payments to Aggrieved Employees and pay penalties to the California Labor and Workforce Development Agency (“LWDA”). Based on Defendant’s records, and the Parties’ current assumptions, your Individual Class and PAGA Payments are shown in the charts below, along with the applicable data points from which these estimates are derived.

[CLASS MEMBER NAME] [ID/CONTROL NUMBER]

<i>Calculations and Data Points for Estimated Payments</i>			
Weeks Worked during Class Period	INSERT	<i>Estimated Individual Class Payment</i>	SINSERT
Weeks Worked during PAGA Period	INSERT	<i>Estimated Individual PAGA Payment</i>	\$INSERT

Please note that the actual amount you receive may be different from the above and will depend on several factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendant’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work for Defendant in California during the PAGA Period.) If you believe that you worked more weeks during the periods than are shown in the chart above, you can submit a challenge by **DATE, 2024** (“**Response Deadline**”). See **Section 4** of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or do not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiffs and Plaintiffs’ attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

If you worked for Defendant in California during the Class Period and/or the PAGA Period, you have four basic options under the Settlement, as shown in the Chart below:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

DO NOTHING AND RECEIVE A SETTLEMENT PAYMENT	If you want to participate in the proposed Settlement and receive your full settlement payment, then no further action is required on your part. You will automatically receive a settlement payment if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims described in Section 3 below.
EXCLUDE YOURSELF	If you do not wish to participate in the proposed Settlement of the Class Claims, you may “opt-out” of the Settlement of the Class Claims. If you choose to opt-out, you must submit a written Request for Exclusion, or otherwise notify the Administrator in writing, by [REDACTED], 2024 (see Section 6 below for more details on how to opt-out). If you opt-out, you will no longer be a participating Class Member, and once you are excluded, you will (1) <u>not</u> receive an Individual Class Payment, but you will preserve your right to pursue the Released Class Claims described below subject to applicable statutes of limitations, and (2) you will be barred from filing an objection to the settlement. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released PAGA Claims. See Section 6 of this Notice. The deadline to opt out of the Settlement is _____
OBJECT	Participating Class Members can objection to the Class Settlement, but not the PAGA Settlement. All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiffs who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiffs, but every dollar paid to Class Counsel and Plaintiffs reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiffs if you thing they are unreasonable. If you decide to object to the settlement with respect to the Class Claims because you find it unfair or unreasonable, you must submit an Objection stating why you object to the settlement by [REDACTED], 2024 (see Section 7 for more details on how to object).
DISPUTE THE NUMBER OF WEEKS WORKED	The amount of your Individual Class Payment and PAGA Payment (if applicable) depends on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number of Class Period Workweeks and number of PAGA Period Pay Periods you worked according to Defendant’s records is stated in the chart on the first page of this Notice. If you believe the number of workweeks that you were credited with working in the chart above is incorrect, you may submit a written dispute to the Administrator (see Section 4 for more details on how to submit a Dispute Form). Defendant’s records will be presumed correct, but you may provide evidence to the Administrator showing how many Work Weeks you believe you should be credited.

YOU MAY ATTEND THE FINAL APPROVAL HEARING, BUT IT’S NOT REQUIRED

DATE: DATE , 2024 TIME: 8:30 A.M.	The Court’s Final Approval Hearing is scheduled to take place on _____. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the
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receive other than their Individual Class Payments and any Individual PAGA payments.

C. **\$XX** to the Settlement Administrator for services administering the Settlement.

D. Up to \$50,000 for PAGA Penalties, allocated 75% (\$37,500) to the LWDA PAGA Payment and 25% (\$12,500) in Individual PAGA Payments to the Aggrieved Employees based on their share of Weeks Worked during the PAGA Period. This allocation is required under California Law.

E. Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Settlement Administrator will distribute the rest of the remainder of the Gross Settlement Amount (the “Net Settlement Amount”) by making Individual Class Payments to Participating Class Members based on their pro rata share of total Weeks Worked during the Class Period.

4. Taxes Owed on Payments to Class Members. Plaintiffs and Defendant are asking the Court to approve an allocation of 10% of each Individual Class Payment to taxable wages (“Wage Portion”) and 90% to penalties and interest (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiffs and Defendant have agreed to these allocations, the Parties and their attorneys cannot provide, and will not provide, any advice regarding tax obligations, nor are they giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the “void date”). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California State Controller’s Unclaimed Property Fund in your name. If the monies represented by your check is sent to the Controller’s Unclaimed Property Fund, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Settlement, unless you opt-out of the Settlement, not later than the Response Deadline. See Section 6 of this Notice for details on how to Opt-Out.

7. The Proposed Settlement Will be Void If the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant.

8. Settlement Administrator. The Court has appointed a neutral company, Phoenix Settlement Administrators (the “Settlement Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion, among other tasks. The Settlement Administrator will also decide any participating Class Member challenges over weeks worked, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Settlement Administrator’s contact information is contained in Section 9 of this Notice.

9. Participating Class Members’ Release. After the Judgment is final and Defendant has fully funded the Settlement Amount and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or related entities for claims based on the facts alleged in the Action for wages based on the Class Period Facts and PAGA penalties

based on PAGA Period facts, which are resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members release the Defendant and the Released Parties (which includes Defendant and its past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers) from all causes of action and claims that were alleged in the Actions or reasonably could have been alleged based on the facts and legal theories contained in the complaints filed, including the operative Complaint, including all of the following claims for relief: (i) failure to pay all regular rate wages, minimum wages, straight time wages, and overtime wages due; (ii) failure to provide compliant meal periods; (iii) failure to provide compliant rest breaks and recovery/cool down periods; (iv) failure to timely pay wages during employment; (v) failure to provide complete, accurate wage statements; (vi) failure to pay wages timely at time of termination or resignation; (vii) failure to reimburse or indemnify necessary business expenses; (viii) failure to pay sick leave and/or vacation pay; (ix) failure to pay reporting time pay; (x) failure to provide fresh drinking water and (xi) unfair business practices that could have been premised on the claims, causes of action or legal theories of relief described above or any of the claims, causes of action or legal theories of relief pleaded in the operative complaint (the “Released Class Claims”). The Class Members who cash their Settlement Checks further acknowledge they are releasing any claims under the Fair Labor Standards Act (“FLSA”) directly based on or arising out of the Released Class Claims. Additionally, this definition of “Released Class Claims” expressly excludes all claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers’ compensation, claims while classified as exempt, and claims outside of the Class Period.

10. Release of Released PAGA Claims. After the Court's judgment is final, and Defendant has paid the Settlement Amount (and separately paid the employer-side payroll taxes), all Aggrieved Employees will be barred from asserting PAGA claims against Defendant, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Defendant or its related entities based on the PAGA Period facts alleged in the Actions and resolved by this Settlement.

The Aggrieved Employees will be bound by the following release:

All Aggrieved Employees shall release the Defendant and the Released Parties (which includes Defendant and its past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers) of all causes of action and claims for civil penalties under the California Labor Code Private Attorneys General Act of 2004 that were alleged in the operative Complaint in the Actions or reasonably could have been alleged based on the facts contained in the operative Complaint in the Actions, including claims for civil penalties based on the following: (i) failure to pay all regular rate wages, minimum wages, straight time wages, and overtime wages due; (ii) failure to provide compliant meal periods; (iii) failure to provide compliant rest breaks; (iv) failure to timely pay wages during employment; (v) failure to provide complete, accurate wage statements; (vi) failure to pay wages timely at time of termination or resignation; (vii) failure to reimburse or indemnify necessary business expenses; (viii) failure to pay sick leave and/or vacation pay; (ix) failure to pay reporting time pay (x) failure to provide fresh drinking water (xi) failure to maintain records in accordance with Labor Code Section 1174; and/or (xi) claims, causes of action or legal theories of relief seeking civil penalties under the California Labor Code Private Attorneys General Act of 2004 plead in the operative Complaint and underlying LWDA exhaustion letters (the “Released PAGA Claims”). The time period governing the Released PAGA Claims shall be any time during the PAGA Period.

4. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Weeks Worked by all Participating Class Members during the Class Period, and (b) multiplying the result by the number of Weeks Worked by each individual Participating Class Member during the Class Period.

2. Individual PAGA Payments. The Settlement Administrator will calculate Individual PAGA Payments by (a) dividing \$12,500 by the total number of PAGA Pay Periods by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by the number of PAGA Pay Periods Worked by each individual Aggrieved Employee during the PAGA Period.

3. Disputing Weeks Worked and/or Share Points. The number of weeks you worked during the Class Period and the number of weeks you worked during PAGA Period, as recorded in Defendant's records, are stated in the tables on page 1 of this Notice. You have until **INSERT DATE** (the "Response Deadline") to dispute the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by timely submitting evidence, via signed letter, to the Settlement Administrator on or before **[INSERT DATE 30 Days After Mailing]**. Section 9 of this Notice has the Administrator's contact information.

You need to support your dispute by sending copies of pay stubs or other records. The Settlement Administrator will accept Defendant's calculation of weeks worked and/or Pay Periods based on Defendant's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve challenges based on your submission and on input from Class Counsel and Defendant's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members and Aggrieved Employees. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (which includes every Class Member who does not opt-out) and qualified Aggrieved Employee. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

2. Non-Participating Class Members/Aggrieved Employees Only. If you opted out of the Class settlement, but qualify as an Aggrieved Employee, then the Settlement Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee (i.e., Non-Participating Class Member), including those who opt out of the Class Settlement.

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Settlement Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

You will be treated as a Participating Class Member, participating fully in the Settlement, unless you opt-out of the Settlement, not later than the Response Deadline.

If you **do not** wish to take part in the release of the Class Claims in the Settlement, you may exclude yourself by sending to the Administrator a "Request for Exclusion" letter/card postmarked no later than , 2024 with your full name, current address, telephone number, last four digits of your social security number or your date of birth, email, and signature. The Request for Exclusion should state:

"I WISH TO BE EXCLUDED FROM THE CLASS IN THE HOWARD ROOFING LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE MY INDIVIDUAL CLASS PAYMENT FROM THIS LAWSUIT."

Any person who submits a timely Request for Exclusion from the Class Claims (1) will not have any rights under

this Settlement, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive an Individual Class Payment; (3) will preserve the right to pursue the Released Class Claims, and (4) will not be bound by this Settlement, or the Judgment. You and/or your designated representative may make the request on your behalf.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Claims remain eligible to receive an Individual PAGA Payment.

If you do not want to participate in the Settlement, the Administrator will exclude you based on timely receipt of a writing communicating your request to be excluded. Be sure to personally sign your request, identify the Action as Medina/Cruz v. Howard Roofing and include your identifying information (full name, address, telephone number, approximate dates of employment, and last four digits of social security number or your date of birth for verification purposes).. **Send your request to be excluded to the Administrator by [REDACTED], 2024 (the “Response Deadline”), or it will be invalid.** Section 9 of the Notice has the Administrator’s contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. A Participating Class Member who disagrees with any aspect of the Settlement may wish to object. Before deciding whether to object, you may wish to see what Plaintiffs and Defendant are asking the Court to approve. **The deadline for sending written objections to the Administrator is [REDACTED], 2024 (the “Response Deadline”).**

An objection is a letter from you that reasonably communicates the objection to the Settlement and/or the Agreement (including the basis for each objection in clear and concise terms). If you wish to object to the proposed Settlement, you or your own attorney must submit a written objection, and the objection must include your full name, address, telephone number, last four digits of the social security number or date of birth, signature, and dates of employment with Defendant, in addition to the case name and number (Medina v. Howard Roofing, Case No. CIVSB2312233), the basis for the objection, including any legal support and each specific reason in support of the objection, as well as any documentation or evidence in support thereof. Additionally, if you are represented by an attorney, the objection must include the name and address of your attorney. This objection and all supporting information must be sent to the Administrator at the address listed in Section 9, **postmarked** on or before [REDACTED], 2024.

If you do not comply with these procedures and the deadline for objections, the Court may not consider your objection at the Final Approval Hearing, and you may lose the right to contest the approval of the Settlement. You are still eligible to receive a settlement payment should the settlement become Final even if you object to the settlement. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and facts that support your objection. See Section 8 (immediately below) of this Notice for specifics regarding the Final Approval Hearing.

8. WHEN IS THE FINAL APPROVAL HEARING?

On [REDACTED], 2024, at ____ a.m./p.m. the Court will hold a public hearing in Department S26 of the Superior Court for the State of California, County of San Bernardino, 247 West 3rd Street, San Bernardino, CA 92415, for the purposes of determining whether the proposed Settlement is fair, adequate and reasonable and should be approved, whether to approve Class Counsel’s applications for attorneys’ fees and costs, whether to approve the payments to the LWDA, and whether to approve Plaintiffs’ request for the service awards. You can, but don’t have to, attend the Final Approval Hearing. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making any decisions. You can attend (or hire a lawyer to attend) either personally or virtually via the San Bernardino Superior Court’s remote access portal (<https://www.sb-court.org/general-information/remote-access>). Check the Court’s website for the most current information.

This hearing may be continued or rescheduled by the Court or via a stipulation by Counsel. Objectors to the

proposed settlement will be provided notice in the event that the Final Approval Hearing is continued to a later date. Class Members who support the proposed Settlement do not need to appear at the hearing and do not need to take any other action to indicate their approval. Class Members who object to the proposed Settlement are not required to attend the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

This agreement sets for everything Defendant and Plaintiffs have promised to do under the proposed Settlement. If you have questions about this Notice, the process to Opt-Out or Object, or the Settlement, or if you did not receive this Notice in the mail and you believe that you are or may be a member of the Class, you may contact the Settlement Administrator for more information or to request that a copy of this Notice be sent to you in the mail. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to Phoenix Settlement Administrator's website at (url). And you may also contact Class Counsel. Contact information for both the Administrator and Class Counsel is provided here:

Settlement Administrator	Class Counsel
Name: Phoenix Settlement Administrators Email: notice@phoenixclassaction.com Mailing Address: P.O. Box 7208, Orange, CA 92863 Telephone Number: (800) 523-5773 Fax Number: (949) 209-2503	Brian Mankin, Esq. brian@LMLfirm.com Peter Carlson, Esq. peter@LMLfirm.com Lauby Mankin Lauby LLP 5198 Arlington Ave, PMB 513 Riverside, CA 92504 Tel: (951) 320-1444 Daniel Hyun, Esq. Daniel@torusllp.com David Alami, Esq. David@torusllp.com Torus LLP 2 Park Plaza, Ste. 1260 Irvine, CA 92614 (949) 590-4122

You may also seek advice and guidance from your own private attorney at your own expense, if you so desire. You may also consult the Superior Court Website by going to <https://www.sb-court.org/divisions/civil-general-information/court-case-information-and-document-sales> and entering the Case Number for the Action (Case No. CIVSB2312233).

This Notice is only a summary. For more detailed information, you may review the Settlement Agreement, containing the complete terms of the proposed Settlement, which is on file with the Court and attached to the Declaration of Brian Mankin in Support of Motion for Preliminary Approval of Class Action Settlement filed on DATE, 2024 and available to be inspected at any time during regular business hours at the Office of the Clerk, San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415.

DO NOT TELEPHONE THE COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Settlement Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void, you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Settlement Administrator if you move or otherwise change your mailing address.

EXHIBIT “3”



LAUBY, MANKIN & LAUBY LLP

May 30, 2023

Submitted Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

Howard Roofing Company, Inc.
245 North Mountain Avenue
Pomona, CA 91767

Lawrence Malekow
245 North Mountain Avenue
Pomona, CA 91767

Ronald Malekow
9403 Shipman Lane
Colorado Springs, CO 80908

Re: PAGA Civil Penalty Claim
Victor Medina v. Howard Roofing Company, Inc., et al.

To the Labor and Workforce Development Agency, Howard Roofing Company, Inc., Mr. Lawrence Malekow, and Mr. Ronald Malekow:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Victor Medina (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against his employer, Howard Roofing Company, Inc., and any affiliated entities as well as its owners/officers Messrs. Lawrence Malekow and Mr. Ronald Malekow (the “Owners”) (collectively, the “Company”), for violations of Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802, among possibly other sections inadvertently omitted, and/or sections of the applicable IWC Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately 2020 through February 2023. Claimant alleges that he and all other employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations to which Claimant was subjected during his employment.

For instance, at all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked. As one specific example, Claimant and the Aggrieved Employees were required to report to

Mailing Address

5198 Arlington Avenue, PMB 513, Riverside, CA 92504



Toll Free
888.959.8508

Physical Address

11801 Pierce Street, Suite 200, Riverside, CA 92505

the Company's location (the "yard") at the start of their shift, and they then drove Company trucks to jobsites to deliver materials and manpower to perform their daily tasks. Yet, despite that the time spent driving was clearly spent under the Company's direction and control, the Company did not properly compensate the Aggrieved Employees for such drive time. This violates California law because the Aggrieved Employees were clearly performing tasks for the Company and, moreover, were "subject to [the Company's] control" because they were prevented "from using the time effectively for his or her own purposes." *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 583. As held by the California Supreme Court, "by requiring employees to take certain transportation to a work site, employers thereby subject those employees to its control by determining when, where, and how they are to travel. Under the definition of 'hours worked,' that travel time is compensable." *Id.* at 588; *see also Oliver v. Konica Minolta Business Solutions U.S.A., Inc.* (2020) 51 Cal.App.5th 1, 17 (reinforcing that "'compulsory travel time' is compensable").

Similarly, the Company frequently required Claimant and the Aggrieved Employees to attend safety meetings at the Company's location, yet the Company did not compensate for such time *and* did not compensate for the time spent driving to the job site after such meetings. These practices violate California law. *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law "do[es] not allow employers to require employees to routinely work for minutes off the clock without compensation"); *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are compensable when employee is under company's control and where the tasks served the employer's interests).

Also, at all relevant times, the Company utilized a rounding policy and practice that routinely undercompensated Claimant and resulted in a net benefit to the Company and a net loss for Claimant. In other words, the Company's rounding policy is not neutral and results in systematic undercompensation for the Aggrieved Employees, in violation of California law. *See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 903 (rounding policy is illegal where it is not "neutral, both facially and as applied"). Moreover, all underpayments caused by this rounding policy violate California law and lead to minimum, regular, and overtime wage violations under *Camp v. Home Depot U.S.A. Inc.*, (2022) 84 Cal. App. 5th 638, 660 (if an employer "can capture and has captured the exact time an employee has worked during a shift, the employer must pay the employee for 'all the time' worked").

Also, at all relevant times, Claimant and the Aggrieved Employees were compensated on an hourly basis plus additional earned nondiscretionary compensation. However, on the occasions when the Aggrieved Employees worked overtime hours and received additional earned compensation during the same workweek, the Company failed to properly include these amounts in the calculations for Claimant's regular rate of pay – in violation of California law and which led to the failure to pay proper overtime.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company's policies and practices, as well as the hectic and demanding workload, Claimant was subjected to meal period violations when: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company, (3) forced to take a shortened meal period, (4) forced to take a meal period after the 5th hour of work, and (5) not provided a mandated second meal period for shifts in excess of 10 hours.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant's rest breaks, and Claimant was often not authorized and/or permitted to take mandated rest breaks. Furthermore, on occasions when Claimant worked 10 hours or more in a shift, the Company failed to

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authorize and/or permit the mandated additional rest breaks. Also, the Company illegally required Claimant and the Aggrieved Employees to take the rest breaks at the same time as their meal periods.

Also, the Company required Claimant and the Aggrieved Employees to incur necessary business-related expenses and costs without reimbursement, including, but not limited to, acquiring and maintaining expensive tools to perform their tasks for the Company,. Moreover, at all relevant times, the Company utilized a policy and practice through which Claimant and the Aggrieved Employees accrued vacation and/or PTO hours (collectively, “vacation hours”). However, on the occasions when Claimant and the Aggrieved Employees had accrued but unused vacation hours upon separation of employment, Defendants failed to pay for these earned wages and, further, failed to pay for vested and unused vacation at the “final rate” as required by Labor Code § 227.3.

The Company also failed to comply with the mandates of Labor Code §§ 204 and 210 regarding the timing of the payment of wages to its employees each period, including minimum and overtime wages, as well as meal and rest period premiums. Also, the Company failed to comply with the mandates of Labor Code §§ 201–203 regarding timing of payment of final wages and failed to pay all wages due and owing upon separation of employment including minimum wages, overtime, meal and rest break premiums, vacation wages, and the Company further failed to pay the Aggrieved Employees for mandated sick time at a rate “calculated in the same manner as the regular rate of pay” as required by Labor Code § 246.

Finally, during employment with the Company, Claimant received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

Claimant alleges that he worked under the joint direction and control of the Company and the Owners and is informed and believes that each of them acted in all respects pertinent to this action as the agent of the others, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each are legally attributable to the others. On information and belief, a unity of interest and ownership between each exists such that the Company and the Owners acted as a single employer of Claimant and the Aggrieved Employees. Furthermore, on information and belief, the Company and the Owners are an integrated enterprise and should be treated as a single employer because the Company and the Owners share an interrelation of operations, with common human resources and personnel policies and shared common offices and facilities. Upon information and belief, the Company and the Owners share common management, a centralized control of labor operations, and common ownership or financial control.

Furthermore, Claimant alleges that the Owners are now and at all material times herein mentioned was the owners/officers of the Company, and Claimant’s and the Aggrieved Employees’ actual employer or, in the alternative, was an individual employed by the Company as a managerial and/or supervisory employee and/or agent. In addition, Claimant alleges that at all relevant times herein the Owners had the authority, in the interest of the Company to exercise independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other similar actions against Claimant and the Aggrieved Employees, and were in Claimant’s chain of command at the time of and direct participants in the wrongful conduct which constitutes the basis of Claimant’s complaint herein. Claimant also alleges that the Company and the Owners are the agents, servants, employees, partners, affiliates, and/or representatives of each other, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each other. Furthermore, in conducting themselves in the manner described herein, the Company and the Owners were acting in active concert with on another such that the acts of each were fully attributable to the other in all material respects.

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Claimant also alleges that the Company was merely the alter ego of the Owners in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and the Owners exercised undue dominance, control, influence, and management over the Company. Claimant further alleges that, at all relevant times, the Company has been inadequately capitalized to conduct its business, has failed to follow appropriate corporate formalities, and has simply been a shell and instrumentality through which the Owners have conducted their personal affairs. Accordingly, the corporate veil should be pierced, and any liability attached to the Company should be imposed jointly and severally against the Owners. Adherence to the fiction of the separate existence of the corporate entity of the Company would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice.

Also, in a separate, but not necessarily mutually exclusive, alternative theory of liability, Owners are liable for PAGA civil penalties under Labor Code § 558 as “other person(s)” who caused the violations regarding minimum wage among other claims. *See Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 (“if there is evidence and a finding that a party other than the employer ‘violates, or causes to be violated’ the overtime laws (§ 558(a)) or ‘pays or causes to be paid to any employee’ less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer”); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S.Dist.LEXIS 40851 (holding the same)

Based on Claimant’s own personal observations, all Aggrieved Employees employed or formerly employed by the Company are entitled to similar wage and hour claims, as further set forth below.

**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 210, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees due to the Company’s failure to accurately record and compensate for all hours worked and the failure to pay proper overtime. This resulted in earned, but unpaid, wages due and owing to Claimant and the Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees performed work for the Company without receiving proper payment of the requisite minimum, overtime, and/or doubletime wages.

Accordingly, Labor Code §§ 210, 558, 1194.2, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second

meal period of not less than 30 minutes.” Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company’s policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee’s regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums and did not do so at the proper rate. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

FAILURE TO PAY VESTED VACATION UPON SEPARATION OF EMPLOYMENT

(Labor Code § 227.3)

Pursuant to Labor Code § 227.3, an employer that has implemented a paid vacation, paid time off, or compensated time off policy must, upon an employee’s separation from employment, pay to the employee all vested but unused vacation and/or paid time off at her final rate of pay. However, as alleged herein, the Company failed to pay all vested vacation upon separation of employment and, further, only paid vested vacation upon separation at the base rate of pay, leading to a violation on each such occasion. As a result of these violations, penalties may be assessed pursuant to Labor Code § 2699.

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802; IWC Wage Order § 9(b))

Labor Code § 2802(a) states “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.” IWC Wage Order § 9(b) states “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.”

Here, the Company required Claimant and the Aggrieved Employees to incur expenses in direct consequence of the discharge of their duties. Accordingly, Labor Code § 2699 imposes a penalty upon the Company for each such violation of Labor Code § 2802.

FAILURE TO PAY SICK TIME AT PROPER RATE OF PAY

(Labor Code § 246)

Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must 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.” Additionally, Labor Code § 246(l)(2) states that the paid sick time must 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.”

Here, Claimant and the Aggrieved Employees were compensated on an hourly basis plus additional compensation. However, when Aggrieved Employees took sick time and received paid sick leave, the

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Company only paid sick time at the base rate of pay, not factoring in the additional compensation as required by Labor Code §§ 246(l)(1-2). As such, penalties may be assessed pursuant to Labor Code § 2699.

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 210, 256 and 2699)

Under Labor Code § 204(a), wages are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

As a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 210 and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, [...] any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code § 203.) Labor Code § 2699 also imposes a penalty.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

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Here, the Company failed to provide accurate itemized wage statements due to violations including: failure to accurately state total hours worked (the paystubs failed to accurately reflect total compensable hours); failure to accurately state gross/net wages earned and all deductions (due to the failure to pay all required minimum/overtime wages); failure to state the applicable hourly rates (including the accurate overtime rate of pay); failure to state the accurate start/end dates of the pay period; failure to accurately state the name and address of the legal entity that is the employer, and; failure to accurately state the number of hours worked at each hourly rate. Additionally, the Company's wage statements directly violated Labor Code § 226(a) each period due to the failure to pay and report premium wages for denied meal/rest breaks under § 226.7. Accordingly, Labor Code §§ 226.3 and 2699 impose civil penalties for these violations.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company's violations described herein, the Company is subject to civil penalties in accordance with Labor Code § 2699.

ATTORNEYS' FEES, INTEREST, AND PENALTIES

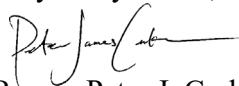
(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimant seeks the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimant is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees. Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for civil penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to his employment or other employees of the Company, he reserves the right to supplement this notice letter.

Very Truly Yours,



By: Peter J. Carlson, Esq.

E-mail: peter@lmfirm.com

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EXHIBIT “4”



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

April 23, 2024

CASE ASSUMPTIONS

Class Members	500
Opt Out Rate	1%
Opt Outs Received	9
Total Class Claimants	491
Subtotal Admin Only	\$9,928.45

Flat Fee Total \$9,500.00

For 500 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Language Translation, Printing & Mailing Included

Case: Medina vs. Howard Roofing, Opt-Out & PAGA Administration

Phoenix Contact: Michael E. Moore
Contact Number: 949.331.0131
Email: mike@phoenixclassaction.com

Requesting Attorney: Brian J. Mankin
Firm: Lauby, Mankin & Lauby, LLP
Contact Number: (951) 320-1444
Email: brian@lmfirm.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PHX will need to adjust this Estimate accordingly.
Estimate is based on **500** Class Members. Class data **Must** be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of \$150 per hour will be charged for any additional analysis or programming. Pricing good for 90 day

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$100.00	2		\$200.00
Programming Database & Setup	\$100.00	2		\$200.00
Toll Free Setup*	\$100.00	1		\$100.00
Call Center & Long Distance	\$2.00	58		\$116.00
NCOA (USPS)	\$100.00	1		\$100.00
Total				\$716.00

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Language Translation / Website

Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	2		\$200.00
Language Translation	\$1,000.00	1		\$1,000.00
Data Merge & Duplication Scrub	\$0.10	500		\$50.00
Notice Packet & Opt-Out Form	\$1.30	500		\$650.00
Estimated Postage (up to 2 oz.)*	\$0.84	500		\$420.00
Static Website	\$200.00	1		\$200.00
Total				\$2,520.00

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



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	2		\$110.00
Skip Tracing Undeliverables	\$1.00	75		\$75.00
Remail Notice Packets	\$1.00	72		\$72.00
Estimated Postage	\$0.87	72		\$62.64
Programming Undeliverables	\$50.00	2		\$100.00
			Total	\$419.64

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Database	\$150.00	1		\$150.00
Non Opt-Out Processing	\$200.00	1		\$200.00
Case Associate	\$55.00	5		\$275.00
Deficiency & Dispute Letters	\$10.00	9		\$90.00
Case Manager	\$85.00	2		\$170.00
			Total	\$885.00

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

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	1		\$135.00
Disbursement Review	\$135.00	2		\$270.00
Programming Manager	\$95.00	3		\$285.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	5		\$675.00
Mail Class Checks *	\$0.85	491		\$417.35
Estimated Postage	\$0.64	491		\$314.24
			Total	\$2,231.59

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing & Instructions for downloading tax forms from PHX secure portal



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	2		\$230.00
Remail Checks (Postage Included)	\$2.00	103		\$206.22
Case Associate	\$55.00	3		\$165.00
Reconcile Uncashed Checks	\$85.00	5		\$425.00
Conclusion Reports	\$115.00	2		\$230.00
Case Manager Conclusion	\$85.00	3		\$255.00
Final Reporting & Declarations	\$115.00	3		\$345.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting & Escheating to the State of CA Included)	\$1,300.00	1		\$1,300.00
Total				\$3,156.22

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

Estimate Total: \$9,928.45



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

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

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

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

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

Tax Reporting Requirements

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

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

EXHIBIT “5”