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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

ISAAC DELGADO, on behalf of himself and all others similarly situated, the State of California, and the general public, Plaintiff, v. OLDCASTLE INFRASTRUCTURE, INC., a Washington corporation; and DOES 1 through 50, inclusive, Defendants.	Case No. STK-CV-UOE-2023-11312 CLASS ACTION Assigned for All Purposes to: Honorable Robert T. Waters Dept. 11B **DECLARATION OF ENOCH J. KIM IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: Time: Dept.: 11B

DECLARATION OF ENOCH J. KIM

I, Enoch J. Kim, declare as follows:

1. I am an attorney licensed and admitted to practice before all courts of the State of California and the United States District Court for the Central, Southern, Eastern, and Northern Districts of California. I am Senior Counsel at D.Law, Inc. and counsel for Plaintiffs Isaac Delgado and Marcos Gutierrez ("Plaintiffs"), on behalf of themselves and all other similarly situated employees of Defendant Oldcastle Infrastructure, Inc. ("Defendant") (Plaintiffs and Defendant collectively referred to herein as "the Parties").

2. All of the matters set forth herein are within my personal knowledge. I submit this Declaration in support of Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement ("Motion"). A true and correct copy of the Parties' Class Action and PAGA Settlement Agreement ("Settlement Agreement" or "Settlement") is attached as **Exhibit 1** hereto, with the Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval ("Class Notice") attached as **Exhibit A** to the Settlement Agreement.

Procedural History

3. On October 26, 2023, Plaintiff Delgado commenced an Action in the Superior Court of the, State of California, County of San Joaquin by filing a Complaint alleging causes of action against Defendant for (1) Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198); (2) Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198); (3) Failure to Pay Hourly Wages and Overtime (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1197.1 and 1198); (4) Failure to Pay Proper Vacation Wages (Lab. Code § 227.3); (5) Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a)); (6) Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203); (7) Failure to Indemnify (Lab. Code § 2802); and (8) Unfair Competition (Bus. & Prof. Code §§ 17200 et seq.) under Case Number STK-CV-2023-11312. On October 26, 2023, Plaintiff Delgado gave timely notice to the LWDA and Defendant that Plaintiff intended to proceed with a representative action under PAGA (LWDA-CM-990042-23) pursuant to Labor Code § 2699.3, subd.(a). A true and correct copy of her PAGA Notice is attached hereto as **Exhibit 2**. On January 16, 2024, Plaintiff Delgado filed the First Amended Complaint, which added claims for civil penalties

under Labor Code § 2698, *et seq.* On June 26, 2024 Plaintiff Delgado filed a Second Amended Compliant adding a second Plaintiff, Raymont Ortiz to the Case. This matter was then removed to Federal Court.

4. On May 1, 2024, Plaintiff Serrano gave timely notice to the LWDA and Defendant that Plaintiff intended to proceed with a representative action under PAGA (LWDA-CM-1025667-24). Plaintiff subsequently filed an action bringing nearly identical claims to the ones in the instant action on November 11, 2026. This matter was then removed to Federal Court.

5. On January 6, 2025, Plaintiff Delgado filed a Third Amended Complaint adding Marcos Gutierrez to this matter and on February 10, 2025 Plaintiff Delgado filed a Fourth Amended Complaint removing Mr. Ortiz from the complaint. On August 6, 2025, Plaintiff Delgado filed a Fifth Amended Complaint following the Court's Order on Defendant's Motion to Dismiss which granted leave to amend.

6. On March 27, 2026, pursuant to the terms of the settlement, the matter was remanded back to the Superior Court of California, County of San Joaquin. Plaintiff Delgado filed a Sixth Amended Complaint adding Plaintiff Serrano and the claims in the Serrano.

Investigation

7. Before filing the lawsuit, my firm conducted a thorough investigation and researched the facts and circumstances underlying the pertinent issues and applicable law. This required thorough discussions and interviews between Class Counsel and Plaintiffs, in addition to the above-described research into the various legal issues involved in the case. After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and claims giving rise to the action, including (1) meeting and conferring with defense counsel and conducting formal and informal discovery; (2) reviewing and analyzing records and data, as well as employment-related policies; (3) reviewing Plaintiffs' personnel files and other documentation; (4) interviewing Plaintiffs regarding Defendant's policies and workplace; (5) researching the applicable law and potential defenses; (6) constructing damage models based on interpretations of California law and the facts and numbers provided by Defendant, including consulting experts; and (7) reviewing information provided by Defendant in response to formal and informal discovery and in advance of the mediation. The Parties conducted

their own evaluations of the potential recoveries based on the claims alleged in the Action, including consulting experts.

8. Defendant, for its part, vigorously contested liability, the amount of claimed damages, and the propriety of class certification. After analyzing the relevant documents and other gathered data, Class Counsel believed that this case was appropriate for resolution via mediation. Given the high level of risk present for both sides, the Parties elected to mediate Plaintiffs' claims and explore the possibility of settlement.

Settlement Efforts

9. On October 3, 2024, the Parties participated in an all-day mediation with mediator Monique Ngo-Bonnici, a respected and highly experienced mediator in wage and hour class actions and were able to reach an agreement on general settlement terms. During mediation, counsel for Plaintiffs and Defendant discussed all aspects of the case, including the risks of litigation and the risks to both Parties of proceeding with a class certification motion, as well as the law on unpaid wages, meal periods, rest periods, reimbursements, wage statements, and final pay. A settlement was not reached on the day of mediation and the Parties returned to a litigation posture. However, settlement discussions between the Parties and with the assistance of the mediator continued. On September 2, 2025, the parties reached a settlement in principle. The Parties continued to work together negotiating the long form settlement terms following mediation, as set forth in the Settlement Agreement.

10. Based on their own independent investigations and evaluations, Class Counsel is of the opinion that the Settlement with Defendant for the consideration and terms set forth herein, considering the representative and class claims, and the risk of loss, is fair, reasonable, and adequate. Class Counsel is also of the opinion that the total consideration and payment set forth in this Settlement Agreement is adequate in light of the uncertainties surrounding the risk of further litigation, the possibility of losing class certification, that the PAGA claim could be deemed unmanageable, and the defenses that Defendant has asserted and/or could assert as to the substantive merit of the claims. Based on the settlement negotiations, which were extensive and conducted in good faith and at arm's length between attorneys with substantial experience litigating wage and hour class action cases, the Settlement was the product of a non-collusive settlement process and

compromises in the interest of reaching a full and complete settlement. As a result, Class Counsel has determined that the Settlement is in the best interests of the Class.

Summary of the Settlement

11. Under the terms of the proposed Settlement Agreement, Defendant has agreed to pay $2,080,000.00 ("Gross Settlement Amount" or "GSA") on a non-reversionary basis to settle and release all claims asserted by Plaintiffs in the Operative Complaints on behalf of the proposed Class. (Exhibit 1, Settlement Agreement, ¶ 1.21.) The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and the Administration Expenses Payment. (*Id*. at ¶¶ 3.2–3.2.5.1.) The Gross Settlement Amount does not include the employer's share of payroll taxes, which will be paid by Defendant in addition to the Gross Settlement Amount. (*Id*. at ¶ 3.1.) Based on its records, Defendant estimates that, as of the date of the Settlement Agreement, (1) there are 11,163 Class Members and 109,431 total workweeks from October 26, 2019 through October 4, 2025 and (2) there were 898 Aggrieved Employees who worked 33,251 Pay Periods from October 26, 2023 to October 28, 2025. (*Id*. at ¶ 8.) If the number of Total Workweeks encompassed within the Class period exceeds 100,400 by more than 10%, then at Defendant's option, either the: (a) Gross Settlement Amount shall be increased in proportion to the percentage increase in the number of Total Workweeks encompassed in the Class Period in excess of 10%; or (b) the Class Period shall end as of the date the workweeks within the Class Period reaches 22,364 workweeks. (*Id*.)

12. The Settlement Agreement defines the "Class" as all persons who (1) worked for Defendant as non-exempt employees in the State of California at any time during the Class Period and (2) were not subject to a collective bargaining agreement at any time during the Class Period, which is October 26, 2019 through October 4, 2025 (Exhibit 1, Settlement Agreement, ¶¶ 1.5, 1.12.) The Settlement Agreement also defines "Aggrieved Employee" as all persons who worked for Defendant as a non-exempt employees in the State of California at any time during the PAGA Period, which is the period from October 26, 2022 through October 28, 2025. (*Id.* at ¶¶ 1.4, 1.30.) The "Net Settlement Amount," available for distribution to Participating Class Members, is the Gross Settlement Amount, less the

following payments in the amounts approved by the Court: the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. (*Id*. at ¶ 1.27.) The remainder is to be paid to Participating Class Members as Individual Class Payments. (*Id*.) These amounts are detailed as follows:

- Class Counsel Fees Payment*:* Up to thirty-five (35%) of the Gross Settlement Amount, or **$728,000.00**, to Class Counsel as attorneys' fees for the litigation and resolution of this Action (Kim Decl., ¶ 12, Exhibit 1, Settlement Agreement, ¶ 3.2.2);
- Class Counsel Litigation Expenses Payment: Reimbursement of actual expenses incurred to prosecute the Action, not to exceed $30,000.00 (Kim Decl., ¶ 12, Exhibit 1, Settlement Agreement, ¶ 3.2.2);
- Class Representative Service Payment: Up to **$10,000.00** to each Plaintiff (for a total of $30,000.00) as an award for their services as the Class Representatives (Kim Decl., ¶ 12, Exhibit 1, Settlement Agreement, ¶ 3.2.1);
- Administration Expenses Payment: Up to **$13,0000.00** to the Administrator for its fees and costs to administer the Settlement (Kim Decl., ¶ 12, Exhibit 1, Settlement Agreement, ¶ 3.2.3); and
- PAGA Penalties: **$140,000.00** for settlement of claims for civil penalties under PAGA, with 25% ($35,000.00) to be paid on a pro-rata basis to the Aggrieved Employees ("Individual PAGA Payments") and 75% ($105,000.00) to be paid to the LWDA ("LWDA PAGA Payment") (Kim Decl., ¶ 12, Exhibit 1, Settlement Agreement, ¶ 3.2.5.)

13. If the Court approves the above allocations from the Gross Settlement Amount, the Net Settlement Amount is estimated to be $**1,139,000.00**. Each Class Member's share of the Net Settlement Amount ("Individual Class Payment") will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. (Exhibit 1, Settlement Agreement, ¶ 3.2.4.) For the approximately 11,163 Class Members (if no exclusions), the average Individual Class Payment, using a straight average, is

$**102.03**.

14. Not later than 21 calendar days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. (Exhibit 1, Settlement Agreement, ¶ 4.2.) Not later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval ("Class Notice") substantially in the form attached to the Settlement Agreement as Exhibit A. (Exhibit 1, Settlement Agreement, ¶ 7.4.2.) The Class Notice includes a summary of the case and settlement terms and provides Class Members with detailed instructions on how to exclude themselves, object to the settlement, and challenge the number of Workweeks and/or PAGA Pay Periods attributed to each Class Member per Defendant's records. (Exhibit 1, Settlement Agreement, Exhibit A, Class Notice). Class Members will have 45 days from the mailing of the Class Notice (plus an additional 14 calendar days for Class Members whose Class Notice is re-mailed) to opt out of the Settlement, object to the Settlement, and/or challenge the number of Workweeks and/or PAGA Pay Periods ("Response Deadline"). (Exhibit 1, Settlement Agreement, ¶¶ 1.42, 7.4.4.)

Certification for Settlement Purposes Only is Appropriate

15. Plaintiffs allege that the proposed Class satisfies the criteria for certification of a settlement class under California law, as embodied in California Code of Civil Procedure § 382. Defendant has agreed to the conditional certification of the class for settlement purposes only. In general, courts may take a proposed settlement into account in evaluating the propriety of class certification. *See Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 fn. 19. Indeed, a "lesser standard" of scrutiny applies in certifying classes for settlement purposes. *Id*. Therefore, the Court should take into consideration the fact that the Parties have settled their claims and stipulated to certification for settlement purposes when assessing whether the Settlement is fair and reasonable.

16. Numerosity and Ascertainability. The putative Class is so numerous that joinder of all members is impractical. Class Members are all persons who both (1) worked for Defendant as non-exempt employees in the State of California at any time during the Class Period and (2) were not

subject to a collective bargaining agreement at any time during the Class Period, which is October 26, 2019 through October 4, 2025 (Exhibit 1, Settlement Agreement, ¶¶ 1.5, 1.12.) Defendant has identified 11,163 Class Members based on a review of its records. Thus, there is numerosity and ascertainability.

17. Well-Defined Community of Interest. Plaintiffs contend, and Defendant does not dispute for settlement purposes only, that common issues of fact and law predominate as to each of the claims alleged by Plaintiffs, and the Class is united in its proof. This action involves, *inter alia*, a determination about Defendant's alleged failure to pay all wages due by requiring Class Members to work off the clock, failure to provide meal and rest breaks and premium wages for non-compliant meal and rest breaks, failure to pay vacation wages, failure to pay all sick pay owed, failure to reimburse necessary business expenses, failure to furnish accurate wage statements, and failure to timely pay wages including final wages. Plaintiffs contend Defendant's practices affected Class Members in the same way and presents questions that are suitable for common adjudication because all Class Members were subject to the same employment policies and practices. The outcome of litigation in this matter depends upon questions that are common to Class Members.

18. Typicality. The Class Representatives' claims are typical when they arise from the same event, practice, or course of conduct that gives rise to the claims of other putative Class Members, and if their claims rest on the same legal theories. Here, Plaintiffs allege that their claims are typical of Class Members' claims because they arose from the same factual basis and are based on the same legal theories. Plaintiffs and Class Members were employed by Defendant during the Class Period and were subject to the allegedly unlawful meal and rest policies and pay practices at issue in this litigation. Thus, the typicality requirement is satisfied.

19. Adequacy. Plaintiffs' interests are aligned with those of the Class Members, as they have suffered the same injuries as the Class Members and have no conflicts of interest. Plaintiffs have not shrunken from this responsibility. Indeed, Plaintiffs have devoted a substantial amount of time and energy to litigating this Action and effectuating a settlement. Furthermore, as set forth below, Class Counsel are experienced in wage-and-hour litigation, especially class actions, and have zealously represented the interests of the Class in litigating this case and have no conflicts of interest.

Accordingly, the adequacy requirement is satisfied.

20. Predominance and Superiority. Plaintiffs contend that individualized issues do not predominate over the issues of law and fact that are common to the Class as a whole. As explained above, Plaintiffs allege there are common issues of law and fact given that Plaintiffs and Class Members were subjected to the same policies and pay practices during the relevant time period. Plaintiffs and Class Members seek meal and rest premiums, unpaid wages and overtime, and penalties for work performed as non-exempt employees. Plaintiffs allege that these issues are suitable for common adjudication because all Class Members were subject to the same employment policies, and Plaintiffs contend the practices applied uniformly to all Class Members.

21. Plaintiffs contend that class resolution is superior to other available methods for the fair and efficient adjudication of the controversy, as there is little interest or incentive for Class Members to individually control the prosecution of separate actions. Although the alleged injuries resulting from Defendant's policies and practices are allegedly real and significant, the cost of individually litigating each such case against Defendant would easily exceed the value of any relief that could be obtained by any one Class Member individually. If Class Members are forced to litigate their claims individually, this would result in 11,163 individual actions against Defendant. Here, the alternative methods of resolution are individual suits for relatively small amounts. Hence, an individual suit would prove uneconomical for potential plaintiffs because litigation costs would dwarf a potential recovery.

The Settlement is Fair, Adequate, and Reasonable

22. In deciding whether to approve a proposed class action settlement, the Court must find that a proposed settlement is "fair, adequate, and reasonable" and falls within the "range of approval." *Dunk*, 48 Cal.App.4th at 1801-02. The trial court considers all relevant factors, such as "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the Class Members to the proposed settlement." *Id.* The Settlement satisfies all of these requirements.

A. The Settlement is the Result of Serious, Informed, Non-Collusive Negotiations.

23. The proposed settlement was reached as a result of arm's length negotiations after the completion of pertinent discovery and the exchange of necessary class data. The negotiations have been, at all times, adversarial and non-collusive in nature. *See*, 4 Newberg on Class Actions § 13:45 (5th ed.) (due to the preference of settlement over litigation, "a court will presume that a proposed class action settlement is fair when certain factors are present, particularly evidence that the settlement is the product of arms-length negotiation, untainted by collusion."). Although Plaintiffs steadfastly maintain that their claims are meritorious, Plaintiffs acknowledge that there were substantial risks and uncertainty in proceeding with litigation. As described below, Defendant presented multiple defenses to Plaintiffs' claims, both on the merits and with respect to class certification. Thus, while Plaintiffs were prepared to litigate these claims through class certification, and ultimately trial, success was far from certain. Assistance from a well-respected mediator ensured that negotiations were non-collusive and well-informed.

B. Extent of Discovery and Stage of Proceedings.

24. As stated above, the Parties engaged in substantial formal and informal discovery before the Settlement was reached to allow them to fully evaluate the class claims and Defendant's defenses. This litigation has reached the stage where the Parties have a clear view of their respective strengths and weaknesses.

C. Strength of Plaintiffs' Case and the Risk, Expense, Complexity, and Likely Duration of Any Litigation.

25. Plaintiffs' claims are based on Defendant's alleged failure to pay wages (including minimum wages and overtime), failure to provide meal and rest periods, failure to pay final wages when required, failure to provide accurate wage statements, failure to reimburse business expenses, and largely derivative claims under the UCL and PAGA.

26. Plaintiffs allege that Defendant failed to pay Plaintiffs and Class Members at least minimum wages for all hours worked and proper overtime wages for hours worked in excess of eight hours in a day and 40 hours in a week. Plaintiffs allege that Defendant required Class Members to work prior to the start of their scheduled shifts and after the end of their scheduled shifts, including

by waiting for computers to boot in order to log in and answer incoming communications from supervisors and clients before clocking in and after clocking out for the day. However, Plaintiffs allege that Class Members were not paid for the time they worked in excess of their scheduled hours.

27. Defendant contends that it instructed Class Members to record all hours worked, that it paid Class Members for all reported hours worked, that any off-the-work was performed without Defendant's knowledge and was de minimis, and that it paid wages to Class Members at the proper rates. Defendant contends that off-the-clock work allegations will be difficult to certify because Defendant has a lawful policy prohibiting off-the-clock work. Defendant also argues that, given its written policies and practices, any unrecorded hours are likely subject to individualized inquiry and unlikely to be certified. Given the difficulty in certifying this claim, Class Counsel applied a significant discount to damages based on this theory.

28. Plaintiffs allege that Defendant failed to provide proper meal breaks to Class Members. Plaintiffs allege that Defendant required Class Members to work through their meal periods due to understaffing and large workload. Plaintiffs further allege that on occasions when Plaintiffs and Class Members worked over ten hours on a shift, Defendant failed to provide them with a second uninterrupted, duty-free, and timely meal period.

29. Defendant contends that Class Members were authorized, permitted, and never denied the opportunity to take their meal periods, and that any deviations from their scheduled meal breaks were at the voluntary election of Class Members. Further, Defendant argues that employees signed valid meal period waivers. Defendant further contends that the meal break claim requires individualized inquiries, which would preclude class certification. If Defendant's contentions are proven true and prevail in trial, the likely outcome would be no recovery for the Class Members on the meal break claim.

30. Plaintiffs also allege that Defendant did not provide Class Members with paid 10-minute rest breaks for every four hours or a major fraction thereof. Plaintiffs contend that Class Members were not permitted to leave Defendant's premises during rest periods, that rest breaks were often interrupted, and that employees were forced to monitor their cell phones during rest breaks.

31. Defendant maintains that it authorized and permitted Class Members to take duty-free rest

breaks of at least ten minutes for every four hours worked or major fraction thereof. Defendant contends that there are no restrictions, in policy or practice, on where employees can go during their rest breaks. Considering that, unlike meal periods, rest breaks need not be recorded, these violations would likely be difficult to prove at trial and potentially depress the damages ultimately awarded. Therefore, Class Counsel applied significant and appropriate discounts to the rest break claim.

32. Additionally, Plaintiffs allege that Defendant required Class Members to pay for costs associated with utilizing their personal cell phones and home internet systems for work. Defendant maintains that Class Members did not incur business expenses and/or were properly reimbursed for all business expenses and further contend that any unreimbursed business expenses were not necessary expenditures as required by Labor Code section 2802. Defendant also maintains that individualized issues relating to this claim would preclude class certification.

33. As for the wage statement and waiting time penalties claims, Defendant contends that these claims are merely derivative of the underlying claims and that Class Members would be unable to first establish liability for the underlying claims for the reasons described above. Defendant further contends that even if they could first establish liability for the underlying claims, Class Members would be unable to establish that Defendant's conduct was willful and knowing as required by the relevant statutes since Defendant acted in good faith to provide accurate wage statements and pay all wages due to Class Members. Thus, Defendant contends that the wage statement and waiting time penalties claims to have little to no value.

34. Similarly, Defendant contends that the PAGA claim is also derivative of the underlying claims in the Action and ultimately fails because the underlying claims have no merit. Defendant also contends that even if Plaintiffs and Class Members could establish Labor Code violations, the Court has the discretion to award less than the maximum civil penalty amount and would award substantially less civil penalties here because Defendant acted in good faith to comply with the relevant wage and hour laws and any violations were minor and technical in nature.

35. Defendant generally denies all claims alleged in the Action and further denies that class and/or representative treatment is appropriate for any purpose other than this Settlement and that it complied with all applicable laws. However, after careful consideration, Defendant has concluded

that further litigation would be protracted and expensive and that it is desirable that the Actions be fully and finally settled in the manner and upon the terms and conditions herein.

36. As stated above, while Plaintiffs contend the claims asserted in the Actions have merit, they also acknowledge the expense, delay, and risks of continued litigation that would have likely spanned several years at a heavy cost. Although the Parties engaged in significant formal and informal discovery in advance of mediation, the Parties still had significant discovery to complete had the matter not been settled. This would have required the expenditure of substantial time and resources by both Parties that would have very likely spanned several years at a heavy cost. Even if Plaintiffs were to certify the class, the Parties would incur considerably more attorney fees and costs through a possible decertification motion, trial, and possible appeal. This Settlement avoids those risks and the accompanying expense.

D. The Risk of Maintaining Class Action Status Through Trial.

37. Plaintiffs have not yet filed their motion for class certification, and as such, the extent to which Plaintiffs' proposed Class was certifiable is somewhat speculative. Absent a settlement, there was a risk that there would not be a certified class at the time of trial, or if there was, such a class could consist of a significantly smaller group of employees than the proposed Class, resulting in less overall recovery.

38. Finally, in class actions, decertification is always a possibility, and there is always a risk that a trial of this magnitude can become unmanageable. Cases like *Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal. 4th 1, 34 addresses the complexity of using statistical samples in class actions and demonstrates that decertification is a real risk that Class Counsel must consider. A class trial would have also required expert witnesses, the accrual of extensive litigation costs, and the commitment of extensive further time and financial resources. Finally, given the complexity and unsettled nature of the issues, it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result in further delay for the Class Members who have already waited years for resolution in this matter. Risk and legal uncertainty must be dealt with in any litigation, and this Settlement was the product of a compromise accounting for those risks and uncertainties.

E. The Presence of a Governmental Participant.

39. Class Counsel will be submitting the Settlement Agreement and this Motion to the LWDA concurrently with the filing of this Motion pursuant to Labor Code § 2699(l)(2).

F. The Amount Offered in Settlement is Fair Given the Potential Value of the Claims.

40. Because the Class consists of numerous employees, it was unlikely that the potential monetary claims of individual Class Members would have proved viable without the class-action mechanism. The Settlement Agreement should be approved in light of two California appellate decisions: *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.

41. The strength of the Plaintiffs' case in light of the settlement amount is deemed by courts to be the "most important." *Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 799 (citing *Kullar*). Here, Plaintiffs allege that Defendant failed to pay minimum wages and overtime, failed to provide meal and rest breaks, failed to provide accurate wage statements, failed to pay all wages upon termination, failed to pay all sick pay owed and vacation wages, and failed to reimburse business expenses, all in violation of California law. Plaintiffs seek a related violation of California's Business & Professions Code and Plaintiff Aurora Itzel Hurtado seeks a related violation of penalties pursuant to Labor Code § 2699 *et seq*. Summary calculations for estimated liability for each of these claims follow.

<u>Failure to Pay Minimum and Overtime Wages:</u>

42. Plaintiffs allege that Defendant failed to pay Plaintiffs and Class Members at least minimum wages for all hours worked and proper overtime wages for hours worked in excess of eight hours in a day and 40 hours in a week. Plaintiffs allege that Defendant required Class Members to work prior to the start of their scheduled shifts and after the end of their scheduled shifts. However, Plaintiffs allege that Class Members were not paid for the time they worked in excess of their scheduled hours.

43. Defendant contends that it instructed Class Members to record all hours worked, that it paid Class Members for all reported hours worked, that any off-the-work was performed without Defendant's knowledge and was de minimis, and that it paid wages to Class Members at the proper rates. Defendant contends that off-the-clock work allegations will be difficult to certify because

Defendant has a lawful policy prohibiting off-the-clock work. Defendant also argues that, given its written policies and practices, any unrecorded hours are likely subject to individualized inquiry and unlikely to be certified. Given the difficulty in certifying this claim, Class Counsel applied a significant discount to damages based on this theory.

44. Plaintiffs' expert estimated Defendant's maximum exposure on the unpaid wages claims to be approximately $4,385,996.00 (assuming 1 hour of off-the-clock work per workweek and 75.3% of off-the-clock hours were attributable to overtime). However, given Defendant's defenses and the potential hurdles facing certification of off-the-clock claims, Class Counsel applied a 90% discount, making for an adjusted realistic exposure of $438,599.60 for Defendant.

Meal Periods and Rest Breaks:

45. Plaintiffs allege that Defendant failed to provide proper meal breaks to Class Members. Plaintiffs allege that Defendant required Class Members to work through their meal periods due to understaffing and large workload. Plaintiffs further allege that on occasions when Plaintiffs and Class Members worked over ten hours on a shift, Defendant failed to provide them with a second uninterrupted, duty-free, and timely meal period.

46. For each meal period missed, of less than 30 minutes, or taken late for which the employee was not provided a reasonable opportunity to take a complete and timely meal period, an employer must pay the employee an additional one hour of compensation. Labor Code § 226.7. This additional hour of compensation is referred to as "premium pay." To comply with these laws, every employer must keep, for each employee, accurate time records showing when the employee begins and ends each work period and takes his or her meal periods. See Wage Order 4-2001(7)(A)(3). Plaintiffs allege that Defendant failed to pay the legally required premium at their regular rate of pay whenever meal periods were missed, interrupted, or late.

47. Defendant contends that Class Members were authorized, permitted, and never denied the opportunity to take their meal periods, and that any deviations from their scheduled meal breaks were at the voluntary election of Class Members. Further, Defendant argues that employees signed valid meal period waivers. Defendant further contends that the meal break claim requires individualized inquiries, which would preclude class certification. If Defendant's contentions are proven true and

prevail in trial, the likely outcome would be no recovery for the Class Members on the meal break claim.

48. Plaintiffs' expert estimated Defendant's maximum exposure on the meal period claim at approximately $2,149,400.00 (based on late, missed, or short meal breaks for shifts greater than 5 hours offset by meal period premiums paid). However, given Defendant's contentions, Class Counsel applied an 80% discount, making for an adjusted realistic exposure of $429,880.00 for Defendant.

49. Rest Breaks: The same argument applied to rest breaks. Plaintiffs also allege that Defendant did not provide Class Members with paid 10-minute rest breaks for every four hours or a major fraction thereof. Plaintiffs contend that Class Members were not permitted to leave Defendant's premises during rest periods and that rest breaks were often interrupted.

50. Defendant maintains that it authorized and permitted Class Members to take duty-free rest breaks of at least ten minutes for every four hours worked or major fraction thereof. Defendant contends that there are no restrictions, in policy or practice, on where employees can go during their rest breaks. Considering that, unlike meal periods, rest breaks need not be recorded, these violations would likely be difficult to prove at trial and potentially depress the damages ultimately awarded. Therefore, Class Counsel applied significant and appropriate discounts to the rest break claim.

51. Plaintiffs' expert estimated Defendant's maximum liability exposure on the rest break period claim at approximately $14,996,636.00 using a 100% violation rate. However, given Defendant's contentions and considering a more realistic violation rate for the Class as well as the potential hurdles facing certification of rest break claims, Class Counsel applied a 95% discount making for an adjusted realistic exposure of $749,831.80 for Defendant. Owing to the arguments above and the fact that the recording of rest periods is not required, this claim was substantially discounted and was not a major driver of exposure in this case.

Inaccurate Wage Statement Violations:

52. Under Labor Code § 226(a), Plaintiffs and the Class are entitled to recover $50 for initial violations for inaccurate wage statements and $100 for subsequent violations, up to a maximum of $4,000 per employee. Plaintiffs allege Defendant issued wage statements to Plaintiffs and the Class Members that failed to include the total hours per pay period and failed to accurately account for all

off-the-clock work and missed meal premiums which Defendant knew or reasonably should have known were owed to Plaintiffs and Class Members.

53. Defendant challenged Plaintiffs' claim for Labor Code § 226(e) penalties, including by arguing they were merely derivative of the other claims that lacked merit, and Plaintiffs' failure to prove the underlying claims could result in the dismissal of these derivative claims. Defendant also argued that it did not knowingly and intentionally commit these alleged violations. *See, e.g.,* Labor Code § 226(e) (recovery of penalties requires showing there was "a knowing and intentional failure by an employer").

54. Plaintiffs' expert estimated Defendant's maximum total exposure on the section 226 claim at approximately $2,657,500 (1,009 employees from with a $4,000.00 per employee maximum). After considering Defendant's contentions and the potential class certification issues, Class Counsel discounted this amount by 90% to get an adjusted realistic exposure of $265,750.00.

Failure to Pay Final Wages at Termination or Separation:

55. In allegedly failing to pay Class Members their minimum wages, overtime wages, and premium pay for deficiently provided meal periods and rest breaks, all discussed above, Plaintiffs allege that Defendant willfully failed to pay Class Members all wages due and certain at the time of termination or within seventy-two (72) hours of resignation, as required under Labor Code § 203.

56. Section 203 further provides that if an employer willfully fails to pay an employee all wages due at termination or within 72 hours of resignation, then that employee's wages will continue as a penalty until paid for a period of up to 30 days from the date they were due.

57. Defendant challenged this claim under Labor Code § 203 with several arguments, including that this claim is merely derivative of the other claims that lacked merit and that under Labor Code § 203, employers are only obligated to pay waiting-time penalties if they "willfully" fail to pay wages due and owing at the time of termination or resignation. As Title 8, California Code of Regulations, § 13520 states: "A willful failure to pay wages within the meaning of Labor Code Section 203 occurs when an employer intentionally fails to pay wages to an employee when those wages are due. However, a good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203." Defendant argued that their good faith disputes and lack of willfulness

would excuse its violations. Defendant maintained that because they had viable defenses in both law and fact, such penalties were subject to a three-year limitations period under Labor Code § 203(b).

58. Plaintiffs' expert estimated Defendant's maximum total exposure on the section 203 claim at approximately $4,184,320 (assuming 635 terminated employees during the relevant period and 30 days per employee). Given the foregoing arguments, Class Counsel discounted this amount by 90% to get an adjusted realistic exposure of $418,432.00.

Failure to Reimburse for Necessary Business Expenditures:

59. Under Labor Code § 2802(a) Defendant must indemnify Plaintiffs and Class Members for all necessary expenditures or losses incurred in direct consequence of the discharge of their duties. As discussed above, Plaintiffs allege that Defendant required Class Members to purchase tools and use their cellular phones for work but were not reimbursed for those expenses. Defendant maintains that Class Members did not incur business expenses and/or were properly reimbursed for all business expenses and further contend that any unreimbursed business expenses were not necessary expenditures as required by Labor Code section 2802. Defendant also maintains that individualized issues relating to this claim would preclude class certification.

60. Plaintiffs' expert estimated Defendant's maximum exposure on the unreimbursed business expenses claim at approximately $1,264,320.00 (assuming $40 per month for each Class Member). However, given Defendant's contentions and the potential for the need for individualized inquiries, making class certification of this claim difficult, Class Counsel applied a discount of 90% to get an adjusted realistic exposure of $126,432.00.

PAGA Penalties:

61. The Labor Code Private Attorneys General Act, Labor Code § 2698 *et seq*., allows Plaintiff Hurtado to obtain civil penalties on behalf of herself and other aggrieved employees for Defendant's violation of any provision of the Labor Code enumerated under Labor Code § 2699.5. Where civil penalties are provided in the statute, those civil penalties are recoverable; where no civil penalties are recoverable, Labor Code § 2699(f) establishes civil penalties of one ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation. Pursuant to Labor Code § 2699(m), sixty-five

percent (65%) of the penalties recovered must be allocated to the Labor and Workforce Development Agency (LWDA), with the remaining thirty-five percent (35%) allocated to the affected employees. The limitations period for all penalties is one year prior to the filing of the complaint.

62. The provisions of the Labor Code potentially triggering PAGA penalties in this case include, but are not limited to, Labor Code §§ 201-204, 210, 226, 226.3, 226.7, 227.3, 245, *et seq*., 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, and 2802. PAGA penalties are not mandatory and are instead permissive. Labor Code § 2699(e)(2) states that "a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." *See Thurman v. Bayshore* (2012) 203 Cal. App. 4th 1112 (substantially reducing PAGA penalties by 30% under this provision); see also *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 529 (2018) (affirming penalty reduction of 90% for practice that resulted in meal periods occasionally starting minutes after the fifth hour of work); *Sanchez v. McDonald's Corp.* (2017), LASC Case No. No. BC 499888 (98% reduction from $41 million to $775,000); *Ghrdilyan v. RJ Financial* (2012), LASC Case No. BC430633 (94% reduction from $5.4 million to $325,000); *Fleming v. Covidien*, Inc. (2011), USDC Case No. ED CV 10-01487-RGK (OPx) (87% reduction from $2.8 million to $375,000).

63. PAGA penalties are also derivative of each and every other claim, and Defendant argued the PAGA claims would be subject to the same defenses as the underlying claims, as well as additional equitable defenses, including substantial compliance. Finally, under *Amaral v. Cintas Corp.* (2008) 163 Cal.App.4th 1157, Defendant asserted that penalties under PAGA could, at best, be awarded only at the rates obtainable for initial violations under the applicable statutes, because Defendant had never been notified of the alleged violations. *Id.* at 1208-1209.

64. Plaintiffs estimated Defendant's total exposure on the PAGA claim at approximately **$3,325,100.00** (33,251 PAGA Pay Periods x $100). However, Class Counsel also estimated any PAGA recovery would be substantially reduced and applied discounts in light of the countervailing arguments with regard to the other causes of action and the Court's power to award "a lesser amount than the maximum civil liability." Class Counsel applied a discount of 95% to get an adjusted realistic

exposure of $166,255.00.

Unfair Business Practices

65. Plaintiffs pled this cause of action to augment their other causes of action and aid in their prosecution. Business & Professions Code § 17208 extends the statute of limitations on Plaintiffs' wage claims, which qualify as unfair business practices, to four years rather than the three years provided by statute.

Summary

66. The foregoing discussion establishes the adequacy of the Settlement amount in light of the merits of Plaintiffs' case and establishes the fairness of the class-action settlement in the instant case, including by analyzing it in light of the *Clark* and *Kullar* decisions. It does so by explaining the legal basis for each of Plaintiffs' causes of action, summarizing the evidence that Class Counsel gathered in support of those causes of action, and relating to Defendant's legal and factual arguments that worked to detract from the strength of Plaintiffs' case.

67. Class Counsel applied reasonable and justified discounts, considering the facts and legal contexts outlined above. These substantial discounts were necessary in light of Defendant's contentions and denial of liability. This Settlement, like most others, was the product of compromise. As addressed above, Plaintiffs estimated that Defendant faced approximately $2,595,180.40 in total realistic exposure on Plaintiffs' main claims. The Gross Settlement Amount of $2,080,000.00, therefore, represents a recovery for the Class Members of approximately 80% of the total realistic exposure Plaintiffs estimated Defendant could face on these class-wide claims. Class Counsel submits that this is an optimal result for the Class in light of all of the factors described above.

Class Counsel Fees Payment is Fair and Reasonable

68. Under the Settlement, Class Counsel requests, without opposition from Defendant, an award of $728,000.00 for attorneys' fees and up to $30,000.00 for reasonable expenses incurred to prosecute the Action. This request is fair, reasonable, and adequate to compensate Class Counsel for the substantial work they have put into this case. Moreover, the risk they assumed by taking it in the first place as they will not receive any compensation for their efforts until recovery is obtained for the Class. The attorneys' fees award is intended to reimburse Class Counsel for all uncompensated work

that they have already done and for all the work they will continue to do in carrying out and overseeing the notification to Class Members, communicating with Class Members regarding their claims, and assisting in the administration of the Settlement if it is preliminarily approved. The requested fee is reasonable for the services provided to Class Members and for the benefits they are to receive.

Class Representative Service Payment is Fair and Reasonable

69. Plaintiffs are entitled to a reasonable service payment for their efforts and initiative in bringing and helping to prosecute this action and obtaining significant benefits from the Settlement for the Class. Plaintiffs spent significant time better apprising themselves of their rights, deciding whether remedial action should be taken and how it should be taken, searching for attorneys, and contacting Class Counsel.

70. Plaintiffs provided Class Counsel with information about Defendant, produced and reviewed documents, identified witnesses, monitored the progress of the litigation with Class Counsel, participated in the mediation process, and reviewed and signed the Settlement Agreement. In light of the foregoing, Class Counsel believes that the $10,000.00 Class Representative Service Payment to each Plaintiff (for a total of $30,000.00) is fair and reasonable.

Proposed Class Notice Provides Adequate Notice

71. The notification procedure set out in the Settlement Agreement provides the greatest likelihood that each and every Class Member will receive the Class Notice, attached to the Settlement as Exhibit A. For Class Notices returned as undelivered, the Administrator will remail the Class Notice to a forwarding address (if provided) and conduct skip tracing to obtain a current address if no forwarding address is provided. (Exhibit 1, Settlement Agreement, ¶ 7.4.3.) The Class Notice includes a summary of the case and settlement terms and provides Class Members with detailed instructions on how to exclude themselves, object to the settlement, and challenge the number of Workweeks and/or PAGA Pay Periods attributed to each Class Member per Defendant's records. (Exhibit 1, Settlement Agreement, Exhibit A, Class Notice). Class Members will have 45 days from the mailing of the Class Notice (plus an additional 14 calendar days for Class Members whose Class Notice is re-mailed) to opt out of the Settlement, object to the Settlement, and/or challenge the number of Workweeks and/or PAGA Pay Periods ("Response Deadline"). (Exhibit 1, Settlement Agreement, ¶¶

1.42, 7.4.4.) This is the best and most practicable way to ensure the greatest possible number of Class Members will receive the Class Notice.

72. The Class Notice itself fully apprises Class Members of the nature of the lawsuit, the claims involved, the terms of the Settlement, and their options thereunder. (Exhibit 1, Settlement Agreement, Exhibit A, Class Notice). It provides for a specific procedure to seek exclusion from the Class, dispute payments and Class Data, challenge Workweek and PAGA Pay Period data, and make objections to the Settlement. (Exhibit 1, Settlement Agreement, Exhibit A, Class Notice). In the Class Notice, Class Members will also receive Class Counsel's contact information so they can speak to attorneys conversant with the legal and factual issues involved in this case, as well as the contact information for the Administrator. The efforts taken to ensure that Class Members receive the Class Notice and are well informed about the settlement are reasonable and provide the best notice practicable under the facts.

Qualifications and Adequacy of Class Counsel

73. D.Law (formerly known as Davtyan Law Firm) prosecutes wage and hour cases, including class actions and PAGA actions on behalf of employees and others who have had their rights violated. D.Law, either on its own or with co-counsel, is currently serving as plaintiffs' counsel of record in numerous wage and hour and employment class action and PAGA action cases pending in both state and federal court.

74. D.Law is well-qualified and has ample experience, knowledge, and resources to act as counsel and represent Plaintiffs and the putative Class and Aggrieved Employees in this action. Our practice is exclusively focused on employment matters and representing plaintiffs in wage and hour actions with the same or similar causes of actions brought forth in the matter pending before this Court.

75. D.Law has litigated and successfully resolved many wage and hour class action cases involving failure to pay wages and derivative Labor Code claims and penalties. See e.g. De La Rosa v. The Coca Cola Company et al. (Superior Court of California in Napa, 17CV000787), Harvey v. Bed Bath & Beyond of California Limited Liability Company (Superior Court of California in Alameda, RG17885153), Paredes v. Bottling Group LLC et. al. (Superior Court of California in

Kern), Ramirez v. Harris Ranch Beef Company (Superior Court of California in Fresno, 16CECG04103), Gates v. Gate Gourmet, Inc. et. al. (Southern District of California, 16-cv-01084-L-AGS), Hargrave v. Antelope Valley Hospital (Superior Court of California in Los Angeles, BC663252), Ramirez v. Milton Roy et. al. (Superior Court of California in Los Angeles, BC 632 276), Hawkins v. AvalonBay Communities (Superior Court of California in Santa Clara, 17CV316492), Jones Tharpe et al. v. Sprint Corporation et al. (Superior Court of California in Los Angeles, BC644645), Ortega et al. v. Nestle Waters North America, Inc. et al. (Superior Court of California in Los Angeles, BC623610), Schultz v. Jimbo's Natural Family, Inc. (Superior Court of California in San Diego, 37-2017-00022348-CUE-OE-CTL), Ambrose v. Victor Valley Global et al. (Superior Court of California in San Bernardino, CIVDS1709289), Puerta-Gildardo v. Real Time Staffing Services LLC et. al. (Superior Court of California in Los Angeles, BC565445), Vargo v. Pregis Innovative Packaging LLC (Superior Court of California in Tulare, 270836), Conlin v. Aegis Senior Communities LLC (Northern District of California, 17-cv-05534-LHK), Galarza v. Kloeckner Metals Corporation (Central District of California, 2:17-cv-04910-FMO), Estes v. L3 Technologies, Inc. et al. (Southern District of California, 3:17-cv-02356-H-JMA), Rowser v. Trunk Club, Inc. (Central District of California, 2:17-cv-05064-DSF-RAO), Leach v. The Claremont Colleges, Inc. (Superior Court of California in Los Angeles, BC686451), Vaesau v. PCT Enterprises, Inc. dba Precision Cabinets (Superior Court of California, County of Contra Costa MSC18-02404), Terry v. TF Louderback, Inc. dba Bay Area Beverage Company (Superior Court of the State of California, County of Contra Costa, MSC18-00859), Roach v. Westcare California, Inc. (Superior Court of California in Kern County, BCV-17-102367-SDS), Patton v. Church & Dwight Co., Inc. (Central District of California, EDCV 18-903-MWF (KKx)), Juarez v. ISL Employees, Inc. (Superior Court of California in Madera, MCV074787), Ferraro v. USC Verdugo Hill s Hospital, et al. (Superior Court of California in Los Angeles, 18STCV09463), Ford v. Account Control Technology, Inc., et al. (Superior Court of California in Los Angeles, 19STCV09369), Ornelas v. iStorage, et al. (Superior Court of California in San Francisco, CGC-18-571421), Martinez v. Ronpak, Inc. (Superior Court of California in Riverside, RIC1901307), Barrera et al. v. Exclusive Wireless, Inc. (Superior Court of California in Stanislaus, 9000687), Barajas v. Mancha Development Company LLC (Superior Court

of California in Orange County, 30-2018-00974707-CU-OE-CXC), Prado v. IMAX Corporation dba IMAC Worldwide Home (Superior Court of California in San Bernardino, CIVDS1820265), Rodriguez v. ND Industries, Inc. (Superior Court of California in Los Angeles, 19STCV38096), Singletary v. Motel 6 Operating LP, et al. (Southern District of California, 3:20-cv-0270-LAB-AHG), Quizon v. CF Watsonville East, LLC, et al. (Superior Court of California in Santa Cruz, 20CV01868), Stephenson v. Bakersfield Dodge, Inc. (Superior Court of California in Kern, BCV-20-102693), Bacerra v. Hugo Boss Retail, Inc. (Superior Court of California in San Diego, 37-2021-00002933-CU-OE-CTL), Walker v. Ariat International, Inc. (Superior Court of California in Alameda, HG19026439), Orr v. Petvet Care Centers (California) Inc. (Superior Court of California in Santa Clara, 19CV354063), Jimenez v. OEC Distribution Services, Inc. (Superior Court of California in San Bernardino, CIVDS1915743), Virdi v. Absolute Security International (Superior Court of California in San Bernardino, CIVDS 1909589), Raj v. First Transit, Inc (Superior Court of California in Sacramento, 34-2021-00295895-CU-OE-GDS), Marchbanks v. Torrid Administration, Inc. (Superior Court of California in San Diego, 37-2020-00008179-CU-OE-NC), among others.

76. I am Senior Counsel at D.Law where I manage the class action and PAGA settlement department. I was admitted to the California Bar in December 2008. I received my J.D. from Pepperdine University School of Law and B.S. from the University of Southern California. Since graduating from law school, I have dedicated virtually my entire career on the practice of employment law. I have practiced employment law from the plaintiff's side, from the defense side, and from an in-house position. I have significant experience specifically working on wage and hour class actions from the plaintiff's side as well as the defense side, with the majority of my experience coming from the plaintiff's side.

77. The collective experience of the D.Law attorneys in litigating employment wage and hour matters has been integral in identifying legal issues, evaluating the strengths and weaknesses of a case, and generally negotiating fair and reasonable class and representative action settlements. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the constantly evolving substantive law (state and federal), as well as the procedural law of class and representative action litigation. In this action, the attorneys at D.Law are fully equipped to use the

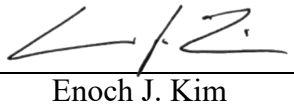
skills and knowledge developed over decades of prosecuting and defending wage and hour class actions to fairly and adequately represent the interests of the Class Members and Aggrieved Employees. Therefore, based on our resources, experience, and knowledge, the attorneys at D.Law are well-qualified to act as Class Counsel and represent the Plaintiffs and the putative Class Members and Aggrieved Employees in this action.

78. We understand the responsibilities owed as counsel to the class members and the aggrieved employees we represent. The attorneys at D.Law thoroughly investigated the claims asserted in this action and have remained committed to dedicating the resources necessary to represent the Class and vigorously pursue their claims. Based upon my experience and understanding of the claims and defenses in this action, I believe the settlement is fair, adequate, and reasonable for the Class Members and Aggrieved Employees and all involved, and that the Settlement is well within the range of reasonableness that would permit it to be finally approved. I am not aware of any conflict of interest with Plaintiffs or any other Class Member that would interfere with the duties as Class Counsel.

79. On November 12, 2026, Plaintiffs submitted the Class Action and PAGA Settlement Agreement and Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement and supporting documents to the LWDA. A true and correct copy of the confirmatory email from the LWDA is attached hereto as **Exhibit 3.**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 12th day of November, 2026 in Pasadena, California



Enoch J. Kim

EXHIBIT 1

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Superior Court of California, County of San Joaquin
Isaac Delgado, et al. v. Oldcastle Infrastructure, Inc.
Case No. STK-CV-UEO-2023-11312

The Superior Court for the State of California authorized this Notice.
It's not junk mail, spam, an advertisement, or solicitation by a lawyer.
This is not a lawsuit against you and you are not being sued

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL ("Notice")

To: All individuals who worked for Oldcastle Infrastructure, Inc. ("Defendant" or "Oldcastle") as non-exempt employees in the State of California at any time during October 26, 2019, through October 2, 2025 ("Class Period") and who were not subject to a collective bargaining agreement during the Class Period.

YOU MAY BE ELIGIBLE TO RECEIVE PAYMENT FROM THE CLASS ACTION AND PAGA SETTLEMENT DESCRIBED IN THIS NOTICE.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	To receive a Settlement payment, you do not need to do anything. Your payment will be mailed to you, automatically, if the Court grants final approval of the Settlement. *You must, however, keep a current address on file with the Settlement Administrator to ensure receipt of your check.*
CHANGE CONTACT AND ADDRESS INFORMATION	Update your address with the Settlement Administrator to ensure your check is sent to the correct address.
EXCLUDE YOURSELF FROM THE CLASS SETTLEMENT	If you do not want to participate in the Class portion of the Settlement, you may exclude yourself (opt out) from the Class portion of the Settlement. If you exclude yourself from the Class portion of the Settlement, you will not receive an Individual Class Payment (defined below). This option preserves your right to pursue the Released Class Claims (defined below) against Defendant. However, even if you exclude yourself from the Class portion of the Settlement, you will still receive your Individual PAGA Payment from the PAGA portion of the Settlement (if eligible) and be bound by it as further explained below.
OBJECT	Write to the Settlement Administrator if you think the Settlement is not fair or you can appear at a hearing to explain to the Court why you think the Settlement is not fair.

- **YOUR RIGHTS AND OPTIONS – AND THE DEADLINES TO EXERCISE THEM – ARE EXPLAINED IN THIS NOTICE.**
- **DEFENDANT WILL NOT RETALIATE IN ANY MANNER AGAINST ANYONE FOR PARTICIPATING OR NOT PARTICIPATING IN THIS SETTLEMENT.**

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BACKGROUND ON THE LAWSUIT

1. Why did I get this notice?

You received this notice because Defendant's records identify you as a "Class Member," which is someone who both (1) worked for Oldcastle Infrastructure, Inc. in California as a non-exempt employee at any time from October 26, 2019, through October 4, 2025 ("Class Period"), and (2) was not subject to a collective bargaining agreement at any time during the Class Period.

The Settlement will resolve certain wage and hours claims of Class Members, which are described below, during the Class Period. The Settlement will also resolve claims for civil penalties brought under the California Private Attorneys General Act ("PAGA") for Aggrieved Employees. If you are a Class Member, you are also an "Aggrieved Employee" or "PAGA Member" if you also worked for Defendant in California as a non-exempt employee at any time from October 26, 2022, through October 28, 2025 ("PAGA Period").

The purpose of this Notice is to explain the lawsuit, the pending Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court has preliminarily approved the proposed Settlement and directed that you receive this Notice. The Court has not yet decided whether to grant final approval. The Court will hold a final approval hearing (details provided below) to determine whether to finally approve the Settlement.

2. What is this Class and PAGA Lawsuit about?

On October 26, 2023, Plaintiff Delgado filed a Class Action Complaint against Defendant in the Superior Court of California, County of San Joaquin, Case No. STK-CV-UEO-2023-11312, alleging claims for failure to pay minimum wage, failure to pay overtime wages, failure to provide compliant meal periods or meal break premium pay, failure to provide compliant rest breaks or rest break premium pay, failure to provide accurate, itemized wage statements, failure to pray proper vacation wages, failure to timely pay wages during employment or upon separation and for waiting-time penalties, failure to indemnify reasonable and necessary business expenses, and unfair competition ("Lawsuit"). On January 16, 2024, Plaintiff Delgado filed a First Amended Complaint, which added claims for civil penalties under the California Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.* ("PAGA").

On June 26, 2024, Plaintiff filed a Second Amended Complaint, which adding a second Plaintiff, Raymond Ortiz, to the Lawsuit. On July 25, 2024, Defendant removed the Lawsuit to the United States District Court, Eastern District of California, Case No. 2:24-cv-02031-DJC-CKD. On January 6, 2025, Plaintiffs filed a Third Amended Complaint, which added a third named Plaintiff, Marcos Gutierrez, to the Lawsuit. On February 20, 2025, Plaintiffs filed a Fourth Amended Complaint, which removed Raymond Ortiz as a named Plaintiff from this Lawsuit. On August 6, 2025, Plaintiffs filed a Fifth Amended Complaint, which add factual allegations and made other changes, as requested by the Court.

As part of the settlement, the Parties remanded this matter back to the Superior Court of California, County of San Joaquin, Case No. STK-CV-UEO-2023-11312. Pursuant to the joint stipulation of the Parties, Plaintiffs filed a Sixth Amended Complaint on March 27, 2026, which added Plaintiff Rene Serrano and claims he asserted against Defendant in an action originally filed in Superior Court of the State of California, County of San Joaquin, Case No. STK-CV-UOE-2024-15058, to the Lawsuit. Plaintiff Serrano asserted claims for (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide required meal periods; (4) failure to provide required rest periods; (5) failure to properly pay accrued sick days; (6) failure to properly pay unused vacation pay; (7) failure to pay timely wages during employment; (8) failure to pay all wages due to discharged and quitting employees; (9) failure to maintain required records; (10) failure to furnish accurate, itemized wage

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statements; (11) failure to reimburse necessary expenditures; (12) unfair and unlawful business practices; (13) civil penalties pursuant to PAGA. The Sixth Amended Complaint is the Operative Complaint.

Defendant denies all allegations in the Lawsuit and contends that it has fully complied with the California Labor Code. The Settlement is not an admission of any wrongdoing by Defendant or an indication that any law was violated or that this case was suitable for class or representative treatment.

3. Why is there a Settlement?

The Court has not decided in favor of Plaintiff or Defendant, nor has it made any decision as to whether this case could or should proceed on a class or representative basis. Instead, with the assistance of an experienced and neutral mediator, the Parties successfully negotiated the Settlement to resolve the Lawsuit rather than continue the expensive and time-consuming process of litigation. Both sides agree the proposed Settlement is a compromise of disputed claims.

4. Who are the Attorneys for the Parties?

Counsel for Plaintiffs and the Class ("Class Counsel")

Counsel for Plaintiffs Isaac Delgado and Marcos Gutierrez:

Emil Davtyan, Esq.
David Yeremian, Esq.
David Keledjian, Esq.
David Arakelyan, Esq.
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Counsel for Plaintiff Rene Serrano:

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Telephone: (323) 372-1202
Fax: (323) 372-1216

Counsel for Defendant Oldcastle Infrastructure, Inc.:

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Sean Bothamley, Esq.
Diana Han, Esq.
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San Jose, CA 95113
Telephone: (408) 579-0404
Fax: (408) 454-0290

THE TERMS OF THE SETTLEMENT

5. What is the Settlement Amount?

The proposed Settlement provides for a maximum payment of $2,080,000.00 (the "Gross Settlement Amount"). From the Gross Settlement Amount, Class Counsel will apply to the Court for attorneys' fees of up to $728,000.00 and actual litigation costs, which is currently estimated not to exceed $30,000.00; a payment of up to $30,000.00 to the named Plaintiffs ($10,000.00 to each named Plaintiff) for their time and efforts to initiate and prosecute the Lawsuit ("Class Representative Service Payments"); PAGA Penalties of $140,000.00, with $105,000.00 allocated to the California Labor Workforce Development Agency ("LWDA") and $35,000.00

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allocated to the Aggrieved Employees as Individual PAGA Payments based on the number of pay periods worked during the PAGA Period; and payment not to exceed $13,000.00 to Apex Class Action Administration ("Administrator") for settlement administration expenses ("Administration Expenses Payment"). The exact amount of the attorneys' fees, litigation costs, Class Representative Service Payment, and Administration Expenses Payment will be determined by the Court at the Final Approval Hearing. The remaining portion of the Gross Settlement Amount ("Net Settlement Amount") is currently estimated to be approximately **$1,139,000.00**. The Net Settlement Amount will be apportioned and paid out to Class Members who do not opt out from the Settlement ("Participating Class Members") as individual payments based on the number of workweeks worked during the Class Period ("Individual Class Payments").

6. How will the Individual Class Payments to Participating Class Members be calculated?

Participating Class Members will receive Individual Class Payments as a proportional amount of the Net Settlement Amount. **A claim form is not required**. Class Members who opt out of the Class portion of the Settlement will not receive an Individual Class Payment and will not be bound by the Class portion of the Settlement.

Each Participating Class Member's Individual Class Payment will be a pro-rata share of the Net Settlement Amount based on the number of workweeks they worked during the Class Period ("Workweeks"). The Administrator will calculate the total Workweeks for all Participating Class Members. The respective Workweeks for each Participating Class Member will then be divided by the total Workweeks for all Participating Class Members, resulting in the pro-rata share of the Net Settlement Amount that each Participating Class Member would be entitled to.

All Individual Class Payments to Participating Class Members shall be allocated as follows for tax purposes: 20% of each Participating Class Member's Individual Class Payment will be allocated to wage claims (the "Wage Portion"). The Wage Portion is subject to tax withholding and will be reported on an IRS W-2 Form. 80% as alleged non-wage remedies, including for interest, statutory penalties, damages, restitution, and reimbursement(the "Non-Wage Portion"). The Non-Wage Portion is not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

Your total estimated Workweeks is _____. Based on that, your anticipated approximate Individual Class Payment is _____.

7. How will the PAGA Penalties be allocated to the LWDA and Aggrieved Employees?

The Parties will ask the Court to approve $140,000.00 in PAGA Penalties in settlement of claims of civil penalties under PAGA. As required under PAGA, 75% of the PAGA Penalties, or $105,000.00, will be paid to the LWDA ("LWDA PAGA Payment"). The remaining 25% of the PAGA Penalties, or $35,000.00, will be paid to Aggrieved Employees ("Individual PAGA Payment").

No claim form is required to receive an Individual PAGA Payment. Because Aggrieved Employees cannot opt out of the PAGA portion of the Settlement, Aggrieved Employees will receive an Individual PAGA Payment and be bound by the PAGA portion of the Settlement even if they opt out of the Class portion of the Settlement.

Each Aggrieved Employee's Individual PAGA Payment will be a pro-rata share of the 25% ($35,000.00) of the PAGA Penalties to be distributed to Aggrieved Employees. Individual PAGA Payments will be based on the number of Pay Periods that each Aggrieved Employee worked for Defendant during the PAGA Period as a proportion of all Pay Periods worked by all Aggrieved Employees during the PAGA Period. For tax purposes, 100% of the Individual PAGA Payments will be allocated as penalties for which an IRS Form 1099 will be issued, if required by law.

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Your total estimated Pay Periods are _____. Based on that, your anticipated Individual PAGA Payment is _____.

HOW TO GET A PAYMENT

8. How can I get a settlement payment?

If you do nothing, you will automatically receive your Individual Class Payment and Individual PAGA Payment (if any) after the Court's approval of the Settlement becomes final. You must notify the Administrator of any change in your name and/or mailing address if the information shown on this is not correct.

It is your responsibility to keep the Administrator informed of any change in your address. Settlement payments will be mailed to the last known address the Settlement Administrator has on file for you. You can contact the Administrator by U.S. Mail, email, or phone at _____ if you need to update your contact information.

9. What do I do if I believe my Workweeks and/or Pay Periods are incorrect?

If you believe the Workweeks and/or Pay Periods above are not correct, you may send a letter to the Administrator indicating what you believe to be the correct information. Your letter must be postmarked on or before _____, 2026 [*45 days within mailing of Notice*]. You should include any documents or other information which supports what you believe to be the number of Workweeks and/or Pay Periods you worked. The Settlement Administrator will resolve any dispute regarding these issues based on Defendant's records and any information you provide.

10. When can I expect to receive a settlement check?

Individual Class Payments and Individual PAGA Payments will be mailed to Participating Class Members and Aggrieved Employees approximately 14 days after the Administrator receives the funds from the Defendant (due 21 days after the Effective Date). The "Effective Date" means the date when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the Court enters a Final Order and Judgment Granting Final Approval of the Settlement; (b) 30 calendar days have passed since the Court has entered the Final Order and Judgement, and has approved the Settlement; and (c) if no objection to the Settlement is filed, the period for filing any appeal, writ, or other appellate proceeding opposing the Court's entry of the Final Order and Judgment has expired without one having been filed or any other opposition, challenge or motion to vacate the entry of the Final Order and Judgment having been filed; or, if any appeal, writ, or other appellate proceeding opposing the Final Order and Judgment has been filed, including objections, or any other opposition, challenge or motion to vacate the Court's Final Order and Judgment approving the Stipulation of Settlement has been filed, five calendar days after the appeal has been finally and conclusively dismissed with no right to pursue further remedies or relief.

Settlement checks should be cashed promptly upon receipt. Proceeds of checks that remain uncashed after 180 days from the date of issuance will be transferred to the California Unclaimed Property Fund. If your settlement check is lost or misplaced, you should contact the Settlement Administrator immediately.

WHAT HAPPENS IF THE COURT APPROVES THE SETTLEMENT

11. What am I giving up to get an Individual Settlement Payment?

If the Court approves the Settlement and unless you exclude yourself from the Class portion of the Settlement, you will become a Participating Class Member, and that means that you cannot sue, continue to sue, or be part

of any other lawsuit against Defendant concerning the claims being resolved in the Settlement. Specifically, you will be giving up or "releasing" the claims described below:

Release by Participating Class Members: All Participating Class Members release the Released Parties from all claims, damages, debts, liabilities, demands, obligations penalties, actions or causes of action of any kind, arising under state, federal or local law, whether statutory, common law, or administrative law, at any time during the Class Period, that that were alleged or reasonably could have been alleged based on the facts stated in the Operative Complaint and/or Plaintiffs' administrative exhaustion letters submitted to the California Labor & Workforce Development Agency ("LWDA") in connections with the Lawsuit, including but not limited to claims for 1) failure to pay minimum wages, wages, and overtime; 2) failure to pay timely wages; 3) failure to pay meal period and rest period premiums; 4) failure to pay vacation time and wages; 5) failure to pay paid sick time and wages; 6) failure to reimburse necessary business expenses; 7) failure to issue accurate itemized wage statements; 8) failure to keep payroll records; 8) failure to pay final wages and waiting time penalties; 9) unfair competition ("Released Class Claims"). The Released Class Claims only apply to claims accrued or arising during the Class Period.

"Released Parties" means Defendant and its present and former parent companies, subsidiaries, divisions, related or affiliated companies, and its shareholders, owners, partners, officers, directors, employees, agents, attorneys, insurers, successors and assigns, clients, and any other individual or entity that could be liable for any of the Released Class Claims and Released PAGA Claims.

12. What PAGA Claims are released by the Settlement?

Release by Aggrieved Employees: All Aggrieved Employees, the LWDA, and the State of California are deemed to release the Released Parties from all claims for civil penalties pursuant to PAGA that were alleged or reasonably could have been alleged based on the facts alleged in the Operative Complaint and Plaintiffs' PAGA Notices and accrued or arising during the PAGA Period, including, but not limited to, claims based on alleged violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 226.8, 227.3, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq*., and 2802; provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200, *et seq*.

"PAGA Notices" are the letters submitted to the LWDA and Defendant by Plaintiff Delgado on October 26, 2023 (and as amended on June 7, 2024, and December 19, 2024), and by Plaintiff Serrano on May 4, 2024.

EXCLUDING YOURSELF FROM THE CLASS SETTLEMENT

13. How do I opt out of the Class portion of the Settlement?

If you wish to preserve your right to pursue your own separate lawsuit against Defendant for the Released Class Claims or otherwise do not want to participate in the Class portion of the Settlement for whatever reason, you have the option to exclude yourself from the Class portion of the Settlement. However, you cannot opt out of the PAGA portion of the Settlement. Class Members who opt out of the Class portion of the Settlement will still be bound by the PAGA portion of the Settlement and will receive an Individual PAGA Payment (if any).

To opt out of the Class portion of the Settlement and the release of Released Class Claims, you must provide a signed and dated letter to the Administrator requesting to be excluded. The letter must include the case name, case number (located at the top of this Notice), your full name and mailing address, and a statement that you request exclusion from the Settlement and do not wish to participate in the Settlement. The letter should be signed by you and faxed, emailed, or postmarked on or before _____, 2026 [*45 days within mailing of Notice*]. Opt-out requests faxed, emailed, or postmarked after the deadline will be invalid. The Administrator's information is below:

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Administrator: Apex Class Action Administration
Email Address: claims@apexclassaction.com
Mailing Address: P.O. Box 54668, Irvine, CA 92619
Telephone: 800-355-0700 / Fax Number: 949-989-4428

14. If I don't exclude myself from the Class portion of the Settlement, can I sue Defendant for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Defendant for the claims being released by the Class portion of the Settlement, the Released Class Claims. If you have a claim or lawsuit already filed against Defendant or any of the Released Parties, you should speak to your lawyer in that case immediately. You may need to exclude yourself from the Class portion of the Settlement to continue your own lawsuit. You cannot exclude yourself from the PAGA portion of the Settlement.

OBJECTING TO THE SETTLEMENT

15. How do I tell the Court that I don't like the Settlement?

If you are a Participating Class Member and don't think the Settlement is fair, you can object to some or all of the Settlement. You can either object to the Settlement in person at the Final Approval Hearing or you can submit a written objection. Written objections must be faxed, emailed, or mailed to the Administrator by _____, 2025 [*45 days within mailing of Notice*].

The written objection should state your name and mailing address and describe all reasons for objecting to the terms of the Settlement. You should also include or attach any documents upon which your objection is based. If the Court overrules the objection at the Final Approval Hearing, the Settlement will be approved and you will receive your Individual Class Payment. If you do not submit a written objection, you may still appear at the Final Approval Hearing to voice your objection or to otherwise observe the proceedings.

Class Members who opt out from the Class portion of the Settlement have no right to object to the Settlement.

THE COURT'S FINAL APPROVAL HEARING

16. When and where will the Court decide whether to grant final approval of the Settlement?

The Court will hold a "Final Approval Hearing" in Department 11B of the San Joaquin County Superior Court located at 180 E. Weber Avenue, Stockton, CA 95202 on _____ 2026, at ___. At this hearing, the Court will determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve the Class Counsel's request for attorneys' fees and costs, the Class Representative Service Payments, and the Administration Expense Payment.

The Court may reschedule the Final Approval Hearing without further notice to Class Members. You can also check the Court's docket in this case, which will have the most up to date information about the case, by visiting the Court's websites at https://www.sjcourts.org/.

17. Do I have to come to the Final Approval Hearing?

No. Class Counsel will answer any questions the Court may have. But you are welcome to come at your own expense. If you timely submit a written objection, you don't have to come to Court to talk about it, but you may. You may also hire and pay your own lawyer to attend if you so desire.

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You may also appear remotely for the Final Approval Hearing. To attend the remote hearing: Call into (209) 992-5590, then follow the prompts and use the Bridge # and Pin # for the Department where your case is to be heard. For Department 11B (Judge Water), the information is as follows: Bridge # 6941; Pin # 5564.

GETTING MORE INFORMATION

18. Whom may I contact if I have questions about the Settlement?

You may contact Class Counsel at the contact information above in Paragraph 4 if you have any questions about the Settlement. You may also contact the court-appointed Administrator, Apex Class Action Administration, using its contact information provided above.

You may also visit https://apexclassaction.com/about/ to review important case notices and documents.

PLEASE DO NOT TELEPHONE THE SUPERIOR COURT CLERK TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Vinesign **Certificate of Completion**

Verification Complete
The document has been officially verified.

Document Status	✔ Signed & Verified
Document Name	Settlement Agreement
Sender Name	Danielle Cohen
Document Key	FBE23CCA-98E7-4333-BAA6-4F94A6DE46DF

Recipient 1
Rene Serrano
reneserrano11182@gmail.com
(209) 405-8455
Order 1

IP Address
2601:205:4288:9440:5df7:1cc5:76ea:7dcd

Signature



Document History

Activity	Date & Time	Recipient	Activity Details
Document Completed	07/23/2026 23:39 UTC	Rene Serrano	Signed by Rene Serrano (reneserrano11182@gmail.com)
Document Viewed	07/23/2026 23:35 UTC	Rene Serrano	Viewed by Rene Serrano (reneserrano11182@gmail.com)
Document Viewed	07/23/2026 23:34 UTC	Rene Serrano	Viewed by Rene Serrano (reneserrano11182@gmail.com)
Document Viewed	07/23/2026 23:33 UTC	Rene Serrano	Viewed by Rene Serrano (reneserrano11182@gmail.com)
Document Viewed	07/23/2026 23:31 UTC	Rene Serrano	Viewed by Rene Serrano (reneserrano11182@gmail.com)
Document Viewed	07/23/2026 23:23 UTC	Rene Serrano	Viewed by Rene Serrano (reneserrano11182@gmail.com)
Document Sent	07/23/2026 23:15 UTC	Rene Serrano	Sent out via sms to Rene Serrano ((209) 405-8455)
Document Sent	07/23/2026 23:15 UTC	Rene Serrano	Sent out via email to Rene Serrano (reneserrano11182@gmail.com)

Activity	Date & Time	Recipient	Activity Details
Document Created	07/23/2026 23:15 UTC		Created by Danielle Cohen (danielle@elkingamboa.com)

EXHIBIT 2

D.Law

880 E. Broadway
Glendale, CA 91205

(818) 962-6465
(818) 962-6469

October 26, 2023

VIA ON-LINE SUBMISSION AND MAIL:
https://dir.tfaforms.net/128 **(copy by certified mail to all Defendants)**

Private Attorneys General Act
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Oldcastle Infrastructure, Inc.
CSC Lawyers Incorporating Service, Agent for Service of Process
2710 Gateway Oaks Drive
Sacramento, CA 95833
Certified Mail Tracking Number:

Oldcastle Infrastructure, Inc.
7000 Central Pkwy Atlanta
Suite 800
Atlanta, GA 30328
Certified Mail Tracking Number:

LWDA Case No.:

Re: Labor Code § 2698, *et seq*. Penalties – PAGA Notice Letter to the LWDA
Isaac Delgado v. Oldcastle Infrastructure, Inc., et al.

Gentlepersons:

This office represents Plaintiff Isaac Delgado ("Plaintiff") and other similarly situated aggrieved employees (collectively "Aggrieved Employees") for violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 226.8, 227.3, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802; provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 et seq.

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et. seq.* ("the Act"). Unless specified below, Plaintiff would like to bring a representative action, pursuant to the Act, on behalf of himself and all other similarly situated, Aggrieved Employees, and the State of California, against Defendants, Oldcastle Infrastrcture, Inc., and DOES 1 through 50 inclusive (all defendants being referred to herein collectively as "Defendants").

Additionally, this correspondence will serve to satisfy the notice requirements under the Act, along Plaintiff's Class Action Complaint, which is attached hereto and incorporated by reference herein. The Complaint is being concurrently filed in San Joaquin County Superior Court and will be

assigned a local case number. The Complaint allegations and claims are incorporated into this Notice Letter.

We also set forth herein the facts and theories and the California Labor Code violations which Defendants engaged in with respect to Plaintiff an all of their Aggrieved Employees in California. The Class Action Complaint provides the details of Plaintiff's class-wide claims and claims under the Act, and the applicable California law governing them. It, along with this Notice Letter, addresses in detail numerous violations that subject Defendants to civil and statutory penalties under the Act.

Relevant Facts

Plaintiff was employed by Defendants as a non-exempt hourly employee in California. Aggrieved Employees include all non-exempt hourly employees of Defendants within the state of California from one year prior to the date of this letter and continuing through the present (Plaintiff and Aggrieved Employees are collectively referred to herein as "Aggrieved Employees").

Defendants had a common policy and practice of systemically failing to pay Aggrieved Employees proper wages and overtime for all hours worked, at the proper rates of pay.

Aggrieved Employees were consistently required to perform work, off-the-clock, for which they were not paid wages. Specifically, Aggrieved Employees were required to perform work-related activities during unpaid meal periods. The forgoing and uncompensated working time was under the direction and control of Defendants, for which no wages were paid.

This uncompensated time caused Aggrieved Employees to work in excess of eight (8), ten (10) and/or twelve (12) hours a day and/or forty (40) hours a week, entitling Aggrieved Employees to minimum and overtime wages, which they were systemically denied.

Defendants had a common policy and practice of systemically denying Aggrieved Employees the opportunity to take meal periods in compliance with California Law. Specifically, Defendants had a common policy and practice of requiring Aggrieved Employees to perform work-related activities during unpaid meal periods. Further, Defendants failed to provide Aggrieved Employees with the opportunity to take their meal periods prior to the completion of their fifth hour of work.

Aggrieved Employees were not provided with meal periods of at least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling each meal period as part of each work shift; (2) no formal written meal policy that encouraged employees to take their meal periods, or that advised Aggrieved Employees of their meal and rest period rights; and (3) Defendants' practice of requiring Aggrieved Employees to continue working through their meal and rest periods due to the excessive workload.

Defendants had a common policy and practice of systemically denying Aggrieved Employees the opportunity to take rest breaks in compliance with the California Law. Aggrieved Employees were not provided with rest periods of at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants' policy of not scheduling each rest period as part of each work shift, including second rest breaks for shifts of six (6) hours or more; (2) no formal compliant written rest period policy that encouraged employees to take their rest periods, or that

properly advised Aggrieved Employees of their rest period rights; (3) Defendants' policy and practice of requiring Aggrieved Employees to continue working through their rest breaks due to the excessive workload.

Furthermore, Defendants failed to pay Aggrieved Employees premium pay wages at their appropriate regular rates of pay for each meal and rest period denied.

Defendants also had a common policy and practice of systemically failing to pay Aggrieved Employees the requisite and accrued vacation time pay in accordance with California Law. Specifically, Aggrieved Employees accrued vested vacation wages during their employment with Defendants. However, Defendants failed to pay all accrued vacation time owed to Aggrieved Employees upon their separation from employment.

Aggrieved Employees were not provided with accurate wage statements as mandated by law pursuant to Labor Code section 226. Specifically, Defendants failed to issue wage statements as "a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing." Additionally, the wage statements issued to Aggrieved Employees were not recorded in "ink or other indelible form."

Defendants failed to comply with Labor Code section 226(a)(1) as "gross wages earned" were not accurately reflected in that: all hours worked, including overtime, were not included.

Defendants failed to comply with Labor Code section 226(a)(2) as "total hours worked by the employee" were not accurately reflected in that: all hours worked, including overtime, were not included.

Defendants failed to comply with Labor Code section 226(a)(5) as "net wages earned" were not accurately reflected in that: all hours worked, including overtime, were not included.

Defendants failed to comply with Labor Code section 226(a)(9) as "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee" were not accurately reflected in that: all hours worked, including overtime, were not included.

Furthermore, Defendants failed to provide Aggrieved Employees with paper pay stubs as required by Labor Code § 226, applicable Wage Orders, and DLSE Opinion Letters. Plaintiff's and Aggrieved Employees' wage statement were only provided in electronic format in violation of Labor Code § 226.

Aggrieved Employees were not reimbursed for business expenses incurred in executing their duties under Defendant's employ. Specifically, Defendants failed to reimburse Aggrieved Employees for necessary business expenses while requiring Aggrieved Employees to work remotely from home during the COVID-19 pandemic. Aggrieved Employees incurred expenses for home internet use, work technology, and utilities for Aggrieved Employees' home workspaces, including gas, water, electricity, and rent.

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PAGA Claim Details, Legal Bases for Violations and Penalties:
As addressed above and in further detail in the Class Action Complaint, the Aggrieved Employees complain of the following violations committed by Defendants:[1]

Failure to Pay Minimum Wages
Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders.

In California, employees must be paid at least the then applicable state minimum wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H) of the applicable IWC Wage Orders defines "Hours Worked" as "the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Additionally, pursuant to Labor Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked. Defendants failed to do so.

California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states: "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The minimum wage provisions of California Labor Code are enforceable by private civil action pursuant to Labor Code § 1194(a) which states: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees and costs of suit."

As described in California Labor Code §§ 1185 and 1194.2, any action for wages incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also, California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in the absence of a contractually agreed upon one. The underpayment of wages to Aggrieved Employees is and has been a direct consequence of Defendants' unlawful compensation policies and practices, which applied uniformly to the Aggrieved Employees working at locations and work sites throughout California.

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[1] Plaintiff hereby reserves the right to seek penalties on behalf of all Aggrieved Employees, for Defendants' violations of the applicable provisions of the Labor Code, suffered by Aggrieved Employees, but not directly suffered by Plaintiff under *Huff v. Securitas Security Services USA, Inc*. (2018) 23 Cal.App.5th 745.

Defendants had a common policy and practice of systemically failing to pay Aggrieved Employees proper wages and overtime for all hours worked, at the proper rates of pay.

Aggrieved Employees were consistently required to perform work, off-the-clock, for which they were not paid wages. Specifically, Aggrieved Employees were required to perform work during unpaid meal periods. The forgoing and uncompensated working time was under the direction and control of Defendants, for which no wages were paid.

Defendants have the ability to pay minimum and overtime wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Aggrieved Employees.

In light of the forgoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a). the other Aggrieved Employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory and civil penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and Wage Order provisions. To the extent minimum wage compensation is determined to be owed to the Aggrieved Employees who have terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under California Labor Code § 203, which penalties are sought herein on behalf of these Aggrieved Employees. Defendants' failure to timely pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was willful, intentional and not in good faith. Further, other Aggrieved Employees are entitled to seek and recover statutory costs.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Pay Wages and Overtime in Violation of Labor Code § 510

Defendants violated the law by failing to pay Aggrieved Employees earned wages and overtime. Specifically, Aggrieved Employees consistently worked in excess of eight (8), ten (10), and twelve (12) hours a day, and/or forty (40) hours a week. However, Aggrieved Employees were not paid overtime wages for hours worked in excess of 8 hours a day. Moreover, the uncompensated time, discussed above caused Aggrieved Employees to work in excess of eight (8), ten (10), and twelve (12) hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code § 510 and applicable Wage Orders.

Defendants have violated Labor Code § 1194 and Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular hourly rates for hours worked in excess of eight hours in a workday or in excess of forty hours in any workweek or for the first eight hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve hours in any one day or for hours worked in excess of eight hours on any seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees wages for all hours worked, including by requiring off the clock work as addressed above and by under-reporting actual hours worked. With work shifts generally requiring eight hours or more of work on a given day, this unpaid off the clock work resulted in Aggrieved Employees working past eight hours on a shift or more than forty hours in a week, which required that they be paid at the correct overtime rate of 1.5 times their regular rate.

When considered in combination with the other wage violations addressed above, Aggrieved Employees were not properly compensated, nor were they paid overtime and double time rates for hours worked in excess of 8, 10, and 12 hours in a given day, and/or forty hours in a given week. Defendants did not make available to Employees a reasonable protocol for correcting time records when Employees worked overtime hours or to fix incorrect time entries or those that Defendants unlawfully under-recorded to the Employee's detriment. Defendants have also violated these provisions by requiring other similarly situated Aggrieved Employees to work through meal periods when they were required to be clocked out or to otherwise work off the clock to complete their daily job duties.

In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, 1174, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including paragraphs 2(K), 2(S), 3(A), 4, and 20. Defendants are liable to Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Meal-Period Liability Under Labor Code §§ 226.7 and 512 and Penalties

Defendants had a common policy and practice of systemically denying Aggrieved Employees the opportunity to take meal periods in compliance with California Law. Specifically, Defendants had a common policy and practice of requiring Aggrieved Employees to perform work-related activities during unpaid meal periods. Further, Defendants failed to provide Aggrieved Employees with the opportunity to take their meal periods prior to the completion of their fifth hour of work.

Aggrieved Employees were not provided with meal periods of at least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling each meal period as part

of each work shift; (2) no formal written meal policy that encouraged employees to take their meal periods, or that advised Aggrieved Employees of their meal and rest period rights; and (3) Defendants' practice of requiring Aggrieved Employees to continue working through their meal and rest periods due to the excessive workload.

Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided, including by miscalculating any premium payments they did make. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2) and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Rest-Break Liability Under Labor Code § 226.7 and Penalties

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than 10 minutes for every work period of 4 or more consecutive hours, as required by Labor Code. Aggrieved Employees were not provided with rest periods of at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants' policy of not scheduling each rest period as part of each work shift, including second rest breaks for shifts of six (6) hours or more; (2) no formal compliant written rest period policy that encouraged employees to take their rest periods, or that properly advised Aggrieved Employees of their rest period rights; (3) Defendants' policy and practice of requiring Aggrieved Employees to continue working through their rest breaks due to the excessive workload.

Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided, or miscalculated any premiums paid. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each rest period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Pay Vested Vacation Wages Upon Separation in Violation of Labor Code § 227.3
California Labor Code section 227.3 provides:

> Unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness.

At all relevant times during the applicable limitations period, Aggrieved Employees accrued vested vacation time during their employment with Defendants. However, Defendants' implemented a common policy and practice of failing to pay Aggrieved Employees for all accrued vacation wages upon separation of employment, in violation of Labor Code 227.3.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 203, 204, 227.3, 1198, 2926, 2927, and 2699.5 seeking all civil penalties available and applicable under Labor Code §§ 204, 210, 246, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Reimburse for Necessary Business Expenditures in Violation of Labor Code § 2802
Defendants have consistently required Aggrieved Employees to incur necessary business expenses in the execution of their duties under Defendants' employ. Specifically, Defendants failed to reimburse Aggrieved Employees for necessary business expenses while requiring Aggrieved Employees to work remotely from home during the COVID-19 pandemic. Aggrieved Employees incurred expenses for home internet use, work technology, and utilities for Aggrieved Employees' home workspaces, including gas, water, electricity, and rent.

Defendants systematically and uniformly failed to reimburse those lawful and necessary work related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9. Defendants are liable for PAGA penalties resulting from their failure to reimburse necessary business expenses incurred by the Aggrieved Employees. Accordingly, Aggrieved Employees are entitled to recover, and hereby seek through this Representative Action, all civil and statutory penalties authorized for violations of California Labor Code §§ 1198 and 2802, and Section 9(B) of the applicable IWC Wage Orders, and Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code §§ 2802 and 2699(f)(2), and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).
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Failure to Issue Accurate and Itemized Wage Statements in Violation of Labor Code § 226

California Labor Code § 226(a) requires an employer to furnish each employee with an accurate, itemized wage statements in writing. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a), Aggrieved Employees suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. The wage statements given to Aggrieved Employees failed to accurately account for unpaid wages, overtime, premium pay for deficiently provided meal periods and rest breaks.

Additionally, for the purposes of Subsection (a)(9), Plaintiff seeks to expand the scope of the Aggrieved Employees she seeks to represent to extend to all individuals employed by Defendants during the applicable period. The wage statements issued to Aggrieved Employees failed to state all applicable hourly rates for which Aggrieved Employees were paid as required by Labor Code § 226(a)(9).

In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars ($4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code §226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial citation and one thousand dollars ($1,000) per employee for each violation in a subsequent citation, …"

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Failure to Issue Semimonthly Payments in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., and failing to provide them with checks and wage statements, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders.

Defendants also required Aggrieved Employees to work hours off the clock for which they were not compensated, including during interrupted or otherwise on-duty meal and rest periods. Defendants also failed to pay all overtime premium wages owed for work conducted on a work shift and a workday or miscalculated these premiums by not including all forms of remuneration in the regular rate, as addressed above. Therefore, when Aggrieved Employees received wage statements and pay checks, they did not compensate all hours worked on a timely basis, resulting in Defendants' systematic failure to pay all wages owed to Aggrieved Employees twice monthly in accordance with the requirements of Labor Code § 204. Additionally, by not providing wage statements as required under section 204, Defendants systematically violated Labor Code § 204 and § 226.

Given the above described off the clock work, Plaintiff was not paid at the correct overtime rate for all hours he worked after eight hours into a shift or over forty in a work week and that he was not paid all double time owed either. Defendants' uniformly applied payroll policies and practices thus resulted in further systematic and ongoing violations of the requirements of Labor Code § 204.

In light of the foregoing, Aggrieved Employees seek to recover wages and penalties, interest, fees and costs pursuant to Labor Code §§ 201.3, 210, 218.5, 558, and 1194. In failing to pay Aggrieved Employees minimum wages and overtime, off the clock work, by not providing proper meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders, entitling Aggrieved Employees to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 203, 204, 2926, 2927, and 2699.5 seeking all civil penalties available and applicable under Labor Code §§ 204, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

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Failure to Keep Records In Accordance With Labor Code § 1174

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, double time, premium pay, etc., and by not recording meal period start and end times, all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the forgoing, Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.* Defendants have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain time records showing when the employee begins and ends each work period, meal periods, wages earned pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked by the Aggrieved Employees, and they are entitled to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide the Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Aggrieved Employees under Labor Code §§ 226, 1174, 1198, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 558, 1174.5, 1199, and 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages earned by and owed to Aggrieved Employees at the time of their termination of within seventy-two hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties and wages under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199, 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Unfair Competition Under Business and Professions Code § 17200, *et seq.*

Consequently, Defendants' conduct has been and continues to be unfair, unlawful, and harmful to Aggrieved Employees and the general public in violation of Business & Professions Code § 17200 *et seq*.

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Plaintiff's PAGA Claim under Labor Code § 2698 *et seq*. and Recovery Bases:
After complying with the notice procedures of Labor Code § 2699.3 and the running of the notice period after the filing of the Class Action Complaint, Plaintiff will file an amended Complaint asserting, as a representative action on behalf of the California Attorney General and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed underlying claims and seeking penalties as specified by the applicable corresponding provisions.

The Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, *inter alia*, on the following California Labor Code sections: §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802, including as follows:

(a) Wage Claims: For failure to provide the Aggrieved Employees all earned regular pay and minimum wages for regular hours worked and for failure to pay overtime premium wages for overtime hours worked, failure to pay proper reporting time and sick pay under Labor Code §§ 510, 1194(a), 1197, and 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable under Labor Code §§ 227.3, 510, 558, 1194.2, 1197.1, 1198, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(b) Meal and Rest Period Claims: For failure to provide the Aggrieved Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable, including under paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide the Aggrieved Employees with wage statements or with accurate, itemized wage statements and failure to maintain employment records for Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code §226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial citation and one thousand dollars ($1,000) per employee for each violation in a subsequent citation, …";

(d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(e) Failure to Reimburse Business Expenses: For Defendants' failure to reimburse the necessary work related expenses incurred under Labor Code §§ 1197, 1197.1, 1198, and 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties available and applicable under Labor Code §§ 1197, 1197.1, 1198, 2802, 2699.5, and 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(f) All Alleged Violations of the IWC Wage Orders: For any above addressed violation of the applicable provisions of the IWC Wage Orders constituting violations of Labor Code § 1198 and Labor Code § 2699.5 and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

We have been constrained to initially move forward with the filing of this Complaint, alleging the causes of action discussed herein, without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

This letter and the attached Complaint therefore provide the requisite notice under the Act to the LWDA and Defendants by setting forth the specific provisions of the Labor Code and related provisions Plaintiff alleges have been violated, including the facts and relevant theories alleged against Defendants and joint employers. To prevent the violations described in the Complaint and herein from occurring, and to remedy past violations, Plaintiff respectfully requests that the LWDA conduct an investigation into Defendants' employment practices in accordance with the Act.

Wherefore we request that you advise us, by certified mail within sixty days of the postmark on this letter, whether you intend to proceed with these claims or whether the Aggrieved Employees should include them in an amended Labor Code § 2698 *et seq.* claim under the Act in an amended Complaint.

Regards,

D.LAW, INC.

David Yeremian

Cc: Oldcastle Infrastructure, Inc., by Certified Mail

EXHIBIT 3