

1 **JUSTICE FOR WORKERS, P.C.**

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6 Attorneys for Plaintiff ERIC ECHEVERRIA

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN BENITO**

10 ERIC ECHEVERRIA, an individual and on
11 behalf of all others similarly situated;

12 Plaintiff,

13 vs.

14 FIRECLAY TILE, INC., a Delaware
15 corporation; and DOES 1 through 50,

16 Defendants.
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Case No.: CU-23-00249

[Assigned for All Purposes to:
Hon. J. Omar Rodriguez, Dept. 1]

**DECLARATION OF WILLIAM C. SUNG
IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

(Filed concurrently with Motion for
Preliminary Approval; Declarations of Tiffany
L. Luu, Eric Echeverria, and Apex Class
Action, LLC; [Proposed] Order)

DATE: To be assigned
TIME: To be assigned
DEPT.: 1

Action Filed: November 3, 2023

Trial Date: Not Set

1 I, William C. Sung, hereby declare as follows:

2 1. I am an attorney licensed to practice law in the state of California and have been
3 admitted to practice before this Court. I am an attorney with the law firm of Justice for Workers,
4 P.C., counsel of record for Plaintiff Eric Echeverria (“Plaintiff”) in this action. I am lead counsel for
5 Plaintiff in this case and I have personal knowledge of the matters stated herein and if called and
6 sworn as a witness, I would and could competently testify under oath thereto.

7 **ATTORNEY QUALIFICATIONS**

8 2. My qualifications are as follow: I received my J.D. from the University of Southern
9 California Gould School of Law in 2011. During law school, I served as the Senior Content Editor
10 on the Southern California Law Review where I published the article: *Taking the Fight Back to Title*
11 *VII: A Case for Redefining “Because of Sex” to Include Gender Stereotypes, Sexual Orientation,*
12 *and Gender Identity*, Southern California Law Review, Volume 84:2 (Jan. 2011). During law
13 school, I also served as a judicial extern to U.S. Ninth Circuit Judge, Hon. Kim M. Wardlaw, and
14 U.S. Bankruptcy Court Judge, Hon. Ernest M. Robles; served as a law clerk to the General Counsel
15 of JM Eagle; and participated in the law school’s Employer Legal Advice Clinic.

16 3. After passing the California Bar, in December 2011, I began practicing management-
17 side employment law at the Los Angeles office of Lewis Brisbois Bisgaard & Smith LLP
18 (“LBBS”). In 2013, I began focusing my practice at Lewis Brisbois on representing employers in
19 wage and hour class and PAGA action lawsuits. In January 2017, I was elevated to the position of
20 Partner and Vice Chair of Lewis Brisbois’ Wage & Hour Class Action Practice Group. In
21 November 2020, I was elevated as the Co-Chair of Lewis Brisbois Wage & Hour Class Action
22 Practice Group, becoming one of the youngest attorneys to chair a practice group at LBBS. In
23 January 2022, I was voted in as an equity partner, becoming one of the youngest equity partners and
24 the third Asian-American equity partner in the history of this 1,500-attorney firm.

25 4. In May 2023, I left LBBS and co-founded Barber Ranen LLP.

26 5. In July 2023, I joined Justice for Workers, P.C. (“JFW”) and began heading its
27 Complex Litigation Practice Group where I focus my practice on representing employees in wage
28 and hour class and PAGA action lawsuits.

1 6. During my tenure as a wage and hour class action defense attorney, I have
2 represented employers in over 80 wage and hour class and/or PAGA action lawsuits. The following
3 is a list of wage and hour class and/or PAGA actions where I served as lead defense counsel or
4 primary handling attorney and in which final settlement approval was granted, I tried the case to
5 verdict, or I obtained a denial of motion for class certification: *Sylvia Martinez v. CCS Engineering*
6 *Fresno, Inc., et al.*, Los Angeles Superior Court, No. 22STCV14985, filed May 4, 2022 (PAGA
7 settlement approved on May 13, 2023); *Fidel Cruz v. Crescent Hotels & Resorts, LLC*, Sacramento
8 Superior Court, No. 34-2021-00299126, filed April 20, 2021 (PAGA settlement approved on
9 January 14, 2022); *Sidney Judge v. Aliso Viejo Brewing Company*, Orange County Superior Court,
10 No. 30-2021-01178139-CU-OE-CXC, filed January 8, 2021 (Class/PAGA settlement approved on
11 January 18, 2023); *Joseph Montgomery v. Copart, Inc.*, Sacramento Superior Court, No. 34-2020-
12 00280733, filed June 15, 2020 (Class/PAGA settlement approved on February 14, 2023); *Khawla*
13 *Majdoub v. Argent Hotel Management, LLC, et al.*, San Francisco Superior Court, No.
14 CGC20582921, filed February 13, 2020 (Class/PAGA settlement approved on September 9, 2022);
15 *Irene Quesada v. California Commerce Club, Inc.*, Los Angeles Superior Court, No.
16 19STCV41482, filed November 18, 2019 (PAGA settlement approved on November 17, 2021); *FPI*
17 *Management Wage and Hour Cases*, Los Angeles Superior Court, No. JCCP5050, filed August 19,
18 2019 (Class/PAGA settlement of two included cases approved on September 9, 2022); *Stephanie*
19 *Ouellette v. MKTG, Inc, et al.*, Los Angeles Superior Court, No. 19STCV27487, filed August 2,
20 2019 (Class/PAGA settlement approved on March 21, 2023); *Naomi Guynn-Neupane v. Magna*
21 *Legal Services, LLC, et al.*, U.S. District Court, Northern District of California, No. 5:19-CV-
22 02652, filed May 15, 2019 (Plaintiff's motion for class certification denied and defendant's motion
23 for summary judgment granted on October 6, 2021); *Janelle Murphy v. BBVA Compass*,
24 Sacramento Superior Court, No. 34-2018-00241658, filed September 28, 2018 (Class/PAGA
25 settlement approved on November 20, 2020); *George Gunn v. Shimadzu Precision Instruments,*
26 *Inc.*, Los Angeles Superior Court, No. BC719424, filed August 31, 2018 (Class/PAGA settlement
27 approved on June 22, 2020); *Lizbeth Garcia v. The Bay Clubs Company LLC*, San Diego Superior
28 Court, No. 37-2018-00029247-CU-OE-CTL, filed June 13, 2018 (PAGA settlement approved on

1 March 14, 2022); *Miguel Casillas v. FPI Management, Inc.*, Sacramento Superior Court, No. 34-
2 2018-00227643, filed February 22, 2018 (PAGA settlement approved on October 10, 2018); *Jesus*
3 *A. Hernandez v. J.V.C. Trucklines, Inc.*, San Bernardino Superior Court, No. CIVDS1714857, filed
4 August 3, 2017 (Class/PAGA settlement approved on May 22, 2018); *Mireya Castrejon v. CCS*
5 *Orange County Janitorial, Inc.*, Orange County Superior Court, No. 30-2017-00920076-CU-OE-
6 CXC, filed May 12, 2017 (Class/PAGA settlement approved on November 17, 2021); *Alfonso*
7 *Valadez v. California Commerce Club, Inc.*, Los Angeles Superior Court, No. BC644587, filed
8 December 20, 2016 (PAGA settlement approved on December 17, 2021); *Loreta B. Gharghani v.*
9 *Gefer Farms, Inc., et al.*, Los Angeles Superior Court, No. BC624938, filed June 23, 2016 (PAGA
10 settlement approved on January 14, 2021); *Salvador Magana v. Normandie Club Incorporated*, Los
11 Angeles Superior Court, No. BC621737, filed May 25, 2016 (Class/PAGA settlement approved on
12 October 26, 2018); *Kejuan Moore v. Farwest Insulation Contracting*, Los Angeles Superior Court,
13 No. BC588118, filed July 15, 2015 (PAGA settlement approved on August 26, 2016); *Maria*
14 *Dominguez v. Viva Bargain Center, Inc., et al.*, Los Angeles Superior Court, No. BC588049, filed
15 July 14, 2015 (Class/PAGA settlement approved on June 13, 2017); *Valentin Maracine v. Mesa*
16 *Verde Convalescent Hospital, Inc.*, Orange County Superior Court, No. 30-2015-00780115-CU-
17 OE-CXC, filed April 1, 2015 (Class/PAGA settlement approved on July 7, 2017); *Judy Pittacora, et*
18 *al. v. Aurora Vista Del Mar, LLC*, Ventura County Superior Court, No. 56-2014-00454445-CU-OE-
19 VTA, filed June 20, 2014 (Class/PAGA settlement approved on October 20, 2016); *Iffat "Iffy" Khan*
20 *v. FPI Management, Inc.*, Los Angeles Superior Court, No. BC541747, filed April 4, 2014
21 (Class/PAGA settlement approved on January 4, 2018); *Michael Luparello v. VIP Tours of*
22 *California, Inc., et al.*, Los Angeles Superior Court, No. BC538570, filed March 6, 2014 (First-
23 chaired certified class action trial through judgment on behalf of one of the defendants on August
24 16, 2019); *Bertram Riddick v. WDI International, Inc.*, Los Angeles Superior Court, No. BC507786,
25 filed May 2, 2013 (Class settlement approved on February 21, 2017); *Pedro Aviles v. Super A*
26 *Foods, Inc.*, Los Angeles Superior Court, No. BC504376, filed March 29, 2013 (Class/PAGA
27 settlement approved on March 9, 2016); *Jose Chavez v. Vallarta Food Enterprises, Inc., et al.*, Los
28 Angeles Superior Court, No. BC490630, filed August 21, 2012 (Class/PAGA settlement approved

1 on November 10, 2014); and *Melinda Gonzalez v. Workforce Outsourcing, Inc., et al.*, Los Angeles
2 Superior Court, No. BC489320, filed July 31, 2012 (Class/PAGA settlement approved on February
3 5, 2016).

4 7. In my current practice at JFW, I serve as the lead plaintiff's counsel on over 75
5 pending class and/or PAGA actions. In addition to this matter, I have resolved six other class and/or
6 PAGA actions at mediation. On August 2, 2024, Judge Harold W. Hopp of the Riverside County
7 Superior Court granted preliminary approval of class settlement and appointed me as class counsel
8 in *Lampkin v. Sunstates Security, Inc.*, Case No. CVRI2305600. The remaining matters are either
9 pending preliminary approval or in the pre-motion for preliminary approval process of negotiating
10 the long-form class and PAGA settlement agreements.

11 8. As counsel for Plaintiff and the proposed Class, I have been intimately
12 involved in this case since its inception and I believe that the proposed class settlement is an
13 excellent result for the Class. Enclosed as **Exhibit 1** is a true and correct copy of the parties' fully
14 executed Class Action and PAGA Settlement Agreement and Class Notice (the "Settlement").

15 **THE PARTIES AND BRIEF PROCEDURAL HISTORY**

16 9. Defendant Fireclay Tiles, Inc. ("Fireclay") owns and operates an architectural tile
17 manufacturing company in Aromas, California with showrooms in San Francisco and Berkeley.

18 10. On November 3, 2023, Plaintiff filed the Class Action Complaint in San Benito
19 County Superior Court, alleging the following causes of action against Defendant for (1) Minimum
20 Wage Violations; (2) Overtime Wage Violations; (3) Meal Period Violations; (4) Rest Period
21 Violations; (5) Wage Statement Penalties; (6) Waiting Time Penalties; (7) Failure to Reimburse
22 Necessary Business Expenses; and (8) Unfair Competition. Previously, on August 1, 2023, Plaintiff
23 sent the PAGA notice letter to the LWDA.

24 11. On the same day, November, 3, 2023, Plaintiff sent a notice letter under the
25 California Private Attorneys General Act ("PAGA") to the Labor and Workforce Development
26 Agency ("LWDA"). Enclosed as **Exhibit 2** is a true and correct copy of the November 3, 2023
27 Amended LWDA Letter.

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1 12. Subsequently, on January 30, 2024, Plaintiff filed the operative First Amended Class
2 and Representative Action Complaint (“FAC”) adding a cause of action for civil penalties under the
3 Private Attorneys’ General Act of 2004, Labor Code Section 2698, *et seq.* Enclosed as **Exhibit 3** is
4 a true and correct copy of the operative FAC.

5 **PLAINTIFF’S CLAIMS AND DEFENDANT’S DEFENSES**

6 13. Plaintiff contends that Defendant underpaid Class Members due to its allegedly
7 unlawful rounding policies/practices. Plaintiff contends that although Defendant’s timekeeping
8 system recorded hours worked to the minute, Defendant rounded all time punches to the nearest
9 quarter-hour from November 3, 2019 (the start of the Class Period) to September 19, 2021, resulting
10 in an underpayment of wages, including overtime wages, to Class Members. However, Defendant
11 argues that its rounding policies/practices were lawful, since it was both neutral on its face and
12 resulted, over time, in employees being paid for all hours worked. Defendant also contends that
13 multiple Courts of Appeal have found rounding mechanisms to be lawful under similar
14 circumstances. Additionally, Defendant asserts Plaintiff would be unable to certify a rounding class
15 given the individualized inquiries as to whether Class Members were in fact underpaid, or
16 potentially overpaid, for each workday in question.

17 14. Plaintiff alleges that Defendant failed to pay all overtime wages owed to Plaintiff and
18 Class Members by failing to include the value of all non-discretionary remuneration into the
19 “regular rate” of pay. Specifically, Plaintiff contends that Defendant failed to pay overtime at or
20 above the weighted average rate when Class Members received shift differentials; Defendant failed
21 to incorporate the following incentive compensation into the regular rate: Bonus, HPBonus,
22 MiscBonus, Incentive, and Servaward; and Defendant failed to pay meal period premiums and paid
23 sick leave at the regular rate. Defendant contends that it properly utilized the “rate-in-effect”
24 method when calculating the overtime rate when Class Members earned shift differentials and the
25 aforementioned types of incentives were discretionary in nature and need not be incorporated into
26 the regular rate of pay. Specifically, Bonus is an annual discretionary bonus, HPBonus is a
27 discretionary bonus for a specific hand painting department, MiscBonus is for small one-off
28 bonuses, Incentive was a sale commission no longer in use, and Servaward is a discretionary bonus

1 for length of tenure. Defendant further argues that Class Members received different types of
2 bonuses and incentives throughout the Class Period, creating substantive differences among the
3 Class Members with respect to the incentives received, making class certification unlikely

4 15. Plaintiff alleges that due to Defendant's scheduling policies and operational needs,
5 Class Members' first and second meal periods were frequently late (commencing after the fifth hour
6 of work) and/or short (i.e., less than a full 30 minutes). Plaintiff further challenges the validity of
7 Defendant's meal period waivers for second meal periods because the waiver form failed to disclose
8 to Class Members of their rights to meal period premiums being affected by their voluntary waiver.
9 As to rest periods, Plaintiff alleges that Class Members were not permitted to take a third rest break
10 when they worked more than 10 hours in a shift. Defendant counters that it has maintained
11 compliant written meal and rest period policies throughout the Class Period and has always
12 provided compliant meal and rest periods in line with those policies. Defendant further contends that
13 its meal period waivers are enforceable and the law does not require disclosure to employees that
14 they are waiving their rights to meal period premiums and most Class Members voluntarily waived
15 their second meal periods on shifts over 10.0 hours and under 12.0 hours so they do not need to stay
16 at work for an extra unpaid 30 minutes. Defendant further argues that any non-compliant meal
17 periods or rest periods resulted from lawful employee waiver or choice, rather than any systemic
18 policy and/or practice of Defendant. Finally, Defendant maintains Plaintiff's meal and rest period
19 claims are not suited for class certification since individual inquiries would be needed to assess
20 which employees, if any, took non-compliant or missed meal or rest periods, how many meal or rest
21 periods were non-compliant or missed, the reasons why a particular employee did not take a meal or
22 rest period on a particular shift, and for second meal periods, whether they waived the meal period.

23 16. Plaintiff contends that Defendant failed to reimburse necessary business expenses to
24 him and Class Members for the required use of their personal cellphones in the performance of their
25 job duties, including calling their supervisors while on shift. Defendant maintains Plaintiff's
26 reimbursement claims are not suited for class certification since individual inquiries would be
27 needed to assess which employees, if any, used their personal cellphone for work; whether they
28 were required to use their personal cellphone by Defendant or if it was merely convenient for them

1 to do so; whether they sought reimbursement from Defendant and were denied; and the amount of
2 their unreimbursed expenses.

3 17. As a result of the unpaid wages and unpaid meal and rest period premium wages
4 described above, Plaintiff contends that Defendant failed to comply with its final pay obligations set
5 forth in Labor Code §§ 201 to 203 to former employees and failed to issue accurate itemized wage
6 statements to Class Members as set forth in Labor Code § 226(a). Thus, the claims for waiting time
7 and wage statement penalties are derivative of the underlying unpaid wages and meal/rest period
8 claims. Defendant argues that it possesses strong, good faith defenses to Plaintiff's underlying
9 claims, thus precluding recovery of waiting time penalties, which are only available for the
10 "willful" failure to pay wages. Defendant further argues any alleged wage statement violations were
11 not "knowing and intentional," and Plaintiff cannot show the Class "suffer[ed] injury" due to the
12 alleged wage statement violations, as required by Labor Code § 226(e) for the imposition of
13 penalties. Notably, Defendant relied on the appellate decision of *Naranjo v. Spectrum Security*
14 *Services, Inc.* (2023) 88 Cal.App.5th 937, 951, for the proposition that an employer's good-faith
15 defenses precludes a "willfulness" finding under Labor Code § 203 and a "knowing and intentional"
16 finding under Labor Code § 226(e) for the imposition of statutory penalties (and this holding has
17 now been affirmed by the California Supreme Court in *Naranjo v. Spectrum Security Services, Inc.*
18 (May 6, 2024) 15 Cal.5th 1056). Defendant further asserts that Plaintiff's waiting time and wage
19 statement penalty exposure was grossly inflated as not every employee experienced the alleged
20 Labor Code violations.

21 18. As a result of the foregoing Labor Code violations, Plaintiff contends that Defendant
22 is liable for civil penalties under the PAGA. Since Plaintiff's PAGA claim is derivative of
23 Plaintiff's underlying wage claims, Defendant asserts the PAGA claim would fail with those claims.
24 Defendant further maintains that, given its good faith defenses, this Court would exercise its
25 discretion to substantially reduce any PAGA penalties if it were to find Defendant liable for any of
26 Plaintiff's claims.

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1 23. According to Defendant, there are approximately 404 Class Members. Therefore, the
2 average Individual Settlement Award from the NSA is projected to be approximately \$401.65.
3 There are also approximately 259 Aggrieved Employees during the PAGA Period who will each
4 receive an average of approximately \$28.96 as Individual PAGA Payments.

5 24. On Final Approval, JFW will apply for an attorneys' fees award of one-third of the
6 Gross Settlement Amount, which is currently estimated to be \$113,333.33, and up to \$15,000.00 in
7 verified costs reimbursement. The requested fee is fair compensation for undertaking complex,
8 risky, expensive, and time-consuming litigation on a purely contingent fee basis. JFW has incurred
9 substantial attorneys' fees conducting pre-filing investigation, analyzing Plaintiff's claims,
10 conducting legal research, conducting extensive informal discovery, analyzing Class Members'
11 payroll records, creating a comprehensive damages model, preparing for and attending mediation,
12 negotiating and preparing the long-form Settlement, preparing this Motion, and otherwise litigating
13 the case. JFW expects to expend additional attorney time in attending the hearing on this Motion,
14 overseeing the Class Notice process and fielding questions from Class Members, preparing the
15 Final Approval papers, and attending the Final Approval hearing.

16 **PRELIMINARY APPROVAL IS WARRANTED**

17 25. Although the Parties engaged in significant informal discovery prior to mediation,
18 the Parties still had significant formal discovery to complete had the matter not been settled. This
19 would have required the expenditure of substantial time and resources by both Parties that would
20 have very likely spanned several years. Even if Plaintiff were to certify the classes, the Parties
21 would incur considerably more attorneys' fees and costs through a possible decertification motion,
22 trial, and possible appeal. This Settlement avoids those risks and the accompanying expense.

23 26. Absent settlement, there was a risk that there would not be a certified class at the
24 time of trial, or if there were, it would consist of a significantly smaller group of employees than the
25 proposed Class (either due to a narrowing of the class definition in a Court order on a contested
26 motion for class certification, or through settlement agreements entered into by Defendant with
27 individual Class Members by way of *Pick Up Stix* type settlement agreements), and the expected
28 recovery could be significantly reduced, given the settlement amounts that are typically offered

1 through the *Pick Up Stix* process.

2 27. Based on Plaintiff's analysis of the sampling time records, Class Members lost a
3 total of 494.02 hours due to rounding, gained only 256.5 hours, experienced a net loss of 237.52
4 hours. Therefore, looking at shifts in which Class Members lost time due to rounding and
5 extrapolating the 25% sampling across the portion of the Class Period in which there was rounding
6 (November 3, 2019 to September 19, 2021), Plaintiff estimates Defendant's maximum exposure for
7 this claim is approximately \$41,836.09. However, only 56.86% of shifts were rounded against Class
8 Members while 28.90% of shifts were rounded in their favor and 14.24% were neutral, which
9 support Defendant's argument that multiple Courts of Appeal have found rounding practices to be
10 lawful under similar circumstances. Defendant further argues that it employed a neutral rounding
11 practice and Plaintiff would be unable to certify a rounding class given the individualized inquiries
12 as to whether Class Members were in fact underpaid, or potentially overpaid, for each workday in
13 question. In light of these defenses and arguments, Plaintiff discounted Defendant's maximum
14 exposure by 25% for the risk of non-certification, and an additional 50% to account for Defendant's
15 defenses on the merits to arrive at an estimated potential recovery for these claims of approximately
16 \$15,688.53.

17 28. Plaintiff alleges that Defendant miscalculated employees' regular rate of pay by
18 failing to include non-discretionary bonuses into the "regular rate" when calculating overtime pay,
19 meal period premiums, and paid sick leave. Based on the data provided by Defendant, Plaintiff
20 calculated Defendant's maximum potential liability to be approximately \$22,970 in unpaid wages
21 due to the regular rate violations during the Class Period. As stated above, Defendant contends that
22 it properly utilized the "rate-in-effect" method when calculating the overtime rate when Class
23 Members earned shift differentials and the aforementioned types of incentives were discretionary in
24 nature and need not be incorporated into the regular rate of pay. Defendant further argues that Class
25 Members received different types of bonuses and incentives throughout the Class Period, creating
26 substantive differences among the Class Members with respect to the incentives received, making
27 class certification unlikely. In light of these defenses and arguments, Plaintiff discounted
28 Defendant's maximum exposure by 25% for the risk of non-certification, and an additional 50% to

1 account for Defendant's defenses on the merits to arrive at an estimated potential recovery for these
2 claims of approximately \$8,613.75.

3 29. Plaintiff alleges that Defendant failed to provide compliant meal periods to Class
4 Members. Based on Plaintiff's analysis of the sampling time and payroll records, Plaintiff found on
5 average 1.67 meal period violations per pay period. Extrapolating across the entire Class Period,
6 Plaintiff estimates the maximum exposure for this claim to be \$525,126.91.

7 30. However, as noted above, Defendant contends that it maintained compliant meal
8 period policies throughout the Class Period and provided compliant meal periods in line with those
9 policies. Defendant also asserts that under *Brinker* it is only required to "provide" the opportunity to
10 take meal periods, not "ensure" meal periods are taken, and that, as described above, it has always
11 done so, and any non-complaint first meal periods in the timekeeping records were the result of
12 lawful employee waiver or choice. Defendant also maintains that its meal period waivers with Class
13 Members were enforceable. Finally, Defendant argues that meal period claim is not suited for class
14 certification, since individual inquiries would be needed to assess which employees took non-
15 compliant meal periods or missed meal periods, how many meal periods were non-compliant or
16 missed, and the reasons why a particular employee did not take a compliant meal period on a
17 particular shift. In light of these defenses and arguments, Plaintiff discounted Defendant's
18 maximum exposure by 60% for the risk of non-certification, and an additional 50% to account for
19 Defendant's defenses on the merits or failing to recover the full amount sought, to arrive at an
20 estimated total of approximately \$105,025.38.

21 31. Plaintiff alleges that Defendant failed to provide third rest periods to Class Members
22 when they worked more than 10 hours in a shift. Based on Plaintiff's analysis of the sampling time
23 and payroll records, Class Members worked over 10 hours in 4,352 shifts. Extrapolating the 25%
24 sampling across the full Class Period, Plaintiff estimates Defendant's maximum exposure for
25 unpaid rest period premiums as \$402,728.10.

26 32. However, as discussed above, Defendant argues that it always maintained and
27 enforced lawful rest period policies and practices during the Class Period. Defendant also maintains
28 that any failure to take rest periods was the result of employee waiver or choice, and that it is not

1 required to police rest periods. Defendant further argues that Plaintiff's rest period claim is not
2 amenable to class treatment as individualized inquiries would be required to determine which
3 employees failed to take rest periods, and the reasons why each employee failed to take a rest period
4 on a particular shift. These considerations are particularly present with respect to rest periods,
5 Defendant argues, as rest periods are not—and need not be—recorded. In light of these defenses,
6 Plaintiff discounted the maximum amount that the class could potentially recover by 60% for risk of
7 non-certification, and discounted an additional 50% for risk of being unsuccessful on the merits or
8 failure to recover the full amount sought, to arrive at a projected exposure of \$55,363.24.

9 33. Defendant's records show approximately 212 formerly employed Class Members
10 who separated their employment with Defendant since November 3, 2020 (three years prior to filing
11 of the Complaint) and are therefore eligible for waiting time penalties. Thus, Plaintiff estimated the
12 maximum waiting time penalty exposure to be approximately \$1,031,846.40 ($\19.50×8.32 hours
13 per day $\times 30$ days).

14 34. Defendant presented several defenses to this claim, most notably its assertion that
15 because they possessed good-faith defenses to the underlying claims for unlawful rounding, regular
16 rate miscalculation, and meal and rest period violations, and any failure to pay wages was not
17 "willful" as a matter of law. Defendant further asserts that Plaintiff's waiting time penalty exposure
18 was grossly inflated as not every former employee experienced the alleged Labor Code violations.
19 Moreover, because the waiting time claim is derivative of Plaintiff's underlying wage claims,
20 Plaintiff would need to overcome Defendant's defenses, both as to class certification and on the
21 merits, as to the underlying claims. Plaintiff discounted the maximum exposure by 50% for the risk
22 of non-certification and an additional 80% for the risk of losing on the merits and/or not receiving
23 the maximum penalties sought to arrive at an estimated exposure of approximately \$103,184.64.

24 35. Plaintiff alleges that Defendant is liable for wage statement penalties as a result of
25 the unpaid wages and unpaid meal and rest period premiums. Those penalties are calculated as \$50
26 for each "initial" violation and \$100 for each "subsequent" violation, with a maximum of \$4,000
27 per employee. *See* Labor Code § 226(e). Defendant's data reflected there were approximately 6,536
28 wage statements issued to Class Members since November 3, 2022 (one year prior to the filing of

1 the Complaint) and that approximately 56.76% of the pay periods in the sampling had a potential
2 rounding, regular rate, meal period, and rest period violation. Plaintiff, therefore, calculated
3 maximum exposure for wage statement penalties at \$185,491.68 (6,536 wage statements x \$50 per
4 wage statement x 56.76%).

5 36. As discussed above, Defendant presented several defenses to this claim, most
6 notably its assertion that because they possessed good-faith defenses to the underlying claims for
7 unlawful rounding, regular rate miscalculation, and meal and rest period violations, and any failure
8 to pay wages was not “willful” as a matter of law. Moreover, because the wage statement claim is
9 derivative of Plaintiff’s underlying wage claims, Plaintiff would need to overcome Defendant’s
10 defenses, both as to class certification and on the merits, as to his underlying claims. To account for
11 Defendant’s defenses, Plaintiff discounted the maximum exposure by 50% for the risk of non-
12 certification and an additional 80% for the risk of losing on the merits and/or not receiving the
13 maximum penalties sought to arrive at an estimated exposure of approximately \$18,549.10.

14 37. Plaintiff estimated a maximum total PAGA exposure of approximately \$653,600
15 (6,536 pay periods during the PAGA Period x \$100 “initial” penalty). However, these penalties
16 derive from the underlying wage and hour violations discussed above, which Defendant disputes
17 vigorously. Defendant also asserts that the Court would drastically reduce any award of PAGA
18 penalties as “confiscatory.” Therefore, Plaintiff discounted the maximum figure by 80% for the risk
19 of losing on the merits and/or not recovering a PAGA penalty for each and every pay period and to
20 account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of
21 approximately \$130,720.

22 38. Using these estimated figures for each of the claims described above, Plaintiff
23 predicted that the potential realistic recovery for the Settlement Class would be approximately of
24 \$521,829.03. The proposed Settlement of \$340,000 represents approximately 65.16% of the
25 reasonably forecasted recovery for the Settlement Class.

26 39. On August 28, 2024, I caused a copy of the Motion for Preliminary Approval of
27 Class Settlement, supporting Declarations, and Proposed Order to be uploaded to the LWDA's
28 website.

1 40. Based on Defendant's disclosures, I am not aware of any other pending matter
2 asserting claims that will be extinguished or affected by the Settlement.

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

5 Executed on August 28, 2024 at Los Angeles, California.

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8 _____
William C. Sung

EXHIBIT 1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff ERIC ECHEVERRIA (“Plaintiff”) and Defendant FIRECLAY TILE, INC. (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1 “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *Eric Echeverria v. Fireclay Tile, Inc.*, Case No. CU-23-00249, initiated on November 3, 2023 and pending in the Superior Court of the State of California, County of San Benito.
- 1.2 “Administrator” means Apex Class Action, LLC, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3 “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4 “Aggrieved Employee” means a person employed by Defendant in California and classified as a non-exempt, hourly employee, who worked for Defendant during the PAGA Period, and who has no right to opt out of the PAGA portion of the settlement..
- 1.5 “Class” or “Class Member(s)” means all persons employed by Defendant in California and classified as a non-exempt, hourly employee and who worked for Defendant during the Class Period.
- 1.6 “Class Counsel” means William C. Sung and Tiffany L. Luu of Justice for Workers, P.C.
- 1.7 “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8 “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, Social Security number, email address (if available), and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9 “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

- 1.10 “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.11 “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members attached as **Exhibit A** and incorporated by reference into this Agreement.
- 1.12 “Class Period” means the period from November 3, 2019 to July 3, 2024.
- 1.13 “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as Class Representative, Eric Echeverria.
- 1.14 “Class Representative Service Payments” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15 “Court” means the Superior Court of California, County of San Benito.
- 1.16 “Defendant” means named Defendant Fireclay Tile, Inc.
- 1.17 “Defense Counsel” means Sumy Kim and Victor C. Ng of O’Hagan Meyer LLP.
- 1.18 “Effective Date” means the date by 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) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or (c) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.19 “Final Approval” or “Final Approval Order” means the Court’s Order Granting Final Approval of the Settlement.
- 1.20 “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21 “Final Judgment” means the Judgment entered by the Court upon granting Final Approval of the Settlement.
- 1.22 “Gross Settlement Amount” means the non-reversionary amount of Three Hundred and Forty Thousand Dollars (\$340,000.00) which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay Individual Class Payments,

Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments and the Administrator's Expenses.

- 1.23 "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period, as set forth in Paragraph 1.28 below.
- 1.24 "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period, as set forth in Paragraph 1.35 below.
- 1.25 "Judgment" means the judgment entered by the Court based upon the Final Approval.
- 1.26 "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.27 "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i), as set forth in Paragraph 1.35 below.
- 1.28 "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29 "Non-Participating Class Member" means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30 "Operative Complaint" means the First Amended Complaint filed on January 30, 2024.
- 1.31 "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.32 "PAGA Period" means the period from November 3, 2022 to July 3, 2024.
- 1.33 "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.34 "PAGA Notice" means Plaintiff's November 3, 2023 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.35 "PAGA Penalties" means the total amount of PAGA civil penalties of Thirty Thousand Dollars (\$30,000.00) to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees, or Seven Thousand and Five Hundred

Dollars (\$7,500.00) and the 75% to LWDA, or Twenty-Two Thousand Five Hundred Dollars (\$22,500.00) in settlement of PAGA claims.

- 1.36 “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.37 “Plaintiff” means Eric Echeverria, the named Plaintiff in the Action.
- 1.38 “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.39 "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval of the Settlement.
- 1.40 “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.
- 1.41 “Released PAGA Claims” means the claims being released as described in Paragraph 5.3 below.
- 1.42 “Released Parties” means: Defendant and each of their former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, affiliates.
- 1.43 “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.44 “Response Deadline” means 60 calendar days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.45 “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.46 “Workweek” means any week during which a Class Member worked for Defendant for at least one day, during the Class Period.

2. RECITALS.

- 2.1 On November 3, 2023, Plaintiff commenced this Action by filing a Class Action Complaint alleging causes of action against Defendant for (1) Minimum Wage Violations (Labor Code §§ 1182.12, 1194, 1194.2, 1197); (2) Overtime Wage Violations (Labor Code §§ 204, 510, 1194, 1198); (3) Meal Period Violations (Labor Code §§ 226.7, 512, 558); (4) Rest Period Violations (Labor Code §§ 226.7,

516, 558); (5) Wage Statement Penalties (Labor Code § 226); (6) Waiting Time Penalties (Labor Code §§ 201-203); (7) Failure to Reimburse Necessary Business Expenses (Labor Code § 2802); and (8) Unfair Competition (Bus & Prof Code §§ 17200, *et seq.*). On October 6, 2023, Plaintiff filed the operative First Amended Complaint (“FAC”) alleging a cause of action for Civil Penalties Under the California Private Attorneys General Act.

- 2.2 Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notices.
- 2.3 On June 3, 2024, the Parties participated in an all-day mediation presided over by mediator Lisa Klerman, Esq. which led to this Agreement to settle the Action.
- 2.4 Prior to negotiating the Settlement, Plaintiff obtained, through informal discovery, a class list of putative class members with unique employee identifying numbers, dates of employment, and hourly rates; information regarding the number of workweeks worked during the class period and pay periods worked during the PAGA period; a 25% randomized sampling of employee time and payroll records; various policies and procedural documents, including employee handbooks, meal and rest period policy, meal period waiver, and alternative workweek agreements; and Plaintiff’s personnel records. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).
- 2.5 The Court has not granted class certification.
- 2.6 The Parties, Class Counsel and Defense Counsel are not aware of any other pending matter asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1 **Gross Settlement Amount.** Except as otherwise provided by Paragraph 8 below, Defendant promises to pay Three Hundred and Forty Thousand Dollars (\$340,000.00) and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.
- 3.2 **Payments from the Gross Settlement Amount.** The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval Order:

- 3.2.1 **To Plaintiff:** Class Representative Service Payments to the Class Representatives of not more than Ten Thousand Dollars (\$10,000.00) (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representatives are entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiff's request for Class Representative Service Payments that does not exceed this amount. As part of the Final Approval motion, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payments using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.
- 3.2.2 **To Class Counsel:** A Class Counsel Fees Payment of not more than 33.33%, which is currently estimated to be \$113,333.33 and a Class Counsel Litigation Expenses Payment of not more than \$15,000.00. Defendant will not oppose requests for these payments provided that Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment do not exceed these amounts. As part of the Final Approval motion, Plaintiff and/or Class Counsel will request approval of the Class Counsel Fees Payment and Class Litigation Expenses Payment. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fees Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of the Class Counsel Fees Payment and/or Class Counsel Litigation Expenses Payment.
- 3.2.3 **To the Administrator:** An Administrator Expenses Payment not to exceed Nine Thousand and Four Hundred Dollars (\$9,400.00) except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than Nine Thousand and Four Hundred Dollars (\$9,400.00), the Administrator will retain the remainder in the Net Settlement Amount.
- 3.2.4 **To Each Participating Class Member:** An Individual Class Payment is 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.

3.2.4.1 Tax Allocation of Individual Class Payments. 20% of each Participating Class Member's Individual Class Payment will be allocated to the settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for [e.g., interest, penalties, and non-wage damages] (the "Non-Wage Portion"). The Non-Wage Portions are 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.

3.2.4.2 Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of Thirty Thousand Dollars (\$30,000.00) to be paid from the Gross Settlement Amount, with 75%, or Twenty-Two Thousand and Five Hundred Dollars (\$22,500.00) allocated to the LWDA PAGA Payment and 25%, or Seven Thousand and Five Hundred Dollars (\$7,500.00) allocated to the Individual PAGA Payments.

3.2.5.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties, or Eight Thousand and Seventy Hundred and Fifty Dollars (\$8,750.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

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

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1 **Class Workweeks and Aggrieved Employee Pay Periods.** Based on a review of its records extrapolated to the date of mediation of June 3, 2024, Defendant estimates there are 404 Class Members who collectively worked a total of 33,805 Workweeks, and 259 Aggrieved Employees who worked a total 7,404 of PAGA Pay Periods.
- 4.2 **Class Data.** Not later than twenty-one (21) calendar days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant have a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.3 **Funding of Gross Settlement Amount.** Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 15 calendar days after the Effective Date.
- 4.4 **Payments from the Gross Settlement Amount.** Within fifteen (15) calendar days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
- 4.4.1 The Administrator will issue checks for the Individual Class Payments and Individual PAGA Payments and send them to the Participating Class Members and Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than one hundred eight (180) calendar days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved

Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

- 4.4.2 The Administrator must conduct a Class Member Address Search for all other Participating Class Members and Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within seven (7) calendar days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Participating Class Members and Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Participating Class Member and/or Aggrieved Employee whose original check was lost or misplaced, requested by the Participating Class Member and/or Aggrieved Employee prior to the void date.
- 4.4.3 For any Participating Class Member and/or Aggrieved Employee whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).
- 4.4.4 The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Participating Class Members or Aggrieved Employees (such as increased retirement, 401(k) benefits or matching benefits, deferred compensation benefits (notwithstanding any contrary language or agreement in any benefit or compensation plan document) or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and fund all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, and Class Members will release claims against all Released Parties as follows:

- 5.1 Plaintiff's Release.** Plaintiff and his representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts

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

5.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542.

For purposes of Plaintiff's Release, subject to applicable carve out listed above, Plaintiff expressly waive and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

- 5.2 Release by Participating Class Members:** All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint, including, (a) any and all claims involving any alleged (1) Minimum Wage Violations; (2) Overtime Wage Violations; (3) Meal Period Violations; (4) Rest Period Violations; (5) Wage Statement Penalties; (6) Waiting Time Penalties; (7) Failure to Reimburse Necessary Business Expenses; and (8) Unfair Competition. Participating Class Members only release these claims for the duration of the Class Period. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.
- 5.3 Release by Aggrieved Employees:** All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, including, any and all claims involving any alleged (1) Minimum Wage Violations (Labor Code §§ 1182.12, 1194, 1194.2, 1197); (2) Overtime Wage Violations (Labor Code §§ 204, 510, 1194, 1198); (3) Meal Period Violations (Labor Code §§ 226.7, 512, 558); (4) Rest Period Violations

(Labor Code §§ 226.7, 516, 558); (5) Wage Statement Penalties (Labor Code § 226); (6) Waiting Time Penalties (Labor Code §§ 201-203); (7) Failure to Reimburse Necessary Business Expenses (Labor Code § 2802); and (8) Unfair Competition (Bus & Prof Code §§ 17200, *et seq.*). Aggrieved Employees only release these claims for the duration of the PAGA Period.

6. MOTION FOR PRELIMINARY APPROVAL. The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”).

6.1 [RESERVED]

6.2 Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel a draft proposed Order Granting Preliminary Approval; a draft proposed Class Notice; and a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance.

6.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court’s Preliminary Approval to the Administrator.

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

7. SETTLEMENT ADMINISTRATION.

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

- 7.2 **Employer Identification Number.** The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 7.3 **Qualified Settlement Fund.** The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.
- 7.4 **Notice to Class Members.**
- 7.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.
- 7.4.2 Using best efforts to perform as soon as possible, and in no event later than fourteen (14) calendar 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 Class Notice (with Spanish translation) substantially in the form attached to this Agreement as **Exhibit A**. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.
- 7.4.3 Not later than three (3) business days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- 7.4.4 The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional fourteen (14) calendar days beyond the sixty (60) calendar days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- 7.4.5 If the Administrator, Defendant Counsel, or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the

Parties will expeditiously meet and confer in person or by telephone, and in good faith in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than fourteen (14) calendar days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

7.5 Requests for Exclusion (Opt-Outs).

- 7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than sixty (60) calendar days after the Administrator mails the Class Notice (plus an additional fourteen (14) calendar days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- 7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
- 7.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Release and Aggrieved Employee Release under Paragraphs 5.2 and 5.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- 7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion

upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.4 of this Agreement and are eligible for an Individual PAGA Payment.

7.5.5 The Parties agree that if five percent (5%) or more of the Class Members opt out of the settlement, Defendant shall have the option to cancel the Agreement. Defendant agrees not to induce or influence Class Members to opt out of the settlement. If Defendant exercises this option, Defendant will pay all costs incurred by the Administrator.

7.6 **Challenges to Calculation of Workweeks.** Each Class Member shall have sixty (60) calendar days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

7.7 **Objections to Settlement.**

7.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

7.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than sixty (60) calendar days after the Administrator's mailing of the Class Notice (plus an additional fourteen (14) calendar days for Class Members whose Class Notice was re-mailed).

7.7.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

- 7.8 **Administrator Duties.** The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.
- 7.8.1 **Email Address and Toll-Free Number.** The Administrator will maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.
- 7.8.2 **Requests for Exclusion (Opt-outs) and Exclusion List.** The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than five (5) calendar days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
- 7.8.3 **Weekly Reports.** The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- 7.8.4 **Workweek and/or Pay Period Challenges.** The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- 7.8.5 **Administrator’s Declaration.** Not later than fourteen (14) calendar days after the Response Deadline, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of the Class Notice, the total number of Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from the Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or

requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

- 7.8.6 **Final Report by Settlement Administrator.** Within ten (10) calendar days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least fifteen (15) calendar days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE.

- 8.1 Based on its records, Defendant estimates that, as of the date of mediation, (1) there were 404 Class Members who collectively worked a total of 33,805 Workweeks and (2) there were 259 Aggrieved Employees who worked a total 7,404 of PAGA Pay Periods.

- 8.2 The Gross Settlement Amount was agreed upon based on Defendant's representations of the total number of Workweeks in the Class Period. If the total number of Workweeks is five percent (5%) higher (35,495 Workweeks), then Defendant shall have the option to either: (1) de-escalate the Class Period so that the Class Period ends on the date that the Workweek count totals no more than 35,495; or (2) permit the Gross Settlement Amount to be increased proportionally by the Workweeks worked in excess of five percent (5%) (or 35,495 Workweeks) multiplied by the per Workweek value of \$10.06. The PAGA Period will end on the same date as the Class Period.

- 9. MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel as soon as practicable prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

- 10.1 **Response to Objections.** Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

- 10.2 **Duty to Cooperate.** If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members or Aggrieved Employees), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.
- 10.3 **Continuing Jurisdiction of the Court.** The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.
- 10.4 **Waiver of Right to Appeal.** Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.
- 10.5 **Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment.** If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Participating Class Members or Aggrieved Employees), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.
10. **AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

11. ADDITIONAL PROVISIONS.

- 12.1 **No Admission of Liability, Class Certification, or Representative Manageability for Other Purposes.** This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserve the right to contest certification of any class for any reasons, and Defendant reserve all available defenses to the claims in the Action, and Plaintiff reserve the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement, and the Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).
- 12.2 **Confidentiality Prior to Preliminary Approval.** Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 12.3 **No Solicitation.** The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

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

- 12.13 **Confidentiality.** To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.14 **Use and Return of Class Data.** Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.
- 12.15 **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 12.16 **Calendar Days.** Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 12.17 **Notice.** All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

William C. Sung
william@justiceforworkers.com
Tiffany L. Luu
tluu@justiceforworkers.com
Justice for Workers, P.C.
3600 Wilshire Boulevard, Suite 1815
Los Angeles, CA 90010

To Defendant:

Sumy Kim
skim@ohaganmeyer.com
Victor C. Ng
vng@ohaganmeyer.com

O'Hagan Meyer LLP
One Embarcadero Center, Suite 2100
San Francisco, CA 94111

12.18 **Execution in Counterparts.** This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12.19 **Stay of Litigation.** The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Dated: 07 / 23 / 2024



Plaintiff Eric Echeverria

Dated: _____

Eric Edelson for:
Defendant Fireclay Tile, Inc.

Dated: 07/23/2024

JUSTICE FOR WORKERS, P.C.


William C. Sung
Tiffany L. Luu
Attorneys for Plaintiff and the Class

Dated: _____

O'HAGAN MEYER

Sumy Kim
Victor C. Ng
Attorneys for Defendant

O'Hagan Meyer LLP
One Embarcadero Center, Suite 2100
San Francisco, CA 94111

12.18 **Execution in Counterparts.** This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12.19 **Stay of Litigation.** The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Dated: _____

Plaintiff Eric Echeverria

Dated: 7/24/24

Eric Edelson

Signature: 
Eric Edelson (Jul 24, 2024 20:35 PDT)

Eric Edelson for: **Email:** eric@fireclaytile.com
Defendant Fireclay Tile, Inc.

Dated: _____

JUSTICE FOR WORKERS, P.C.

William C. Sung
Tiffany L. Luu
Attorneys for Plaintiff and the Class

Dated: 7/24/24

O'HAGAN MEYER



Sumy Kim
Victor C. Ng
Attorneys for Defendant

EXHIBIT A

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING
DATE FOR FINAL COURT APPROVAL**

Eric Echeverria v. Fireclay Tile, Inc., Case No.: CU-23-00249

The Superior Court for the State of California authorized this Notice. Read it carefully!

It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.

You may be eligible to receive money from an employee class action lawsuit ("Action") against Fireclay Tile, Inc. ("Fireclay Tile") for alleged wage and hour violations. The Action was filed by former Fireclay Tile employee Eric Echeverria ("Plaintiff") who alleges Fireclay Tile violated various provision of the California Labor Code and seeks (1) unpaid wages, (2) meal and rest break premiums, (3) reimbursement for business expenses, (4) statutory penalties and other relief for a class of non-exempt hourly employees ("Class Members") who worked for Fireclay Tile during the Class Period (November 3, 2019 to July 3, 2024); and (2) penalties under the California Private Attorney General Act ("PAGA") for all non-exempt employees who worked for Fireclay Tile during the PAGA Period (November 3, 2022 to July 3, 2024) ("Aggrieved Employees").

Fireclay Tile denies all liability, denies all allegations in the Action, and has raised various defenses to the claims. Fireclay Tile asserts that it fully complied with all applicable wage and hour laws, and contends that civil penalties under PAGA are not warranted. Fireclay Tile also denies that the Action is suitable for class certification. Fireclay Tile has entered into the Settlement solely for purposes of resolving this dispute to avoid costly, disruptive, and time-consuming litigation and does not admit to any wrongdoing or liability.

The proposed Settlement has two main parts: (1) a Class Settlement requiring Fireclay Tile to fund Individual Class Payments, and (2) a PAGA Settlement requiring Fireclay Tile to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency ("LWDA").

Based on Fireclay Tile's records, and the Parties' current assumptions, your Individual Class Payment is estimated to be \$ [REDACTED] (less withholding) and your Individual PAGA Payment is estimated to be \$ [REDACTED]. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Fireclay Tile's records you are not eligible for an Individual PAGA Payment under the Settlement because you didn't work during the PAGA Period.)

The above estimates are based on Fireclay Tile's records showing that you worked [REDACTED] workweeks during the Class Period and you worked [REDACTED] pay periods during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval of the Settlement. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and

Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Fireclay Tile to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Fireclay Tile.

If you worked for Fireclay Tile during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

1. **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Fireclay Tile.
2. **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Fireclay Tile, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Fireclay Tile will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement. If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Fireclay Tile that are covered by this Settlement (Released Claims).

You Can Opt-Out of the Class Settlement but not the PAGA Settlement. The Opt-out Deadline is **DATE**. If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.

You Cannot Opt-out of the PAGA Portion of the Proposed Settlement. Fireclay Tile must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).

Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement. Written objections must be submitted by **DATE**. All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff. Other than the

PAGA portion of this Settlement, you can object to any aspect of this Settlement. See Section 7 of this Notice.

You Can Participate in the Final Approval Hearing. The Court's Final Approval Hearing is scheduled to take place on **DATE**. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.

You Can Challenge the Calculation of Your Workweeks/Pay Periods. Written Challenges Must be Submitted by **DATE**. The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number of Workweeks and number of Pay Periods you worked according to Fireclay Tile's records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by **DATE**. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former Fireclay Tile employee. The Action accuses Fireclay Tile of violating California labor laws by failing to pay overtime wages, minimum wages, meal and rest break premium wages, wages due upon termination and reimbursable expenses, meal breaks, rest breaks and accurate itemized wage statements. Based on the same claims, Plaintiff have also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) ("PAGA"). Plaintiff is represented by Justice for Workers, P.C. ("Class Counsel") in the Action.

Fireclay Tile strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Fireclay Tile violated any laws. In the meantime, Plaintiff and Fireclay Tile hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an end to the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Fireclay Tile have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Fireclay Tile does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Fireclay Tile has agreed to pay a fair, reasonable, and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable, and adequate, authorized this Notice, and scheduled a hearing to determine whether to finally approve the Settlement.

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

Fireclay Tile Will Pay \$340,000.00 as the Gross Settlement Amount (Gross Settlement).

Fireclay Tile has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, Fireclay Tile will fund the Gross Settlement no later than fifteen (15) calendar days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:

- Up to \$113,333.33 (33.33% of the Gross Settlement] to Class Counsel for attorneys' fees and up to \$15,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
- Up to \$10,000.00 as a Class Representative Service Payment to Plaintiff for filing the Action, working with Class Counsel and representing the Class. A Class Representative Service Payment will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
- Up to \$9,400.00 to the Administrator for services administering the Settlement.
- Up to \$30,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

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

Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.

Taxes Owed on Payments to Class Members. Plaintiff and Fireclay Tile are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages ("Wage Portion") and 80% to penalties, interest, and non-wage damages ("Non-Wage Portion"). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Fireclay Tile will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Fireclay Tile have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

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

Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Settlement, unless you notify the Administrator in writing, not later than **DATE**, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the Response Deadline. The Request for Exclusion should be a letter from you or your representative setting forth your name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Fireclay Tile.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Fireclay Tile based on the PAGA Period facts alleged in the Action.

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

Administrator. The Court has appointed a neutral company, Simpluris, Inc. (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.

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

Participating Class Members' Release: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint including, all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint, including, 'any and all claims involving any alleged failure to pay minimum wages and overtime time wages, meal and rest period violations, wage statement penalties, waiting time penalties, and unreimbursed business expenses during the Class Period. Participating Class Members' only release these claims for the duration of the Class Period.

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

The Aggrieved Employees' Release: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties, from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice including, all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, including, any and all claims involving any alleged failure to pay minimum wages and overtime time wages, meal and rest period violations, wage statement penalties, waiting time penalties, and unreimbursed business expenses. Aggrieved Employees only release these claims for the duration of the PAGA Period.

HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

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

Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$7,500.00 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of Pay Periods worked by each individual Aggrieved Employee.

Workweek/Pay Period Challenges. The number of Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Fireclay Tile's records, are stated in the first page of this Notice. You have until **DATE** to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Fireclay Tile's calculation of Workweeks and/or Pay Periods based on Fireclay Tile's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Fireclay Tile's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

4. HOW WILL I GET PAID?

Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment. **Non-Participating Class Members.** The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Settlement (i.e., every Non-Participating Class Member).

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

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

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Echeverria v. Fireclay Tile Labs*, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. The Administrator must be sent your request to be excluded by **DATE**, or it will be invalid. Section 9 of the Notice has the Administrator's contact information.

6. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Fireclay Tile are asking the Court to approve. At least 16 court days before the Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff are requesting as a Class Representative Service Payments. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you.

A Participating Class Member who disagrees with any aspect of the Agreement or the Motion for Final Approval may wish to object, for example, that the proposed Settlement is unfair, or that the

amounts requested by Class Counsel or Plaintiff are too high or too low. The deadline for sending written objections to the Administrator is **DATE**. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action *Echeverria v. Fireclay Tile, Inc.* and include your name, current address, telephone number, and approximate dates of employment with Fireclay Tile and sign the objection. Section 9 of this Notice has the Administrator's contact information.

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

7. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on **DATE** at **TIME** in Department **INSERT** of the San Benito Superior Court, located at 450 Fourth Street, Hollister, CA 95023. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually. Check the Court's website (<https://www.sanbenito.courts.ca.gov/home-public-portal>) for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Court's website beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

8. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Fireclay Tile and Plaintiff have promised to do under the proposed Settlement. If you have questions or would like additional information, you can telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<https://www.sanbenito.courts.ca.gov/home-public-portal>) and entering the Case Number for the Action, *Echeverria v. Fireclay Tile, Inc.*, Case No. CU-23-00249.

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

Class Counsel:

William C. Sung
william@justiceforworkers.com
Tiffany L. Luu
tluu@justiceforworkers.com
Justice for Workers, P.C.
3600 Wilshire Boulevard, Suite 1815
Los Angeles, CA 90010

Telephone: 323-922-2000

Settlement Administrator: Apex Class Action, LLC

Email Address:

Mailing Address:

Telephone:

Fax Number:

9. WHAT IF I LOSE MY SETTLEMENT CHECK?

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

10. WHAT IF I CHANGE MY ADDRESS?

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

EXHIBIT 2



JUSTICE FOR WORKERS

3600 WILSHIRE BOULEVARD, SUITE 1815, LOS ANGELES, CA 90010

TEL: (323) 922-2000

FAX: (323) 922-2000

www.JusticeForWorkers.com

November 3, 2023

VIA PAGA ONLINE FILING ONLY

California Labor and Workforce Development Agency

Attn: PAGA Administrator

455 Golden Gate Avenue, 9th Floor

San Francisco, CA 94102

<https://dir.tfaforms.net/308>

**Re: *Eric Echeverria v. Fireclay Tile, Inc.*
Notice of Private Attorneys General Act Claim**

Dear PAGA Administrator:

This office has been retained by aggrieved employee Eric Echeverria ("Plaintiff") concerning a representative action pursuant to the Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.* ("PAGA") against Fireclay Tile, Inc. (including any and all affiliates, subsidiaries, parents, directors, officers, managing agents, and executive employees) (collectively referred to as "Defendants") for violations of California wage and hour laws. Plaintiff seeks civil penalties for violations of the Labor Code and all other remedies available under PAGA.

Plaintiff seeks these remedies on behalf of the State of California and "aggrieved employees," as defined herein. This letter is sent in compliance with the notice requirements of Labor Code § 2699.3.

Defendants own and operate an architectural tile manufacturing company in Aromas, California with showrooms in San Francisco and Berkeley. Defendants has employed Plaintiff as an hourly-paid, non-exempt employee since October 2019 as a production assistant at its Aromas facility. The "aggrieved employees" that Plaintiff seeks civil penalties on behalf of are all current and former hourly-paid or non-exempt employees who worked for any of the above-referenced entities within the State of California.

Based on the following facts and theories, Defendants violated and/or continue to violate, among other provisions of the Labor Code and applicable wage law, California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 246, 256, 510, 512, 516, 558, 558.1, 1174, 1194, 1197, 1197.1, 1198, and 2802, and IWC Wage Orders including Wage Order 1-2001.

Labor Code §§ 1194, 1197, and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. The applicable Wage Order 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." See §2 of all applicable Wage Orders. Therefore, employers are required to pay employees for all time spent subject to the control of the employer and all time the employee is suffered or permitted to work. During the relevant time period, Defendants required Plaintiff and other aggrieved employees to perform work before clocking in, after clocking out, and/or during off-the-clock meal breaks, including unlawful rounding of time punches, time spent finding an operating time clock station to clock in and out of their shifts and meal periods, afterhours communications regarding their production, and failed to compensate aggrieved employees for all time they actually worked.

Labor Code §§ 510 and 1198 require employers to pay time-and-a-half or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates at one-and-one-half times or double the regular rate of pay, including additional remuneration. During the relevant time period, Plaintiff and other aggrieved employees worked in excess of 8 hours in a day, 40 hours in a week, and seven consecutive days in a workweek, but were not paid for all hours worked before clocking in, after clocking out, and/or during off-the-clock meal breaks, including unlawful rounding of time punches, afterhours communications regarding their production, time spent finding an operating time clock station to clock in and out of their shifts and meal periods, and failed to compensate aggrieved employees for all time they actually worked. Plaintiff and other aggrieved employees were not paid overtime compensation at the regular rate of pay because Defendants failed to incorporate multiple rates of pay and/or all non-discretionary remuneration, including bonuses, into the regular rate of pay.

Labor Code §§ 226.7, 512, 516, and the Wage Orders require employers to pay an employee one additional hour of pay at the employee's regular rate of compensation for each meal or rest period that is not provided. During the relevant time period, Defendants required Plaintiff and other aggrieved employees to work during meal and rest periods and failed to compensate them properly and at the regular rate of compensation for non-compliant meal and rest periods including, *inter alia*, short, late, interrupted, and missed meal and rest periods, including second meal periods and third rest periods when they worked more than 10 hours in a shift, unlawful rounding of meal period punches, and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including bonuses, into the regular rate of compensation.

Labor Code § 246 mandates employers to comply with various requirements with respect to the provision of paid sick leave to employees. During the relevant time period, Defendants improperly calculated the sick leave rate of pay owed to Plaintiff and other aggrieved employees by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including performance bonuses, into the sick leave pay rate calculation.

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later

than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. During the relevant time period, Defendants failed to pay Plaintiff and other aggrieved employees all wages due to them within any time period specified by Labor Code §§ 201 and 202, including earned and unpaid minimum, overtime, and premium wages as discussed above.

Labor Code § 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. Labor Code § 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, Defendants failed to pay Plaintiff and other aggrieved employees all wages due to them within any time period specified by Labor Code § 204, including earned and unpaid minimum, overtime, and premium wages as discussed above.

Labor Code § 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, Defendants did not provide Plaintiff and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from Defendants were in violation of Labor Code § 226(a). The violations include, but are not limited to, the failure to include the total hours worked, including time spent working off the clock and during meal and rest periods, failure to state the correct gross and net wages earned for all time worked, failure to state the name and address of the legal entity that is the employer, and failure to state all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Labor Code § 1174 requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years. During the relevant time period, Defendants failed to keep accurate and complete payroll records showing the actual hours worked daily and the wages earned by Plaintiff and other aggrieved employees, including earned and unpaid minimum, overtime, and premium wages as discussed above.

Labor Code § 1198 provides: "The employment of any employee ... under conditions of labor prohibited by the [Industrial Wage Orders] is unlawful." Section 15 of the applicable Wage Order provide: "(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed. (B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort. Where the nature of the employment requires a temperature of less than 60°

F, a heated room shall be provided to which employees may retire for warmth, and such room shall be maintained at not less than 68° F. (C) A temperature of not less than 68° F shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use. (D) Federal and State energy guidelines shall prevail over any conflicting provision of this section.”

California law requires an employer to endeavor to provide a safe and healthy workplace. (Cal. Code Regs., tit. 8, §3203.) Labor Code section 6720 required the California Division of Occupational Safety and Health (“Cal/OSHA”) to propose an indoor heat illness standard by January 1, 2019. (Lab. Code, § 6720.) Cal/OSHA’s draft standard applies its proposed regulations to “all indoor work areas where the temperature equals or exceeds 82 degrees Fahrenheit when employees are present.” During the relevant time period, Defendants failed to provide Plaintiff and other aggrieved employees who worked at Defendants’ Aromas facility with reasonable comfort by maintaining the indoor temperature within the range of industry standards by, *inter alia*, providing adequate heating, air conditioning, and/or ventilation and failed to maintain a temperature of not less than 68° F in toilet rooms and/or breakrooms for Plaintiff and other aggrieved employees.

Labor Code § 2802 requires an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During the relevant time period, Plaintiff and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by Defendants, including, but not limited to, the use of their personal cellphones for communicate with their supervisors during and after their shifts.

Therefore, on behalf of all aggrieved employees, Plaintiff seeks all applicable penalties arising out of the above-referenced wage, hour, and payroll practices, or which could be assessed and collected by the LWDA, for violation of the Labor Code pursuant to PAGA. Labor Code § 2699.3 requires that a claimant send a certified letter (i.e. this letter) to the employer in question and file an online claim to the LWDA setting forth the claims and the basis for the claims, thereby giving the LWDA and employer an opportunity to investigate the claims and/or take any action they deem appropriate. If the LWDA and Defendants elect not to take any action with respect to any of the foregoing claims, Plaintiff will seek these penalties in a civil action on behalf of all aggrieved employees within one year of the date of this letter as allowed by law.

If you have any questions, please contact me at the phone number or address below:

William C. Sung
JUSTICE FOR WORKERS, P.C.
3600 Wilshire Boulevard
Suite 1815
Los Angeles, CA 90010
Office: 323-922-2000
Fax: 323-922-2000
Email: william@justiceforworkers.com

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'William C. Sung', with a stylized flourish at the end.

William C. Sung
JUSTICE FOR WORKERS, P.C.

Cc: Via USPS Certified Mail – Return Receipt Requested

Fireclay Tile, Inc.
c/o Cogency Global Inc.
Agent for Service of Process
1325 J St., Ste. 1550
Sacramento, CA 95814

9589 0710 5270 1316 0077 11

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☐ Adult Signature Restricted Delivery	\$

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Postage

\$
Total Postage and Fees

\$8.53

Sent To

Fireclay Tile, Inc.

Street and Apt. No., or PO Box No.

1325 J St., Ste. 1550

City, State, ZIP+4®

Sacramento, CA 95814

PS Form 3800, January 2023 PSN 7530-02-000-0047 See Reverse for Instructions

CERTIFIED MAIL®



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JUSTICE FOR WORKERS, P.C.
3600 Wilshire Blvd Ste 1815
Los Angeles, CA 90010

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11/03/2023 ZIP 92683
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Fireclay Tile, Inc.
c/o Cogency Global Inc.
Agent for Service of Process
1325 J St., Ste. 1550
Sacramento, CA 95814

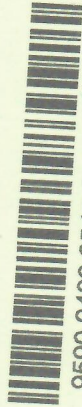
PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Fireclay Tile, Inc.
c/o Cogency Global Inc.
Agent for Service of Process
1325 J St., Ste. 1550
Sacramento, CA 95814



9590 9402 8545 3186 4095 60

2. Article Number (Transfer from service label)

9589 0710 5270 1316 0077 11

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X

B. Received by (Printed Name)

C. Date of Delivery

☐ Agent

☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☒ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Mail Restricted Delivery
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

EXHIBIT 3

JUSTICE FOR WORKERS, P.C.

William C. Sung, SB# 280792

E-Mail: william@justiceforworkers.com

Tiffany L. Luu, SB# 335127

E-Mail: tluu@justiceforworkers.com

3600 Wilshire Boulevard, Suite 1815

Los Angeles, CA 90010

Tel: 323-922-2000

Fax: 323-922-2000

Attorneys for Plaintiff ERIC ECHEVERRIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BENITO

ERIC ECHEVERRIA, an individual and on
behalf of all others similarly situated;

Plaintiff,

vs.

FIRECLAY TILE, INC., a Delaware
corporation; and DOES 1 through 50,

Defendants.

Case No.: CU-23-00249

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

- (1) **MINIMUM WAGE VIOLATIONS**
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197);
- (2) **OVERTIME WAGE VIOLATIONS**
(LABOR CODE §§ 204, 510, 1194,
1198);
- (3) **MEAL PERIOD VIOLATIONS**
(LABOR CODE §§ 226.7, 512, 558);
- (4) **REST PERIOD VIOLATIONS**
(LABOR CODE §§ 226.7, 516, 558);
- (5) **WAGE STATEMENT PENALTIES**
(LABOR CODE § 226);
- (6) **WAITING TIME PENALTIES**
(LABOR CODE §§ 201-203);
- (7) **FAILURE TO REIMBURSE
NECESSARY BUSINESS EXPENSES**
(LABOR CODE § 2802);
- (8) **UNFAIR COMPETITION (BUS &
PROF CODE §§ 17200, *et seq.*); and**
- (9) **CIVIL PENALTIES UNDER THE
CALIFORNIA PRIVATE
ATTORNEYS GENERAL ACT**
(LABOR CODE §§ 2698, *et seq.*)

DEMAND FOR JURY TRIAL

1 Plaintiff ERIC ECHEVERRIA (“Plaintiff”), on behalf of himself and all others similarly
2 situated, hereby brings this First Amended Class and Representative Action Complaint
3 (“Complaint”) against Defendants FIRECLAY TILE, INC., a Delaware corporation, and DOES 1 to
4 50 inclusive (collectively “Defendants”), and on information and belief alleges as follows:

5
6 **JURISDICTION AND VENUE**

7 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
8 Complaint for recovery of unpaid wages and penalties under California Business and Professions
9 Code § 17200, *et seq.*, Labor Code §§ 201-204, 226, 226.7, 246, 510, 512, 516, 558, 1182.12, 1194,
10 1194.2, 1197, 1198, 2802, 2698, *et seq.*, and Industrial Welfare Commission (“IWC”) Wage Order
11 1-2001 (“Wage Order 1”), in addition to seeking injunctive relief, declaratory relief, and restitution.
12 This Complaint is brought pursuant to California Code of Civil Procedure § 382. This Court has
13 jurisdiction over Defendants’ violations of the Labor Code because the amount in controversy
14 exceeds \$25,000.

15 2. Venue is proper in this judicial district because Defendants maintain offices, have
16 agents, and/or transact business in the State of California, including San Benito County, and some
17 of the acts and omissions complained of herein occurred in San Benito County. Furthermore,
18 Plaintiff was employed by Defendants within San Benito County.

19 **PARTIES**

20 3. Plaintiff is, and at all times relevant herein was, an individual over the age of
21 eighteen (18) and is a California resident. Within the statute of limitations periods applicable to
22 each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt employee.
23 Plaintiff was, and is, a victim of Defendants’ policies, practices, and/or customs complained of
24 herein and has been deprived of the rights guaranteed by Business and Professions Code § 17200, *et*
25 *seq.*, Labor Code §§ 201-204, 226, 226.7, 246, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197,
26 1198, 2802, 2698, *et seq.*, and Wage Order 1.

27 4. Plaintiff is informed and believes, and based thereon alleges, that during the
28 applicable statute of limitations for each cause of action pled herein and continuing to the present,

1 Defendants engaged in, and continue to engage in, business, and employed Plaintiff and other,
2 similarly-situated non-exempt employees within San Benito County, and the State of California
3 and, therefore, were (and are) doing business in San Benito County and the State of California.

4 5. Plaintiff does not know the true names or capacities, whether individual, partner, or
5 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
6 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
7 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
8 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
9 partners, or corporate, was responsible in some manner for the acts and omissions alleged herein,
10 and proximately caused Plaintiff, the Classes (as defined below), and Aggrieved Employees (as
11 defined below) to be subject to the unlawful employment practices, wrongs, injuries, and damages
12 complained of herein.

13 6. At all times herein mentioned, each of said Defendants participated in the doing of
14 the acts hereinafter alleged to have been done by the named Defendant; and furthermore,
15 Defendants, and each of them, were the agents, servants, and employees of each of the other
16 defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
17 within the course and scope of said agency and employment.

18 7. Plaintiff is informed and believes, and based thereon alleges, that at all times
19 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
20 joint venturer of, or working in concert with each of the other co-Defendants and was acting within
21 the course and scope of such agency, employment, joint venture, or concerted activity. To the extent
22 said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining
23 Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

24 8. At all times herein mentioned, Defendants, and each of them, were members of, and
25 engaged in, a joint venture, partnership, and common enterprise, and acting within the course and
26 scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

27 9. At all times herein mentioned, the acts and omissions of various Defendants, and
28 each of them, concurred and contributed to the various acts and omissions of each and all of the

1 other Defendants in proximately causing the injuries and damages as herein alleged.

2 **FACTUAL ALLEGATIONS**

3 10. Defendants own and operate an architectural tile manufacturing company in Aromas,
4 California with showrooms in San Francisco and Berkeley. Defendants employed Plaintiff as an
5 hourly-paid, non-exempt employee from approximately October 2019 to November 6, 2023 as a
6 production assistant at its Aromas facility.

7 11. Throughout Plaintiff's employment with Defendants, Defendants' timekeeping
8 and/or payroll policies and practices resulted in Plaintiff and other non-exempt employees not being
9 compensated for all hours actually worked. Plaintiff and other non-exempt employees regularly
10 worked more than eight hours in a workday, 40 hours in a workweek, or seventh consecutive days
11 in a single workweek. Upon information and belief, Defendants required Plaintiff and other non-
12 exempt employees to perform work before their scheduled shifts, after their scheduled shifts, and/or
13 during off-the-clock meal breaks, including unlawful rounding of time punches, time spent finding
14 an operating time clock station to clock in and out of their shifts and meal periods, and afterhours
15 communications regarding their production, and failed to compensate aggrieved employees for all
16 time they actually worked.. Upon information and belief, Defendants also failed to incorporate
17 multiple rates of pay and/or all non-discretionary remuneration, including bonuses, into the regular
18 rate of pay. As a result, Plaintiff and other non-exempt employees were not compensated for all
19 earned minimum and overtime wages.

20 12. Defendants failed to provide Plaintiff and other non-exempt employees with all
21 legally compliant meal periods due to Defendants' meal period policies/practices, which have
22 frequently resulted in late (commencing after the fifth hour of work), short (less than 30 minutes),
23 and/or missed meal periods. Upon information and belief, Plaintiff and other non-exempt
24 employees were not able to take their legally compliant meal breaks due to work demands imposed
25 by Defendants. Defendants also failed to provide Plaintiff and other non-exempt employees with
26 second meal period when they worked more than 10 hours in a shift. Upon information and belief,
27 Defendants do not keep accurate records of Plaintiff's and other non-exempt employees' hours
28 worked, including accurate time records showing when employees take their meal periods. On those

1 occasions when Plaintiff and other non-exempt employees were not provided with all legally
2 compliant meal periods to which they were entitled, Defendants failed to compensate Plaintiff and
3 other non-exempt employees with the required meal period premium(s) for each workday there was
4 a meal period violation as mandated by Labor Code § 226.7. Upon information and belief,
5 Defendants maintained no mechanism for the payment of meal period premium payments as
6 required by Labor Code § 226.7 in the event that a legally compliant meal period was not provided
7 to their non-exempt employees. Alternatively, Defendants failed to incorporate multiple rates of pay
8 and/or all non-discretionary remuneration, including bonuses, into the regular rate of compensation.

9 13. Plaintiff and other non-exempt employees were not authorized and permitted to take
10 all required rest periods due to Defendants' unlawful rest period policies/practices, which failed to
11 authorize and permit a net 10-minute rest period for every four hours worked, or major fraction
12 thereof. Plaintiff and other non-exempt employees were not able to take their legally compliant rest
13 breaks due to work demands imposed by Defendants. Additionally, although Plaintiff and other
14 non-exempt employees occasionally worked shifts in excess of 10 hours, Plaintiff and other non-
15 exempt employees were not authorized and permitted a third rest period during shifts in excess of
16 10 hours. On those occasions when Plaintiff and other non-exempt employees were not authorized
17 and permitted to take all legally compliant rest periods to which they were entitled, Defendants
18 failed to compensate them with the required rest period premium(s) for each workday there was a
19 rest period violation as mandated by Labor Code § 226.7. Upon information and belief, Defendants
20 maintained no mechanism for the payment of rest period premium payments as required by Labor
21 Code § 226.7, in the event that a legally compliant rest period was not authorized and permitted to
22 their non-exempt employees.

23 14. Additionally, upon information and belief, Defendants violated Labor Code § 246 by
24 failing to incorporate multiple rates of pay and/or all non-discretionary remuneration into the paid
25 sick leave pay rate.

26 ///

27 15. As a result of Defendants' failure to pay all minimum and overtime wages, failure to
28 pay all meal and rest period premium wages, and unlawful timekeeping and payroll practices as

1 alleged above, Defendants maintained inaccurate payroll records and issued inaccurate wage
2 statements to Plaintiff and other non-exempt employees. Defendants' wage statements also failed to
3 state the name and address of the legal entity that is the employer. As a further result of Defendants'
4 failure to pay all minimum and overtime wages, sick leave wages, and meal and rest period
5 premium wages, Defendants failed to timely pay all final wages to Plaintiff and former non-exempt
6 employees upon their separation of employment from Defendants.

7 16. Additionally, Defendants required Plaintiff and other non-exempt employees to use
8 their personal cellphones to communicate about their work during and after their shifts. Despite
9 requiring employees to incur these necessary business expenses, Defendants failed to reimburse
10 Plaintiff and other non-exempt employees for the cost of their personal cellphones.

11 17. Labor Code § 1198 provides: "The employment of any employee ... under conditions
12 of labor prohibited by the [Industrial Wage Orders] is unlawful." Section 15 of the applicable Wage
13 Order provide: "(A) The temperature maintained in each work area shall provide reasonable
14 comfort consistent with industry-wide standards for the nature of the process and the work
15 performed. (B) If excessive heat or humidity is created by the work process, the employer shall take
16 all feasible means to reduce such excessive heat or humidity to a degree providing reasonable
17 comfort. Where the nature of the employment requires a temperature of less than 60° F, a heated
18 room shall be provided to which employees may retire for warmth, and such room shall be
19 maintained at not less than 68° F. (C) A temperature of not less than 68° F shall be maintained in
20 the toilet rooms, resting rooms, and change rooms during hours of use. (D) Federal and State energy
21 guidelines shall prevail over any conflicting provision of this section." California law requires an
22 employer to endeavor to provide a safe and healthy workplace. (Cal. Code Regs., tit. 8, §3203.)
23 Labor Code section 6720 required the California Division of Occupational Safety and Health
24 ("Cal/OSHA") to propose an indoor heat illness standard by January 1,2019. (Lab. Code, § 6720.)
25 Cal/OSHA's draft standard applies its proposed regulations to "all indoor work areas where the
26 temperature equals or exceeds 82 degrees Fahrenheit when employees are present." During the
27 relevant time period, Defendants failed to provide Plaintiff and other non-exempt employees who
28 worked at Defendants' Aromas facility with reasonable comfort by maintaining the indoor

1 temperature within the range of industry standards by, inter alia, providing adequate heating, air
2 conditioning, and/or ventilation and failed to maintain a temperature of not less than 68° F in toilet
3 rooms and/or breakrooms for Plaintiff and other aggrieved employees.

4 **CLASS ACTION ALLEGATIONS**

5 18. **Class Definitions:** Plaintiff brings this action on behalf of himself and the following
6 Classes pursuant to § 382 of the California Code of Civil Procedure:

- 7 a. Minimum Wage Class: All current and former non-exempt employees of Defendants
8 in the State of California who were subject to Defendants' timekeeping and payroll
9 policies and/or practices, during the four years immediately preceding the filing of
10 this action through the present.
- 11 b. Overtime Class: All current and former non-exempt employees of Defendants in the
12 State of California who worked more than eight hours per day and/or 40 hours per
13 week and were subject to Defendants' timekeeping policies and/or practices, during
14 the four years immediately preceding the filing of this action through the present.
- 15 c. Meal Period Class: All current and former non-exempt employees of Defendants in
16 the State of California who: (i) worked at least one shift in excess of 5.0 hours;
17 and/or (ii) worked at least one shift in excess of 10.0 hours, during the four years
18 immediately preceding the filing of this action through the present.
- 19 d. Rest Period Class: All current and former non-exempt employees of Defendants in
20 the State of California who worked at least one shift of 3.5 or more hours, during the
21 four years immediately preceding the filing of this action through the present.
- 22 e. Wage Statement Class: All current and former non-exempt employees of Defendants
23 in the State of California who received a wage statement, during the one year
24 immediately preceding the filing of this action through the present.
- 25 f. Waiting Time Penalty Class: All of Defendants' formerly employed members of the
26 Minimum Wage Class, Overtime Class, Rest Period Class, and/or Meal Period Class
27 during the three years immediately preceding the filing of this action through the
28 present.

1 g. Expense Reimbursement Class: All current and former non-exempt employees of
2 Defendants in the State of California who were not reimbursed for all necessary
3 business expenses, during the four years immediately preceding the filing of this
4 action through the present.

5 19. **Numerosity/Ascertainability**: The members of the Classes are so numerous that
6 joinder of all members would be impractical, if not impossible. The membership of the Classes is
7 unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number
8 greater than 50 individuals. The identity of such membership is readily ascertainable via inspection
9 of Defendants' employment records, including payroll records.

10 20. **Common Questions of Law and Fact Predominate/Well-Defined Community of**
11 **Interest**: There are predominant common questions of law and fact as to Plaintiff and members of
12 the Classes, which predominate over questions affecting only individual members including,
13 without limitation to:

- 14 a. Whether Defendants properly paid all overtime wages to members of the Overtime
15 Class;
- 16 b. Whether Defendants paid at least the minimum wage for all hours worked to
17 members of the Minimum Wage Class;
- 18 c. Whether Defendants provided all legally compliant meal periods or paid meal period
19 premium wages due to members of the Meal Period Class pursuant to Labor Code §§
20 226.7 and 512;
- 21 d. Whether Defendants authorized and permitted all legally compliant rest periods or
22 paid all rest period premium wages due to members of the Rest Period Class
23 pursuant to Labor Code §§ 226.7 and 516;
- 24 e. Whether Defendants timely paid all final wages to members of the Waiting Time
25 Class at the time of their separation of employment pursuant to Labor Code §§ 201
26 and 202;
- 27 f. Whether Defendants furnished legally compliant wage statements to members of the
28 Wage Statement Class pursuant to Labor Code § 226; and

1 g. Whether Defendants reimbursed members of the Expense Reimbursement Class for
2 all necessary business expenses pursuant to Labor Code § 2802.

3 These common questions of law and fact set forth above are numerous and substantial and
4 stem from Defendants' policies and/or practices applicable to each individual class member. As
5 such, the common questions predominate over individual questions concerning each individual
6 class member's showing as to their eligibility for recovery or as to the amount of their damages.

7 21. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
8 Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s)
9 of limitations period applicable to each cause of action pled in the Complaint. As alleged herein,
10 Plaintiff, like the members of the Classes, was not paid all minimum and overtime wages owed due
11 to Defendants' timekeeping and payroll policies/practices, was not provided all required meal
12 periods, was not authorized and permitted all rest periods, did not receive premium pay for non-
13 compliant meal and rest periods, was not provided with accurate, compliant, itemized wage
14 statements, and was not reimbursed for all necessary business expenses.

15 22. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
16 to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's
17 attorneys are ready, willing and able to fully and adequately represent the members of the Classes
18 and Plaintiff. Plaintiff's attorneys have litigated numerous wage-and-hour class actions in state and
19 federal courts in the past and are committed to vigorously prosecuting this action on behalf of the
20 members of the Classes.

21 23. **Superiority:** The Labor Code is broadly remedial in nature and serves an important
22 public interest in establishing minimum working conditions and standards in California. These laws
23 and labor standards protect the average working employee from exploitation by employers who
24 have the responsibility to follow the laws and who may seek to take advantage of superior economic
25 and bargaining power in setting onerous terms and conditions of employment. The nature of this
26 action and the format of laws available to Plaintiff and members of the Classes make the class
27 action format a particularly efficient and appropriate procedure to redress the violations alleged
28 herein. If each employee were required to file an individual lawsuit, Defendants would necessarily

1 gain an unconscionable advantage since they would be able to exploit and overwhelm the limited
2 resources of each individual plaintiff with their vastly superior financial and legal resources.

3 24. Moreover, requiring each member of the Class(es) to pursue an individual remedy
4 would also discourage the assertion of lawful claims by employees who would be disinclined to file
5 an action against their former and/or current employer for real and justifiable fear of retaliation and
6 permanent damages to their careers at subsequent employment. The claims of the individual
7 members of the Class are not sufficiently large to warrant vigorous individual prosecution
8 considering all of the concomitant costs and expenses attending hereto.

9 25. Furthermore, the prosecution of separate actions by the individual class members,
10 even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
11 with respect to the individual class members against Defendants herein; and which would establish
12 potentially incompatible standards of conduct for Defendants; and/or legal determinations with
13 respect to individual class members which would, as a practical matter, be dispositive of the interest
14 of the other class members not parties to adjudications or which would substantially impair or
15 impede the ability of the class members to protect their interests. As such, the Classes identified
16 hereinabove are maintainable as classes under § 382 of the Code of Civil Procedure.

17 **FIRST CAUSE OF ACTION**

18 **MINIMUM WAGE VIOLATIONS**

19 **(Against All Defendants)**

20 26. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though
21 fully set forth herein.

22 27. Labor Code §§ 1182.12, 1197, and Wage Order 1, § 4 establish the right of
23 employees to be paid minimum wages for all hours worked, in amounts set by state or local law.
24 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
25 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
26 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
27 wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform its
28 pay practices to the requirements of the law by failing to pay Plaintiff and members of the

1 Minimum Wage Class for all hours worked, including, but not limited to, all hours they were
2 subject to the control of Defendants and/or suffered or permitted to work under the Labor Code and
3 Wage Order 1.

4 28. Labor Code § 1198 makes unlawful the employment of an employee under
5 conditions that the IWC prohibits. California Labor Code § 1194(a) and 1194.2(a) provide that an
6 employer who has failed to pay its employees the legal minimum wage is liable to pay those
7 employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount
8 equal to the wages due and interest thereon.

9 29. As a consequence of Defendants' non-payment of minimum wages, Plaintiff and
10 members of the Minimum Wage Class seek recovery of the balance of unpaid wages, including
11 interest thereon, statutory penalties, attorneys' fees, and costs of suit according to Labor Code §§
12 218.6, 558, 1194, 1194.2, and 1199, Code of Civil Procedure § 1021.5; and Civil Code §§ 3287 and
13 3289.

14 **SECOND CAUSE OF ACTION**
15 **OVERTIME WAGE VIOLATIONS**
16 **(Against All Defendants)**

17 30. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though
18 fully set forth herein.

19 31. This cause of action is brought pursuant to Labor Code §§ 204, 510, 1194, 1198, and
20 Wage Order 1, § 3, which provide that non-exempt employees are entitled to all overtime wages
21 and compensation for all overtime hours worked and provide a private right of action for the failure
22 to pay all overtime compensation for overtime work performed.

23 32. At all times relevant herein, Defendants were required to properly compensate non-
24 exempt employees, including Plaintiff and members of the Overtime Class, for all overtime hours
25 worked pursuant to Labor Code § 1194 and Wage Order 1. Wage Order 1, § 3 requires an employer
26 to pay an employee one and one-half (1½) times and two times the employee's regular rate of pay
27 for overtime and double time hours work. Defendants caused Plaintiff and members of the Overtime
28 Class to work overtime hours but failed to compensate these employees for all overtime hours

1 actually worked.

2 33. As a consequence of Defendants' non-payment of overtime wages, Plaintiff and
3 members of the Overtime Class seek recovery of the balance of unpaid overtime wages, including
4 interest thereon, statutory penalties, attorneys' fees, and costs of suit according to Labor Code §§
5 204, 210, 216, 218.6, 510, 1194, and 1198; Code of Civil Procedure § 1021.5; and Civil Code §§
6 3287 and 3289.

7 **THIRD CAUSE OF ACTION**

8 **MEAL PERIOD VIOLATIONS**

9 **(Against All Defendants)**

10 34. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though
11 fully set forth herein.

12 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed
13 in their affirmative obligation to provide all of their non-exempt employees in California, including
14 Plaintiff and members of the Meal Period Class, with all legally compliant meal periods in
15 accordance with the mandates of the Labor Code and Wage Order 1, § 11.

16 36. Despite Defendants' violations, Defendants did not pay an additional hour of pay to
17 Plaintiff and members of the Meal Period Class at their respective regular rates of compensation, in
18 accordance with California Labor Code §§ 204, 210, 226.7, and 512.

19 37. As a consequence of Defendants' unlawful meal period practices, Plaintiff and
20 members of the Meal Period Class seek recovery of unpaid premium wages for meal period
21 violations including interest thereon, statutory penalties, and costs of suit, pursuant to Labor Code
22 §§ 226.7, 512, 558, Wage Order 1, and Civil Code §§ 3287 and 3289.

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27 **FOURTH CAUSE OF ACTION**

1 **REST PERIOD VIOLATIONS**

2 **(Against All Defendants)**

3 38. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though
4 fully set forth herein.

5 39. Labor Code §§ 226.7, 516, 558, and Wage Order 1, § 12 and establish the right of
6 employees to be provided with a rest period of at least 10 minutes for each four-hour period
7 worked, or major fraction thereof. Plaintiff is informed and believes, and based thereon alleges, that
8 despite Defendants' failure to authorize and permit Plaintiff and members of the Rest Period Class
9 to take all legally compliant rest periods as alleged herein, Defendants did not pay these individuals
10 an additional hour of pay at their respective regular rate for the rest periods that they failed to
11 authorize and permit them to take, as required by Labor Code § 226.7.

12 40. As a consequence of Defendants' unlawful rest period practices, Plaintiff and
13 members of the Rest Period Class seek recovery of unpaid premium wages for rest period violations
14 including interest thereon, statutory penalties, and costs of suit, statutory penalties, attorneys' fees,
15 and costs of suit according to Labor Code §§ 226.7, 516, 558, Wage Order 1, and Civil Code §§
16 3287 and 3289.

17 **FIFTH CAUSE OF ACTION**

18 **WAGE STATEMENT PENALTIES**

19 **(Against All Defendants)**

20 41. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though
21 fully set forth herein.

22 42. Plaintiff is informed and believes, and based thereon alleges, that Defendants
23 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
24 and members of the Wage Statement Class with accurate and complete, itemized wage statements
25 that included, among other requirements, all hours worked, total gross wages earned, all rates of pay
26 and corresponding number of hours worked, total net wages earned, the inclusive dates of the pay
27 period, and/or the correct name and address of the legal entity that is the employer in violation of
28 Labor Code § 226.

43. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class with accurate and complete, itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of minimum and overtime wages and meal and rest period premium wages owed and deprived them of the information necessary to identify the discrepancies in Defendants' reported payroll data.

44. As a consequence of Defendants' unlawful wage statement practices, Plaintiff and members of the Wage Statement Class seek damages and/or statutory penalties, reasonable attorneys' fees, and costs of suit according to California Labor Code § 226.

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(Against All Defendants)

45. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

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

47. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them at their separation from employment, including unpaid minimum and overtime wages as well as unpaid meal and rest period premium wages.

48. Furthermore, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-202.

49. Defendants' failure to pay all final wages was willful within the meaning of Labor

1 Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
2 Time Class their earned wages upon separation from employment results in continued payment of
3 daily wages up to thirty days from the time the wages were due.

4 50. As a consequence of Defendants' unlawful practices, Plaintiff and members of the
5 Waiting Time Class seek statutory penalties, and costs of suit according to California Labor Code §
6 203.

7 **SEVENTH CAUSE OF ACTION**

8 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

9 **(Against All Defendants)**

10 51. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though
11 fully set forth herein.

12 52. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
13 states that "an employer shall indemnify his or her employees for all necessary expenditures or
14 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his
15 or obedience to the directions of the employer."

16 53. Defendants violated Labor Code § 2802 by failing to reimburse Plaintiff and
17 members of the Expense Reimbursement Class all necessary business expenses they incurred in the
18 performance of their job duties.

19 54. As a consequence of Defendants' unlawful practices, Plaintiff and members of the
20 class seek recovery of unreimbursed business expenses, including interest thereon, reasonable
21 attorneys' fees, and costs of suit pursuant to Labor Code § 2802.

22 **EIGHTH CAUSE OF ACTION**

23 **UNFAIR COMPETITION**

24 **(Against All Defendants)**

25 55. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though
26 fully set forth herein.

27 56. Defendants have engaged and continue to engage in unfair and/or unlawful business
28 practices in California in violation of Business and Professions Code § 17200, *et seq.*, by:

- 1 a. failing to pay Plaintiff and members of the Minimum Wage Class all minimum
2 wages due;
- 3 b. failing to pay Plaintiff and members of the Overtime Class all overtime wages due;
- 4 c. failing to provide Plaintiff and members of the Meal Period Class with all meal
5 periods to which they are entitled, and failing to pay them all meal period premium
6 wages due;
- 7 d. failing to authorize and permit Plaintiff and members of the Rest Period Class all rest
8 periods to which they are entitled, and failing to pay them all rest period premium
9 wages due;
- 10 e. failing to issue accurate and itemized wage statements to Plaintiff and members of
11 the Wage Statement Class;
- 12 f. failing to timely pay all final wages to Plaintiff and members of the Waiting Time
13 Penalty Class; and
- 14 g. failing to reimburse all necessary business expenses to Plaintiff and members of the
15 Expense Reimbursement Class.

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

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

25 59. The acts complained of herein occurred within the last four years immediately
26 preceding the filing of the Complaint in this action.

27 ///

28 **NINTH CAUSE OF ACTION**

1 **PRIVATE ATTORNEYS GENERAL ACT**

2 **(Against All Defendants)**

3 60. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though
4 fully set forth herein.

5 61. Plaintiff, an “aggrieved employee” within the meaning of Labor Code §§ 2698, *et*
6 *seq.*, acting on behalf of himself and other aggrieved employees (collectively, “Aggrieved
7 Employees”), brings this representative action against Defendants to recover the civil penalties due
8 to Plaintiff and other Aggrieved Employees, and the State of California according to proof pursuant
9 to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial
10 violation for each failure to pay each employee and \$200 for each subsequent violation or willful or
11 intentional violation pursuant to Labor Code §§ 210 and/or 225.5 for each failure to pay each
12 employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and
13 \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3)
14 \$100 for each initial violation and \$250 for each subsequent violation pursuant to Labor Code §
15 1197.1 per employee per pay period; (4) \$250 for each initial violation and \$1,000 for each
16 subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (5) pursuant to
17 Labor Code § 256, a civil penalty in an amount not exceeding 30 days per former employee as
18 waiting time under the terms of Labor Code § 203; and/or (6) \$100 for each initial violation and
19 \$200 for each subsequent violation per employee per pay period for those violations of the Labor
20 Code for which no civil penalty is specifically provided, based on the following Labor Code
21 violations:

- 22 a. Failing to pay minimum wages for all hours worked to Aggrieved Employees in
23 violation of Labor Code § 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- 24 b. Failing to pay Aggrieved Employees all earned overtime compensation in violation
25 of Labor Code §§ 204, 510, 558, 1194, and 1198;
- 26 c. Failing to provide all legally required meal periods, and failure to pay meal period
27 premium wages, to Aggrieved Employees at the regular rate of compensation in
28 violation of Labor Code §§ 226.7, 512, 558, and 1198;

- d. Failing to authorize and permit all legally required rest periods, and failure to pay rest period premium wages, to Aggrieved Employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- e. Failing to furnish Aggrieved Employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- f. Failing to timely pay all final wages and compensation earned by Aggrieved Employees at the time of separation in violation of Labor Code §§ 201-202;
- g. Failure to reimburse Aggrieved Employees for all necessary business expenses in violation of Labor Code § 2802;
- h. Failing to pay Aggrieved Employees all paid sick leave wages in violation of Labor Code § 246;
- i. Failing to pay Aggrieved Employees all earned wages at least twice during each calendar month in violation of Labor Code § 204;
- j. Failing to provide Aggrieved Employees with reasonable comfort by maintaining indoor temperatures required by the applicable Wage Order in violation for Labor Code § 1198; and
- k. Failing to maintain accurate records on behalf of Aggrieved Employees in violation of Labor Code §§ 1174 and 1198.

62. On or about November 3, 2023, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the Labor Code and Plaintiff’s intent to bring a claim for civil penalties under Labor Code §§ 2698, *et seq.* with respect to the violations of the Labor Code identified in the preceding paragraph. Now that 33 days and 65 days have passed from Plaintiff notifying Defendants and the LWDA of these violations, Defendants have not cured any curable violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

63. Plaintiff has incurred attorneys’ fees and costs, which Plaintiff is entitled to receive

1 under California Labor Code § 2699(g).

2 **PRAYER FOR RELIEF**

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

- 5 1. For an order certifying the proposed Classes;
- 6 2. For an order appointing Plaintiff as representative of the Classes;
- 7 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 8 4. Upon the First Cause of Action, for payment of minimum wages, liquidated
9 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and
10 1197;
- 11 5. Upon the Second Cause of Action, for payment of overtime wages and penalties
12 according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 13 6. Upon the Third Cause of Action, for meal period premium wages according to proof
14 pursuant to Labor Code §§ 226.7, 512, and 558;
- 15 7. Upon the Fourth Cause of Action, for rest period premium wages according to proof
16 pursuant to Labor Code §§ 226.7, 516, and 558;
- 17 8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code §
18 226;
- 19 9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code §
20 203
- 21 10. Upon the Seventh Cause of Action, for unreimbursed business expenses according to
22 proof pursuant to Labor Code § 2802;
- 23 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
24 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
25 practices declared by this Court to be in violation of Business and Professions Code §§ 17200, *et*
26 *seq.*;
- 27 ///
- 28 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other Aggrieved

1 Employees, and the State of California according to proof pursuant to Labor Code §§ 558 and
2 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to
3 pay each employee and \$200 for each subsequent violation or willful or intentional violation
4 pursuant to Labor Code §§ 210 and/or 225.5 for each failure to pay each employee, plus 25% of the
5 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
6 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
7 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee
8 per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation
9 pursuant to Labor Code § 226.3 per employee per pay period; (5) pursuant to Labor Code § 256, a
10 civil penalty in an amount not exceeding 30 days per former employee as waiting time under the
11 terms of Labor Code § 203; and/or (6) \$100.00 for each initial violation and \$200 for each
12 subsequent violation per employee per pay period for those violations of the Labor Code for which
13 no civil penalty is specifically provided;

14 13. Prejudgment interest on all due and unpaid wages pursuant to Labor Code § 218.6
15 and Civil Code §§ 3287 and 3289;

16 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
17 218.5, 226, 1194, 2699(g), and Code of Civil Procedure § 1021.5; and

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

19 **DEMAND FOR JURY TRIAL**

20 Plaintiff hereby demands a trial by jury on all claims.

21
22 DATED: January 29, 2024

JUSTICE FOR WORKERS, P.C.

23
24 By: 

25 William C. Sung, Esq.

26 Tiffany L. Luu, Esq.

27 Attorneys for Plaintiff ERIC ECHEVERRIA
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