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9 Attorneys for Plaintiffs and the Aggrieved Employees

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF ORANGE**

12 DAVID AVILA and DAVID JUAREZ, on
13 behalf of the State of California, as private
attorneys general,

14 Plaintiffs,

15 v.
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17 BEHR PROCESS CORPORATION, a
California Corporation; and DOES 1-50,
18 inclusive.

19 Defendants.
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CASE NO.: 30-2023-01366549-CU-OE-CXC

Assigned to the Hon. William D. Cluster

**DECLARATION OF MEHRDAD
BOKHOUR IN SUPPORT OF MOTION TO
APPROVE PAGA SETTLEMENT**

Hearing Information:

Date: October 24, 2025

Time: 9:00 a.m.

Dept.: CX101

Reservation No.: 74636772

1 United States District Courts for the Central, Northern, Eastern, and Southern Districts of
2 California. I have litigated numerous class and representative actions under the Private Attorneys
3 General Act (“PAGA”) in courts throughout the state.

4 8. In addition to the present case, I have served as counsel in numerous wage-and-hour
5 class and PAGA representative actions. I have substantial experience litigating complex
6 employment matters and have devoted the majority of my practice to California wage-and-hour
7 class and PAGA actions on behalf of employees. My firm possesses the experience, resources, and
8 commitment necessary to provide effective and adequate representation as Plaintiffs’ Counsel.
9 Currently, my firm serves as counsel in more than twenty-five wage-and-hour class and/or PAGA
10 actions and as co-counsel in at least twenty additional such matters. I am well-versed in evaluating
11 PAGA claims and assessing the viability of potential defenses.

12 9. Here, Plaintiffs’ operative claims are brought on behalf of all current and former hourly,
13 non-exempt employees who worked for Defendant at any time during the period December 20, 2022
14 through March 9, 2025 (the “PAGA Members” or “Aggrieved Employees”). The PAGA period is
15 the period beginning on December 20, 2022 and ending on March 9, 2025 (“PAGA Period”).

16 10. Plaintiffs alleged that Defendant failed to properly calculate and pay overtime and sick
17 time wages due to, among other things, off-the-clock work, understaffing/scheduling, alternative
18 workweek schedules, and/or violations of the regular rate of pay requirements. Plaintiffs also alleged
19 that PAGA Members were denied compliant meal and rest periods, as a result of Defendant’s policies,
20 practices, and the nature of the work.

21 11. Plaintiffs further alleged that Defendant also allegedly failed to reimburse necessary
22 business expenses, failed to timely pay wages, failed to pay timely wages at separation, and issued
23 inaccurate itemized wage statements or otherwise failed to maintain records, thereby incurring civil
24 penalties under the PAGA.

25 12. Following informal discovery and a robust exchange of data and documents, the Parties
26 participated in private mediation before Hon. Carl J. West (Ret.), an experienced wage and hour
27 mediator. Through the mediator’s and the parties’ efforts at and following mediation, the Parties
28 were able to reach a settlement of the action.

1 13. Defendant supplies architectural paint and exterior wood care products nationwide and
2 across California, including interior paints, primers, wood stains, finishes, strippers, cleaners, floor
3 coatings, sealers, and specialty paints.

4 14. Plaintiff David Avila was employed by Defendant as a non-exempt employee with the
5 title of “Maintenance Mechanic” beginning on January 3, 2023, until his separation from employment
6 on November 20, 2023. Plaintiff David Juarez was employed by Defendant as a non-exempt
7 employee with the tile of “Operator” beginning on approximately April 7, 2022, until his separation
8 from employment on November 21, 2023.

9 15. Plaintiffs, along with the PAGA Members, worked on the operational side of
10 Defendant’s business. Plaintiff Avila worked for Defendant in Santa Ana, California. Plaintiff Juarez
11 worked for Defendant in San Bernardino County, California. Plaintiffs and the PAGA Members
12 (including, but not limited to, Inventory Control Manager, Quality Technician, Receiving Operator,
13 Machine Operator, and all other non-exempt positions) were responsible for all aspects of
14 Defendant’s operations in California during the relevant PAGA Period.¹

15 16. After retaining counsel, on December 8, 2023, Plaintiff Avila submitted his notice of
16 violations to the LWDA and commenced² this Action against Defendant Behr Process Corporation
17 (now known as Behr Process LLC), alleging causes of action based on purported Labor Code
18 violations. Similarly, Plaintiff Juarez (with respect to the Juarez Action) submitted a timely PAGA
19 Notice Letter on January 22, 2024, and a Supplemental Notice on March 13, 2025, notifying the
20 LWDA and Defendant of the alleged violations.

21 17. Plaintiffs’ complaint alleges that Defendant is liable for civil penalties under the PAGA
22 based on various alleged Labor Code violations, including but not limited to failure to accurately
23 record all time worked, including time worked off the clock, failure to compensate employees for all
24 hours and overtime hours worked, failure to pay employees at the correct overtime rate, failure to pay

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26 ¹ “PAGA Period” is defined as the period beginning on December 20, 2022 and ending March 9, 2025. (S.A. ¶ I.13.)

27 ² Plaintiff Avila subsequently amended this Action by filing a Second Amended Complaint on March 20, 2025, to
28 include the claims and parties alleged by Plaintiff Juarez in the related action entitled *David Juarez v. Behr Process Corp.* then-pending in Orange County Superior Court, Case No. 30-2025-01452707 (the “Juarez Action”). In conjunction therewith, Plaintiff Juarez dismissed the Juarez Action without prejudice.

1 all required sick days at the legal rate of pay, failure to provide meal periods or pay meal period
2 premiums at the regular rate of pay, failure to provide rest periods or pay rest period premiums at the
3 regular rate of pay, failure to provide accurate itemized wage statements, failure to timely pay final
4 wages at termination, failure to reimburse for necessary business expenses, failure to pay all vested
5 vacation time, failure to properly elect and implement an alternative workweek schedule, failure to
6 keep accurate and complete time and pay records, failure to timely produce or make available
7 personnel records and payroll records, refusal to pay wages, unlawful deductions, requiring unlawful
8 agreements and waivers, and conducting unlawful inquiries into criminal history.

9 18. Attached hereto as **Exhibit “A”** is a true and correct copy of Plaintiffs’ letters to the
10 LWDA.

11 19. In advance of mediation, the Parties engaged in an informal exchange of relevant
12 information, data, and documents. Defendant produced policy documents and a sampling of time and
13 payroll records, which enabled Plaintiffs’ counsel to conduct a thorough analysis of liability exposure,
14 identify representative violations, and formulate damages and penalties models. As part of this
15 informal discovery, Plaintiffs’ counsel analyzed issues including but not limited to meal and rest
16 period violations, regular rate miscalculations, expense reimbursements, wage statement violations,
17 and late payment penalties. Plaintiffs also reviewed applicable policies, practices, and pay data to
18 evaluate the risks and potential recovery at trial.

19 20. Following these efforts, the Parties participated in a full-day mediation on January 8,
20 2025, before Hon. Carl J. West (Ret.), a respected and experienced mediator of complex wage and
21 hour class and PAGA actions. With Judge West’s assistance, the Parties reached a negotiated
22 resolution of the claims asserted in this action.

23 21. Attached hereto as **Exhibit “B”** is a true and correct copy of the fully executed PAGA
24 Settlement Agreement (the “Settlement Agreement” and/or the “Settlement”).

25 22. Based upon my experience and after factoring in the risks explained below, I believe
26 that the proposed settlement is fair and reasonable. As such and for the reasons set forth below, I
27 believe that the Settlement Agreement should be approved.

28 23. This experience helps assess the reasonableness of settlements such as the one at issue

1 here. Based on my years of experience representing plaintiffs in wage and hour cases, including
2 PAGA representative and class actions, the Settlement herein is fair, adequate, and reasonable under
3 the facts and law applicable to this case.

4 SETTLEMENT CONSIDERATIONS

5 24. I have performed substantial work and diligently investigated and prosecuted this case
6 to a successful conclusion. I believe this Settlement to be fair, reasonable, and adequate.

7 25. In evaluating the fairness and reasonableness of this proposed Settlement, my co-
8 counsel and I had to consider both the potential maximum and Defendant's various defenses. This is
9 significant because in a PAGA action, the Court has the same discretion "to assess a civil penalty"
10 that the Labor Commissioner would have, as well as complete discretion to "award a lesser amount
11 than the maximum civil penalty amount specified [by PAGA] if, based on the facts and circumstances
12 of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive,
13 or confiscatory." Lab. Code § 2699(e)(2). Such considerations include Defendant's defenses to the
14 alleged claims.

15 26. In the end, Defendant urged that the trial court would exercise its discretion to
16 substantially reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiffs'
17 claims. As a result, Plaintiffs' Counsel made appropriate discounts for the associated risks.

18 27. The following chart reflects the estimated payments from the Settlement Agreement:

	Amount
Gross Settlement Amount	\$560,000.00
PAGA Counsel Fees Payment	\$186,666.67
PAGA Counsel Litigation Expenses Payment	\$21,830.84
Administration Expenses Payment	\$4,000.00
Net Settlement Amount	\$347,502.49
75% to the LWDA	\$260,626.86
25% to PAGA Members	\$86,875.62

25
26 28. As such, the LWDA will receive approximately \$260,626.86 (75% of the Net
27 Settlement Amount) and the PAGA Members will collectively receive approximately \$86,875.62
28 (25% of the Net Settlement Amount), which will be paid on a pro-rata basis according to the number

1 of pay periods worked during the PAGA Period. The average payment to the PAGA Members is
2 approximately \$173.76.

3 29. Plaintiffs estimate that Defendant's maximum potential penalty exposure was
4 approximately \$2,172,300, based on approximately 21,723 PAGA Pay Periods and the statutory \$100
5 per-pay-period penalty for a first violation.

6 **THE ATTORNEYS' FEES AND LITIGATION COSTS REQUESTED**

7 30. Moreover, as part of the Settlement, the Parties have agreed that Plaintiffs will request
8 a PAGA Counsel Fees Payment in an amount not to exceed one-third of the Gross settlement amount.
9 Here, Plaintiffs' Counsel is seeking one-third (33.33%) of the Gross Settlement Amount, thus
10 \$186,666.67, subject to court approval, plus actual litigation costs for \$21,830.84.

11 31. This request is fair, reasonable, and adequate to compensate Plaintiffs' Counsel for
12 the substantial work they have put into this case and the risk they assumed by taking it in the first
13 place. Additionally, it is consistent with the contingency-fee agreement entered into by the named
14 Plaintiffs. The attorneys' fees award is intended to reimburse Plaintiffs' Counsel for all
15 uncompensated work that they have already done and for all the work they will continue to do in
16 carrying out and overseeing the administration of the Settlement, communicating with PAGA
17 Members regarding their Individual PAGA Payment checks, and communicating with the Settlement
18 Administrator regarding the administration of the Settlement, if it is approved.

19 32. My firm took this case on a contingent-fee basis against a business represented by a
20 reputable defense firm. When we take on contingent cases, we must pay careful attention to the
21 economics involved, as one bad case can undo years of work. Accordingly, when we take on
22 contingent cases, we anticipate that, if successful, we will receive a fee that exceeds our normal hourly
23 rate; otherwise, the risk is often too great to bear. Even when we work long hours, the number of
24 hours a day is limited. Because of this, when we take on one particular matter, we are unable to take
25 on other matters. When my firm became involved in this case, we realized the time commitment that
26 it would entail, and we were forced to turn down matters that we otherwise should have been able to
27 handle.

33. The requested attorneys' fees are reasonable for the services provided to the LWDA and the PAGA Members and for the benefits they are to receive.

34. Moreover, the case involved significant risks of non-payment of attorneys' fees and non-recovery of litigation costs if the Settlement was not granted approval, or if Plaintiffs did not prevail. California courts consider the risks counsel takes in litigating a case where they may not prevail on the merits in granting attorney's fees awards. *See Graham v. Daimler Chrysler Corp.* (2004) 34 Cal.4th 553, 583.

35. The actual aggregated lodestar between the attorneys who worked on this case is \$139,613.75. This results in a modest 1.33 multiplier, demonstrating that the requested fee is justified, reasonable, and appropriate. The total lodestar is summarized in the following table:

Lodestar Summary

Attorney	Experience	Hourly Rate	Total Hours	Lodestar
Mehrdad Bokhour	13 years	\$650	65.2	\$42,347.50
Joshua Falakassa	12 years	\$675	45.6	\$30,746.25
Kane Moon	18 years	\$950	22.4	\$21,280
Allen Feghali	11 years	\$900	15.5	\$13,950
Julie Sohyun Oh	4 years	\$700	44.7	\$31,290
TOTAL				\$139,613.75

36. Attached hereto as **Exhibit "C"** are the time records maintained by my firm reflecting the hours worked in connection with this matter.

37. In compliance with California Rules of Professional Conduct section 1.5.1, Plaintiffs signed a fee split agreement that provides fees will be allocated between Class Counsel as follows: thirty five percent (35%) to the Bokhour Law Group, P.C.; thirty five percent (35%) to Falakassa Law, P.C.; and 30% to Moon Law Group.

38. The actual litigation costs incurred in this case by Plaintiffs' Counsel to date amount to \$21,830.84. The following table sets forth the specific costs incurred by my firm to date:

BOKHOUR LAW GROUP, P.C.		
Type	Description	Charge
Process	Service of Process Fee	\$82.80
Mediation	Mediation Fees	\$9,784.05
Expert Data	Analysis of Time Records	\$3,245
Filing Fees	Complaint & Other Filings	\$1,789
LWDA Notice	PAGA Filing Fee	\$75
TOTAL		\$14,975.85

39. Based on my years of experience representing plaintiffs in wage and hour matters—including both PAGA representative actions and class actions—I believe the Parties’ proposed settlement is fair, adequate, and reasonable in light of the applicable facts and law.

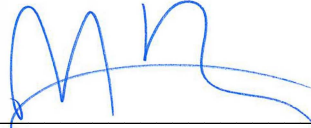
40. Plaintiffs—each individually and on behalf of other allegedly aggrieved employees and acting as representatives of the State of California—brought this representative action for civil penalties against their former employer, Defendant Behr Process LLC (formerly Behr Process Corporation) under PAGA.

41. Pursuant to Labor Code § 2699(1)(2), the proposed settlement has been submitted to the Labor and Workforce Development Agency. A true and correct copy of the confirmation of this submission is attached hereto as **Exhibit “D”**.

42. Defendant represents that the PAGA Members worked approximately 21,723 pay periods during the PAGA Period. If the total number of pay periods worked by PAGA Members during the PAGA Period exceeds 21,723 by more than ten percent (10%), the Gross Settlement Amount shall be increased proportionally, but only for the percentage exceeding the ten percent (10%) threshold. For example, if the total pay periods exceed 21,723 by eleven percent (11%), the Gross Settlement Amount will increase by one percent (1%).

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

Executed this 18th day of August 2025, at Los Angeles, California.



 Mehrdad Bokhour, Esq.

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EXHIBIT “A”

TRUE AND CORRECT COPY OF

LWDA LETTER

[SEE ATTACHED]



MEHRDAD BOKHOUR
Attorney at Law

1901 Avenue of the Stars | Suite 450
Los Angeles | California 90067

tel 310 975 1493
fax 310 675 0861

December 8, 2023

SUBMITTED VIA LWDA'S PAGA CLAIM NOTICE ONLINE PORTAL

COPY SENT VIA CERTIFIED MAIL TO:

BEHR PROCESS CORPORATION
17450 COLLEGE PARKWAY
LIVONIA, MI 48152

C T CORPORATION SYSTEM
330 N BRAND BLVD,
GLENDALE, CA 91203

Re: David Avila v. Behr Process Corporation
Notice of Intent to File Suit for California Labor Code § 2698 et seq. Penalties

To Whom It May Concern:

This office and Falakassa Law, P.C. represent David Avila (hereinafter "Mr. Avila") and a proposed group of current and former non-exempt employees working for Behr Process Corporation (hereinafter "Behr Process") and any of its affiliated, predecessor and/or merged entities in the State of California for violations of the California Labor Code §§ 201-203, 204, 210, 221, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1174, 1174.4, 1194, 1194.2, 1197.1, 1199, 2802-2804, and all applicable Industrial Welfare Commission Wage Orders ("Wage Order").

This letter shall serve as notification under Labor Code § 2699.3 (hereinafter "PAGA Notice"). The \$75 filing fee payable to the California Labor and Workforce Development Agency for the Private Attorneys General Act Notice ("PAGA Notice") was paid online. A copy of this PAGA Notice was submitted electronically to the Department of Industrial Relations.

Mr. Avila wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of the following group of "aggrieved employees":

All current and former non-exempt hourly employees who work or worked for Behr Process Corporation, in California, during the one year immediately preceding the filing of this PAGA Notice and continuing into the present and ongoing ("aggrieved employees")

Behr Process supplies architectural paint and exterior wood care products to the American and Canadian do-it-yourself markets. They offer interior paints, primers, wood stains, finishes, strippers, cleaners, floor coatings, sealers, and specialty paints. Behr Process employed Mr. Avila as a non-exempt employee with the title of “Maintenance Mechanic” out of its Santa Ana, California location from January 3, 2023, until his separation from employment on November 20, 2023. Mr. Avila and other aggrieved employees (including, but not limited to, Inventory Control Manager, Quality Technician, Machine Operator, Receiving Operator, and all other non-exempt positions) were responsible for all Behr Process’ business in California.

At all relevant times, Mr. Avila and other aggrieved employees regularly worked various shifts, many of which were in excess of 8.0 hours in a workday and 40.0 hours in a workweek. Mr. Avila alleges that other aggrieved employees were also subjected to the same policies, procedures, and practices, working conditions, and corresponding wage and hour violations to which he was subjected during his employment.

First, from at least one year ago and continuing until the present, Plaintiff and other aggrieved employees were required to don Personal Protective Equipment (“PPE”) all before clocking in and starting their shifts. Likewise, aggrieved employees were required to remove PPE after clocking out at the end of their scheduled shifts. These mandated procedures occurred before employees clocked in and after clocking out and resulted in time aggrieved employees did not receive compensation while subject to the control of the Company. Despite being subject to the Company’s control while donning and doffing PPE, the Company did not provide any compensation for the time it took to complete these processes.

As a result, at all relevant times, Behr Process has consistently failed to accurately record and pay all time worked, including the time under which aggrieved employees were subject to the employer’s control. This included a policy and practice of failing to record aggrieved employees’ employees time properly worked, including all time spent working off-the-clock. As a result of this company-wide policy/practice, Mr. Avila and other aggrieved employees are not compensated for all the hours that they work and all of the overtime hours they work, in violation of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable Wage Orders. The Company has no valid defense to this claim given the California Supreme Court’s recent unanimous decision in *Frlekin v. Apple, Inc.* (2020) 8 Cal.5th 1038, which held that employees “must be paid” during security checks since “it is clear that [employees] are subject to [the employer’s] control while awaiting, and during, [the] exit searches.”

As a result, Mr. Avila and other aggrieved employees were not properly paid for all hours worked in violation of Cal. Labor Code §§ 204, 210, 1194, 1197.1, 1199, and applicable Wage Orders. Additionally, due to the unlawful timekeeping policy/practices, Mr. Avila and other aggrieved employees were also not properly paid at the correct overtime rate for hours worked more than eight hours per shift in violation of Labor Code § 510.

Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed by an applicable state or local law or by an order of the commission a civil penalty, restitution of wages, and liquidated damages as follows: (1) for any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.

Labor Code § 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular rate of pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the applicable Wage Orders, non-exempt employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

Accordingly, through PAGA and to the extent permitted by law, Mr. Avila and other aggrieved employees are entitled to recover penalties for violations of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199 1197.1 under Labor Code § 1197.1, 1199, or § 2698 *et seq.*

Furthermore, at all relevant times, Mr. Avila and other non-exempt employees often worked regular shifts that lasted longer than 8.0 hours in a workday, and more than 40 hours in a workweek. However, Mr. Avila and other non-exempt employees were not properly paid at the correct overtime rate for all overtime hours worked due to Behr Process's uniform failure to include all forms of compensation/remuneration, including, but not limited to, commissions, incentives, non-discretionary bonuses, and all other forms of remuneration in calculating the "regular rate of pay" for purposes of overtime compensation.

Under the California Labor Code (as well as the FLSA), courts have consistently held that regularly paid non-discretionary bonuses and other forms of pay must be included in determining an employee's "regular rate of pay" for purposes of calculating overtime. (See *Haber v. The Americana Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency bonuses must be included in calculating the "regular rate"]; *Wang v. Chinese Daily News, Inc.* 435 F. Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgement to Plaintiff under California and federal law on the grounds, that Defendant improperly calculated overtime by excluding annual bonuses paid to employees from the "regular rate of compensation"]; see *Walling v. Youngerman-Reynolds Hardwood Co.* (1945) 65 S.Ct. 1242, 1245. ("The regular rate by its very nature must reflect all payments which the parties have agreed shall be received regularly during the workweek, exclusive of overtime payments. It is not an arbitrary label chosen by the parties; it is an actual fact. Once the parties have decided upon the amount of wages and the mode of payment

the determination of the regular rate becomes a matter of mathematical computation, the result of which is unaffected by any designation of a contrary ‘regular rate’ in the contracts.”); see also 29 CFR §§ 778.110 (“production bonus”) and 778.111 (“piece-rate”).

Labor Code § 510 requires an employer to compensate an employee who works more than eight (8.0) hours in one workday, forty (40.0) hours in a workweek, and for the first eight (8.0) hours worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular rate of pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12.0) hours in a workday or more than eight (8.0) hours on the seventh consecutive day of work. Pursuant to Section 3 of the applicable Wage Orders, non-exempt employees shall not be employed more than eight (8.0) hours in any workday or more than 40.0 hours in any workweek unless the employee receives one and one-half (1 1/2) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek.

By their policy of requiring aggrieved employees to work in excess of eight (8) hours in a workday and/or forty (40.0) hours in a workweek without compensating them at the rate of one-half (1 1/2) their “regular rate of pay,” Behr Process willfully violated the provisions of Labor Code § 510 and the applicable Wage Orders.

Accordingly, through PAGA and to the extent permitted by law, Mr. Avila and other aggrieved employees are entitled to recover penalties for violations of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199 1197.1 under Labor Code § 1197.1, 1199 or § 2698 *et seq.*

Similarly, at all relevant times, Behr Process also failed in its obligation to provide Mr. Avila and other aggrieved employees the legally required paid sick days at the legal rate pursuant to Labor Code §§ 246(a),(b), which requires that “[a]n employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment.” Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must be “calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.”

Additionally, Labor Code § 246(l)(2) states that the paid sick time must be “calculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.” Finally, Labor Code § 246(i) requires employers to “provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee’s itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee’s payment of wages.”

Here, at all relevant times, Behr Process failed in its obligation to provide Mr. Avila and other aggrieved employees the legally required paid sick days at the legal rate, including all forms of compensation, pursuant to Labor Code §§ 246(a), (b). As such, Behr Process paid sick time below his base rate of pay, rather than the “regular rate of pay” as required by Labor Code §§ 246(l) (1-2). Based on the foregoing Labor Code violations, Mr. Avila seeks all civil and statutory penalties available and applicable under Labor Code § 2699(f)(2), and for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

Moreover, at all relevant times, Mr. Avila and other aggrieved employees were denied compliant and timely 30-minute off-duty meal periods as mandated by California law. Due to Behr Process’ uniform meal period policies/practices, operational requirements, and work demands, Mr. Avila and other aggrieved employees were often unable to take timely and uninterrupted net 30-minute first meal periods before the end of the fifth hour of work.

Further, when Mr. Avila and other aggrieved employees worked more than 10.0 hours in a shift, they were not always allowed and permitted to take a mandated second meal period before the end of the tenth hour of work in violation of the Labor Code and applicable Wage Orders. Indeed, Plaintiff and other aggrieved employees’ meal periods were often interrupted and lasted fewer than 30 minutes due to Behr Process’ meal period policies/procedures, operational requirements, and work demands.

In addition, for each missed or non-compliant meal period, Behr Process failed and continues to fail to maintain a mechanism by which aggrieved employees were paid meal period premiums at the “regular rate of pay” pursuant to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 5th 858 and Labor Code § 226.7.

Accordingly, due to Behr Process’ uniform meal period practices, Mr. Avila and other aggrieved employees were also regularly denied legally compliant meal periods in violation of Labor Code 226.7, 510, 516, and applicable IWC Wage Orders, and are entitled to penalties under Labor Code § 2698 *et seq.*

Next, at all relevant times, Mr. Avila and other aggrieved employees were not provided with all 10-minute rest periods for every four hours worked, or a major fraction thereof, due to Behr Process’ uniform rest period policies/practices, operational requirements, and work demands. As a result, Mr. Avila and other aggrieved employees were and are often unable to take a net 10-minute duty-free rest period for every major fraction of four hours worked. This includes a second rest period for shifts in excess of six hours and a third rest period for shifts in excess of 10.0 hours in a workday.

By not relieving all non-exempt employees of all duties during rest periods, Behr Process failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 [concluding that “during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time.”]. In *Augustus*, the

California Supreme Court expressly rejected the employer's assertion that it could provide an on-duty rest period to employees who worked as security guards and further explained: "that employers [must] relinquish any control over how employees spend their break time and relieve their employees of all duties." *Id.* at 273. Each time Mr. Avila and other aggrieved employees could not take a compliant rest period, Behr Process failed and continues to fail to adequately pay rest period premium payments at the "regular rate of pay" as required by Labor Code § 226.7.

Accordingly, due to Behr Process' uniform rest period policies/practices and work demands, Mr. Avila and other aggrieved employees were also regularly denied legally compliant rest breaks in violation of Labor Code §§ 226.7, 512, and applicable Wage Orders, and would be entitled to penalties under Labor Code § 2698 *et seq.*

As a result of Behr Process' failure to pay Mr. Avila and other aggrieved employees for all hours they were subject to the control of Behr Process, including all minimum, overtime, sick pay wages at the "regular rate of pay," and Behr Process' failure to pay for meal and rest period premiums at the "regular rate of pay," Behr Process issued wage statements which failed to accurately identify the gross wages earned, the total hours worked, the net wages earned, and the correct corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(1, 2, 5, and 9).

Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226."

Thus, for the violations of Labor Code section 226 described above, Mr. Avila and other aggrieved employees may also recover Labor Code § 226.3 penalties for Behr Process' violations of Labor Code § 226(a). Consequently, because Behr Process failed to comply with Labor Code § 226(a), Mr. Avila and other aggrieved employees would be entitled to recover penalties under Labor Code §§ 226(e) or 2698 *et seq.*

Furthermore, because Behr Process failed to pay all minimum wages, overtime wages, sick pay wages, and meal and rest period premiums at the "regular rate of pay," Behr Process also failed and continues to fail to pay the aggrieved employees all wages owed at their time of separation from employment in violation of Labor Code §§ 201-203. Thus, aggrieved employees would be entitled to recover penalties under Labor Code §§ 201-203 or 2698 *et seq.*

Finally, at all relevant times, Behr Process required Mr. Avila and other aggrieved employees to incur necessary expenses for work-related purposes. Still, it did not reimburse aggrieved employees adequately for these necessary expenditures in violation of Labor Code §§ 2802-2804. (*See Cochran v. Schwan's Home Service, Inc.*, (2014) 228 Cal.App.4th 1137, 1144 ["[i]f an employee is required to make work-related calls on a personal cell phone, then he or she

is incurring an expense for the purposes of section 2802. It does not matter whether the phone bill is paid for by a third person or at all...To show liability under section 2802, an employee need only show that he or she was required to use a personal cell phone to make work-related calls, and he or she was not reimbursed”].) Here, Behr Process uniformly failed to reimburse aggrieved employees the necessary costs incurred in discharging their duties, including, but not limited to, personal cell phones, uniforms, and various work tools. Accordingly, due to Behr Process’s uniform failure to adequately reimburse for necessary business expenditures in violation of Labor Code §§ 2800-2802 and applicable Wage Orders, Mr. Avila and other aggrieved employees would be entitled to civil penalties under Labor Code § 2698 *et seq.*

Pursuant to Labor Code § 2699.3(a)(2)(A), please advise within sixty-five (65) calendar days of the date of this notice whether your office intends to investigate the violations alleged herein above. We understand that if we do not receive a response from your office within sixty-five (65) calendar days of this PAGA Notice, Mr. Avila may thereafter pursue his interests and the interests of similarly aggrieved employees with a civil complaint against Behr Process for its violations of the California Labor Code and applicable Wage Orders.

While we intend to pursue a PAGA representative and/or Class Action lawsuit against Behr Process for unpaid wages and civil penalties under Labor Code § 2699, our firm’s policy is to attempt to negotiate an early resolution of all matters where possible and beneficial to all aggrieved employees. If Behr Process is interested in attempting to resolve this matter, please contact me or have your lawyer contact our office to discuss an informal discovery plan and the possibility of early mediation on or before **February 6, 2024**.

Respectfully submitted,

FALAKASSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.



Joshua S. Falakassa, Esq.
Mehrdad Bokhour, Esq.

MOON LAW GROUP, PC

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Kane Moon, Esq.
Kmoon@moonlawgroup.com

January 21, 2024

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

VIA CERTIFIED MAIL

BEHR Process Corporation
17450 College Parkway
Livonia, MI 48152

Notice of Labor Code Violations and PAGA Penalties

Re: ***David Juarez v. BEHR Process Corporation***

To Whom It May Concern:

Please be advised that my office has been retained by David Juarez (“Plaintiff”) to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against his former employer, BEHR Process Corporation (“Defendant”). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of Plaintiff as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff's Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including San Bernardino County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission (“IWC”).

Plaintiff worked for Defendant as an operator from approximately April 2022 to November 2023, primarily in San Bernardino County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 5 to 6 days per week, and in excess of 8 hours each workday.

Throughout Plaintiff's employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is 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.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the statutory period, Defendants maintained a policy and practice of not paying Plaintiff and the Aggrieved Employees for all hours worked, including all overtime wages. Throughout the statutory period, Plaintiff and the Aggrieved Employees were required to work off-the-clock, and uncompensated. For example, Plaintiff and the Aggrieved Employees were required to wait in line in order to clock into work, off the clock and uncompensated. Also, Plaintiff and the Aggrieved Employees often donned and doffed prior to clocking into work, which included putting on boots, safety glasses, and uniforms, off the clock and uncompensated. Also, Plaintiff and the Aggrieved Employees were occasionally required to continue to work after their shift was completed, and after clocking out, such as to clean or complete work. Also throughout the statutory period, Plaintiff and the Aggrieved Employees received non-discretionary bonuses and other remuneration. However, Defendants failed to incorporate all remuneration when calculating the correct overtime rate of pay, sick day rate of pay, and meal break premium rate of pay, leading to underpayment of wages.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required meal periods. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours).

Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required rest periods. Further, Defendant did not maintain accurate records of employee work periods, and therefore Defendant cannot demonstrate that Plaintiff and the Aggrieved Employees took rest periods during the middle of each work period. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendant wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendant without reimbursement, which included the purchase of specific types of shoes, the use of personal cellular telephones for work purposes, and the occasional use of personal vehicles for work purposes. Plaintiff and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendant, and Defendant has failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

Failure to Pay All Accrued Vacation Wages at Termination

Labor Code § 227.3 requires employers to pay employees for all unused vested vacation time at their final rate of pay upon termination of their employment.

During the statutory period, Defendant maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees the correct amount of vacation pay owed at the termination of

employment. For instance, when Plaintiff's employment with Defendant terminated, he was owed vacation wages at his true final wage rate on his final pay check from Defendant even though he had accrued unused vacation time. On information and belief, Defendant's failure to pay Plaintiff the correct amount of vacation pay was not a single, isolated incident, but was instead part of Defendant's policy and practice that applied to the Aggrieved Employees.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to pay all accrued vacation wages at termination.

Failure to Timely Pay All Wages at Termination

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 that if an employee voluntarily leaves 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 previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” (Lab. Code § 226(e)(1).)

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked.

As a result of Defendant violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant’s failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendant also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month. Throughout the statute of limitations period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for hours worked. However, during all such times, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked. As a result, Defendant owes employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code § 227.3 by failing to pay all vacation wages at termination;
7. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
8. Labor Code § 226 by failing to provide accurate itemized wage statements; and
9. Labor Code § 204 by failing to pay all earned wages two times per month.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 2802, and 2699(f)(2).

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address, as indicated on the first page.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

MOON LAW GROUP, PC



Kane Moon, Esq.
Attorney at Law



MEHRDAD BOKHOUR
Attorney at Law

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Los Angeles | California 90067

tel 310 975 1493
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March 13, 2025

Filed via LWDA's PAGA Claim Notice Online Form

Copies Sent via Certified Mail to:

BEHR PROCESS CORPORATION
17450 COLLEGE PARKWAY
LIVONIA, MI 48152

C T CORPORATION SYSTEM
330 N BRAND BLVD,
GLENDALE, CA 91203

Copy Sent Via E-mail To:

C/O SOOJIN KANG
skang@ohaganmeyer.com
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O'HAGAN MEYER LLP

Re: *David Avila v. Behr Process Corporation*
Case Nos. *LWDA-CM-998842-23 and LWDA-CM-1006294-24*
Notice of Intent to File Suit Pursuant to California Labor Code Section 2699

To whom it may concern:

This office, along with Falakassa Law, P.C., and Moon Law Group, PC, represent David Avila and David Juarez (hereinafter "Plaintiffs") and a group of putative class members in a pending lawsuit against Behr Process Corporation and any of its affiliated entities ("Defendant"). The action, *Avila et al. v. Behr Process Corporation* is currently pending in the Superior Court of the State of California for the County of Orange (the "Action").

A copy of the second amended complaint to be submitted to the Action is enclosed as **Exhibit "A."** This letter incorporates by reference the facts, law, and allegations of Exhibit A.

This letter serves as a notice pursuant to the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), codified in California Labor Code sections 2698 through 2699.6, that we

intend to include representative claims in the Action for civil penalties under PAGA on behalf of a group of aggrieved employees. For the purposes of this letter, “Aggrieved Employees” is defined as *All individuals who are or were employed by Defendant as non-exempt employees in California from December 20, 2022, to March 9, 2025.*

As outlined in more detail in the enclosed Exhibit A, such claims for PAGA penalties arising from the following alleged violations of the California Labor Code and applicable Wage Orders during the PAGA Period, including: failure to accurately record all time worked, including time worked off the clock, failure to compensate employees for all hours and overtime hours worked, failure to pay employees at the correct overtime rate, failure to pay all required sick days at the legal rate of pay, failure to provide meal periods or pay meal period premiums at the regular rate of pay, failure to provide rest periods or pay rest period premiums at the regular rate of pay, failure to provide accurate itemized wage statements, failure to timely pay final wages at termination, failure to reimburse for necessary business expenses, failure to pay all vested vacation time, failure to properly elect and implement an alternative workweek schedule, failure to keep accurate and complete time and pay records, failure to timely produce or make available personnel records and payroll records, refusal to pay wages, unlawful deductions, requiring unlawful agreements and waivers, and conducting unlawful inquiries into criminal history, and violations of Labor Code sections 201-203, 204, 208, 210, 216, 218.5, 226, 226.3, 226.7, 227.3, 223, 233, 234, 245-248.5, 256, 432, 432.5, 432.6, 432.7, 510, 511, 512, 516, 558, 559.1, 1174.4, 1174.5, 1194, 1194.2, 1197.1, 1198, 1198.5, 1199, 2698, et seq., and 2800-2804 ..

The enclosed complaint and this correspondence provide notice that we intend to proceed with a claim for civil penalties in the Action pursuant to PAGA. (See Lab. Code, §§ 2698–2699.6.) We intend to prosecute the representative claims alleged in the complaint, including obtaining civil penalties under PAGA.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

By:

Mehrdad Bokhour

EXHIBIT “A”

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8 Tel: (310) 975-1493; Fax: (310) 675-0861

9 Attorneys for Plaintiffs, on behalf of the State of California

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF ORANGE**

12 DAVID AVILA and DAVID JUAREZ, on
13 behalf of themselves and all others similarly
14 situated,

15 Plaintiffs,

16 v.

17 BEHR PROCESS CORPORATION, a
California Corporation; and DOES 1-50,
18 inclusive.

19 Defendants.
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CASE NO.: 30-2023-01366549-CU-OE-CXC

SECOND AMENDED COMPLAINT FOR:

**CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL ACT
(LABOR CODE § 2698 *et seq.*)**

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1 Plaintiffs David Avila and David Juarez (collectively, “Plaintiffs”), on behalf of the State of
2 California, hereby bring this PAGA Representative Action Complaint against defendants Behr
3 Process Corporation and DOES 1 to 50 (collectively, “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendants supply architectural paint and exterior wood care products across the
6 United States and California, including interior paints, primers, wood stains, finishes, strippers,
7 cleaners, floor coatings, sealers, and specialty paints.

8 2. Plaintiffs bring this PAGA representative action solely on behalf of the State of
9 California against Defendants for alleged violations of the California Labor Code.

10 3. Plaintiffs do not seek to recover anything other than penalties as permitted by California
11 Labor Code § 2699.

12 4. As set forth below, Plaintiffs allege that Defendants failed to pay for all hours worked
13 due to its failure to record and pay for all time worked off the clock. Plaintiffs further allege that
14 Defendants failed to pay all overtime compensation and sick pay wages at the proper legal rates by
15 failing to calculate the “regular rate of pay properly.” Moreover, Plaintiffs allege that Defendants’
16 meal and rest period policies and practices failed to allow and permit aggrieved employees to take all
17 compliant and timely meal and rest periods or pay premium wages at the “regular rate of pay” in lieu
18 thereof. Plaintiffs further allege that Defendants failed to provide aggrieved employees with accurate
19 written itemized wage statements in violation of Labor Code § 226(a), failed to reimburse business
20 expenses, failed to timely pay all final wages upon separation of employment in violation of Labor
21 Code §§ 201-203, failed to maintain accurate payroll records and personnel files, failed to pay all
22 vested vacation time, failed to properly elect and implement an alternate workweek schedule, refused
23 to pay wages, made unlawful deductions, required unlawful agreements and waivers, and conducted
24 unlawful inquiries into criminal history.

25 **JURISDICTION**

26 5. This is a representative action brought pursuant to Labor Code § 2698 *et seq.* on
27 behalf of the State of California and the group of aggrieved employees defined as follows: “All
28 individuals who are or were employed as hourly, aggrieved employees by Defendants, or their

1 predecessors or merged entities, in the State of California from December 8, 2022, and continuing to
2 the present (“aggrieved employees”).

3 6. Plaintiffs, on behalf of the State of California, bring this representative action
4 pursuant to Labor Code § 2698, *et seq.* seeking penalties for Defendants’ violation of California Labor
5 Code §§ 201-204, 208, 210, 216, 218.5, 223, 226(a), 226(e), 226.3, 226.7, 227.3, 233, 234, 245-
6 248.5, 256, 432, 432.5, 432.6, 432.7, 510, 511, 512, 516, 558, 559.1, 1174.4, 1174.5, 1194, 1197.1,
7 1199, 2802-2804, and all applicable IWC Wage Orders.

8 7. Based upon the foregoing, Plaintiffs and all non-exempt employees are aggrieved
9 employees within the meaning of Labor Code §2698, *et seq.*

10 8. This Court has jurisdiction over Defendants because, upon information and belief,
11 Defendants have sufficient minimum contacts in California or otherwise intentionally avail
12 themselves to the State of California to render the exercise of jurisdiction over them by California
13 courts consistent with the traditional notions of fair play and substantial justice.

14 VENUE

15 9. Venue is proper in this judicial district pursuant to California Code of Civil Procedure
16 §§ 395(a) and 395.5, as most of the acts and omissions complained of herein occurred in the County
17 of Orange. Defendants own and maintain offices, transact business, have an agent or agents within
18 the County of Orange, and/or otherwise are found within the County of Orange. Defendants are within
19 this Court's jurisdiction for service of process.

20 10. In determining the proper venue for a PAGA Action, Plaintiffs are not limited to the
21 county/counties in which he or she suffered Labor Code violations but may file suit in any county
22 where an allegedly aggrieved employee suffered a Labor Code violation. (*See Crestwood Behavioral*
23 *Health v. Superior Court* (2021) 60 Cal.App.5th 1069.

24 PARTIES

25 11. At all relevant times herein, Plaintiffs, who are over 18, were and currently are
26 California residents residing in the State of California.

27 12. Plaintiffs are informed and believe and allege that Defendants are authorized to do
28 business within the County of Orange and are and/or were the legal employer of Plaintiffs and the

1 aggrieved employees during the applicable statutory periods. Plaintiffs were, and are, victims of
2 Defendants' policies and/or practices complained of herein and has been deprived of the rights
3 guaranteed to them by California Labor Code §§ 201-204, 210, 226(a), 226(e), 226.3, 226.7, 227.3,
4 510, 512, 516, 1174.4, 1174.5, 1194, 1197.1, 1199, 2802-2804, , and the California Business and
5 Professions Code § 17200 *et seq.*, and applicable Wage Orders.

6 13. Plaintiffs are informed and believe, and based thereon alleges, that during the four years
7 preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to
8 do) business in the State of California, County of Orange.

9 14. Plaintiffs does not know the true names or capacities, whether individual, partner, or
10 corporate, of the Defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
11 Defendants are sued under such fictitious names, and Plaintiffs will seek leave from this Court to
12 amend this Complaint when such true names and capacities are discovered. Plaintiffs are informed
13 and believe, and thereon alleges, that each of said fictitious Defendants, whether individual, partners,
14 or corporate, were responsible in some manner for the acts and omissions alleged herein and
15 proximately caused Plaintiffs and the aggrieved employees to be subject to the unlawful employment
16 practices alleged herein.

17 15. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned
18 herein, Defendants were and are the employers of Plaintiffs and all aggrieved employees. At all times
19 herein mentioned, each of the Defendants participated in the doing of the acts hereinafter alleged to
20 have been done by the named Defendants. Furthermore, the Defendants, and each of them, were the
21 agents, servants, and employees of each and every one of the other Defendants, as well as the agents
22 of all Defendants, and at all times herein mentioned, were acting within the course and scope of said
23 agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise
24 ratified each and every one of the acts or omissions complained of herein.

25 16. At all times mentioned herein, Defendants, and each of them, were members of and
26 engaged in a joint venture, partnership, and common enterprise and acting within the course and
27 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
28 Plaintiffs allege that all Defendants were joint employers for all purposes of Plaintiffs and all

1 aggrieved employees.

2 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

3 17. Defendants supply architectural paint and exterior wood care products nationwide and
4 across California, including interior paints, primers, wood stains, finishes, strippers, cleaners, floor
5 coatings, sealers, and specialty paints.

6 18. Plaintiff David Avila was employed by Defendants as a non-exempt employee with
7 the title of “Maintenance Mechanic” beginning on January 3, 2023, until his separation from
8 employment on November 20, 2023. Plaintiff worked for Defendants out of its Santa Ana, California
9 location.

10 19. Plaintiff David Juarez was employed by Defendants as a non-exempt employee with
11 the title of “Operator” during the statutory period. Plaintiff worked for Defendants in the County of
12 San Bernardino, State of California.

13 20. Plaintiffs and other non-exempt employees (including, but not limited to, Inventory
14 Control Manager, Quality Technician, Maintenance Mechanic, Receiving Operator, Machine
15 Operator, and all other aggrieved positions) were responsible for all aspects of Defendants’ business
16 in California. However, in these roles, Plaintiffs and aggrieved employees were often not afforded all
17 protections and rights conferred under the California Labor Code and applicable wage orders.

18 21. At all relevant times, Plaintiffs and other aggrieved employees regularly worked
19 various shifts, many of which were in excess of 8.0 hours in a workday and 40.0 hours in a workweek.
20 Plaintiffs allege that other aggrieved hourly employees were also subjected to the same policies,
21 procedures, practices, working conditions, and corresponding wage and hour violations to which he
22 was subjected during his employment.

23 22. First, at all relevant times, Plaintiffs and other aggrieved employees were required to
24 don Personal Protective Equipment (“PPE”) before clocking in and starting their shifts. Likewise,
25 aggrieved employees were required to remove PPE after clocking out at the end of their scheduled
26 shifts. These mandated procedures occurred before employees clocked in and after clocking out and
27 resulted in time aggrieved employees not receiving compensation while subject to the control of the
28 Company. Despite being subject to Defendants’ control while donning and doffing PPE, the

1 Company did not provide any compensation for the time it took to complete these processes.

2 23. As a result, at all relevant times, Defendants have consistently failed to accurately
3 record all time worked, including time under which aggrieved employees were under the employer's
4 control. This included a policy and practice of failing to record aggrieved employees' time properly
5 worked, including all time spent working off the clock. As a result of this company-wide
6 policy/practice, Plaintiffs and other aggrieved employees are not compensated for all the hours that
7 they work and all of the overtime hours they actually work, in violation of Labor Code §§ 204, 210,
8 510, 1194, 1197.1, 1199, and applicable Wage Orders. Defendants have no valid defense to this claim
9 given the California Supreme Court's recent unanimous decision in *Frlekin v. Apple, Inc.* (2020) 8
10 Cal.5th 1038, which held that employees "must be paid" during security checks since "it is clear that
11 [employees] are subject to [the employer's] control while awaiting, and during, [the] exit searches."

12 24. As a result, over a period of time, Plaintiffs and other aggrieved employees were not
13 properly paid for all hours worked in violation of Cal. Labor Code §§ 204, 210, 1194, 1197.1, 1199,
14 and applicable Wage Orders. Additionally, due to the unlawful timekeeping policy/practices,
15 Plaintiffs and other aggrieved employees were not properly paid at the correct overtime rate for hours
16 worked in excess of eight hours per shift in violation of Labor Code § 510.

17 25. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed
18 by an applicable state or local law or by order of the commission a civil penalty, restitution of wages,
19 and liquidated damages as follows: (1) for any initial violation that is intentionally committed, one
20 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is
21 underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty
22 dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid
23 regardless of whether the initial violation was intentionally committed.

24 26. Labor Code § 510 requires an employer to compensate an employee who works more
25 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
26 worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular rate of
27 pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than
28 twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or

1 more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the
2 applicable Wage Orders, aggrieved employees shall not be employed more than eight (8) hours in
3 any workday or more than 40 hours in any workweek unless the employee receives one and one-half
4 (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

5 27. Accordingly, through PAGA and to the extent permitted by law, Plaintiffs and other
6 aggrieved employees are entitled to recover penalties for violations of Labor Code §§ 204, 210, 510,
7 1194, 1197.1, 1199 1197.1 under Labor Code § 1197.1, 1199, or Labor Code § 2699(f)(2), and for
8 attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

9 28. Furthermore, at all relevant times, Plaintiffs and other aggrieved employees worked
10 regular shifts that lasted longer than 8.0 hours in a workday. This resulted in aggrieved employees
11 regularly working more than 40 hours in a workweek. However, Plaintiffs and other aggrieved
12 employees were not properly paid at the correct overtime rate for all overtime hours worked due to
13 Defendants' uniform failure to include all forms of compensation/remuneration, including, but not
14 limited to, commissions, incentives, non-discretionary bonuses, and all other forms of remuneration
15 in calculating the "regular rate of pay" for purposes of overtime compensation.

16 29. Under the California Labor Code (as well as the FLSA), courts have consistently held
17 that regularly paid non-discretionary bonuses (and other forms of pay) must be included in
18 determining an employee's "regular rate of pay" for purposes of calculating overtime. (See *Haber v.*
19 *The Americana Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency
20 bonuses must be included in calculating the "regular rate"]; *Wang v. Chinese Daily News, Inc.* 435 F.
21 Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgement to Plaintiffs under
22 California and federal law on the grounds, that Defendants improperly calculated overtime by
23 excluding annual bonuses paid to employees from the "regular rate of compensation"]; see *Walling*
24 *v. Youngerman-Reynolds Hardwood Co.* (1945) 65 S.Ct. 1242, 1245. ("The regular rate by its very
25 nature must reflect all payments which the parties have agreed shall be received regularly during the
26 workweek, exclusive of overtime payments. It is not an arbitrary label chosen by the parties; it is an
27 actual fact. Once the parties have decided upon the amount of wages and the mode of payment the
28 determination of the regular rate becomes a matter of mathematical computation, the result of which

1 is unaffected by any designation of a contrary ‘regular rate’ in the contracts.”); see also 29 CFR §§
2 778.110 (“production bonus”) and 778.111 (“piece-rate”).

3 30. By their policy of requiring Plaintiffs and the other aggrieved employees to work in
4 excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating
5 them at the lawful rate of one-half (1 1/2) their regular rate of pay, Defendants willfully violated the
6 provisions of Labor Code § 510 and the applicable Wage Orders.

7 31. Accordingly, through PAGA and to the extent permitted by law, Plaintiffs and other
8 aggrieved employees are entitled to recover penalties for violations of Labor Code §§ 204, 210, 510,
9 1194, 1197.1, 1199 1197.1 under Labor Code § 1197.1, 1199, or Labor Code § 2699(f)(2), and for
10 attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

11 32. Furthermore, at all relevant times, Defendants also failed in its obligation to provide
12 Plaintiffs and other aggrieved employees the legally required paid sick days at the legal rate pursuant
13 to Labor Code §§ 246(a),(b), which requires that “[a]n employee who, on or after July 1, 2015, works
14 in California for the same employer for 30 or more days within a year from the commencement of
15 employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours
16 worked, beginning at the commencement of employment.” Labor Code § 246(l)(1) provides that paid
17 sick time for aggrieved employees must be “calculated in the same manner as the regular rate of pay
18 for the workweek in which the employee uses paid sick time, whether or not the employee actually
19 works overtime in that workweek.”

20 33. Additionally, Labor Code § 246(l)(2) states that the paid sick time must be “calculated
21 by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total
22 hours worked in the full pay periods of the prior 90 days of employment.” Finally, Labor Code §246(i)
23 requires employers to “provide an employee with written notice that sets forth the amount of paid
24 sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either
25 the employee’s itemized wage statement described in Section 226 or in a separate writing provided
26 on the designated pay date with the employee’s payment of wages.”

27 34. Here, at all relevant times, Defendants failed in its obligation to provide Plaintiffs and
28 other aggrieved employees the legally required paid sick days at the legal rate, including all forms of

1 compensation, pursuant to Labor Code §§ 246(a), (b). As such, Defendants paid sick time below
2 “regular rate of pay” as required by Labor Code §§ 246(l) (1-2). Based on the foregoing Labor Code
3 violations, Plaintiffs seeks all civil and statutory penalties available and applicable under Labor Code
4 § 2699(f)(2), and for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

5 35. Moreover, at all relevant times, Plaintiffs and other aggrieved employees were denied
6 compliant and timely 30-minute off-duty meal periods as mandated by California law. Due to
7 Defendants’ uniform meal period policies/practices, operational requirements, and work demands,
8 Plaintiffs and other aggrieved employees were often unable to take timely and uninterrupted net 30-
9 minute first meal periods before the end of the fifth hour of work. Further, when Plaintiffs and other
10 aggrieved employees worked more than 10.0 hours in a shift, they were not allowed and permitted to
11 take a mandated second meal period before the end of the tenth hour of work in violation of the Labor
12 Code and applicable Wage Orders. Indeed, Plaintiffs’ and other aggrieved employees’ meal periods
13 were often interrupted and lasted fewer than 30 minutes due to Defendants’ meal period
14 policies/procedures, operational requirements and work demands.

15 36. In addition, for each missed or non-compliant meal period, Defendants failed and
16 continues to fail to maintain a mechanism by which aggrieved employees were paid meal period
17 premiums at the “regular rate of pay” pursuant to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11
18 5th 858 and Labor Code § 226.7.

19 37. Accordingly, due to Defendants’ uniform meal period practices, aggrieved employees
20 were also regularly denied legally compliant meal periods in violation of Labor Code §§ 226.7, 510,
21 516, and applicable Wage Orders, and would be entitled to penalties under Labor Code § 2698 *et seq.*

22 38. Next, at all relevant times, Plaintiffs and other aggrieved employees were not provided
23 with all 10-minute rest periods for every four hours worked, or major fraction thereof due to
24 Defendants’ uniform rest period policies/practices, operational requirements, and work demands. As
25 a result, Plaintiffs and other aggrieved employees were and are often unable to take a net 10-minute
26 duty free rest periods for every major fraction of four hours worked. This includes a second rest period
27 for shifts in excess of six hours, and a third rest period for shifts in excess of 10.0 hours in a workday.
28 Making matters worse, based on information and belief, aggrieved employees were required to

1 remain on-site during rest periods.

2 39. By not relieving all aggrieved employees of all duties during rest periods, Defendants
3 failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services, Inc.* (2016)
4 2 Cal. 5th 257, 269 [concluding that “during rest periods employers must relieve employees of all
5 duties and relinquish control over how employees spend their time.”] (Emphasis added). In *Augustus*,
6 the California Supreme Court expressly rejected the employer’s assertion that it could provide an on-
7 duty rest period to employees who worked as security guards and further explained: “that employers
8 [must] relinquish any control over how employees spend their break time and relieve their employees
9 of all duties.” *Id.* at 273. Each time aggrieved employees could not take a compliant rest period,
10 Defendants failed and continue to fail to adequately pay rest period premium payments at the “regular
11 rate of pay” as required by Labor Code § 226.7.

12 40. Accordingly, due to Defendants’ uniform rest period policies/practices and work
13 demands, aggrieved employees were regularly denied legally compliant rest breaks in violation of
14 Labor Code §§ 226.7, 512, and applicable Wage Orders, and would be entitled to penalties under
15 Labor Code § 2698 *et seq.*

16 41. As a result of Defendants’ failure to pay Plaintiffs and other aggrieved employees for
17 all hours they were subject to the control of Defendants, including all minimum, overtime and sick
18 pay wages, and Defendants’ failure to adequately pay for all overtime wages, sick pay wages, and
19 meal and rest period premiums at the “regular rate of pay,” Defendants issued wage statements which
20 failed to identify the gross wages earned accurately, the total hours worked, the net wages earned,
21 and the correct corresponding number of hours worked at each hourly rate, in violation of Labor Code
22 § 226(a)(1, 2, 5, and 9).

23 42. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
24 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
25 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
26 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
27 deduction statement or fails to keep the required in subdivision (a) of Section 226.”

28 43. Thus, for the violations of Labor Code section 226 described above, Plaintiffs and

1 other aggrieved employees may also recover Labor Code § 226.3 penalties for Defendants violations
2 of Labor Code § 226(a). Consequently, because Defendants failed to comply with Labor Code §
3 226(a), Plaintiffs and other aggrieved employees would be entitled to recover penalties under Labor
4 Code § 226(e) and/or 2698 *et seq.*

5 44. Moreover, because Defendants failed to pay all minimum, overtime and sick pay
6 wages, and meal and rest period premiums at the “regular rate of pay,” Defendants also failed and
7 continue to fail to pay Plaintiffs and other aggrieved employees all wages owed at their time of
8 separation from employment in violation of Labor Code §§ 201-203. Thus, aggrieved employees
9 would be entitled to recover waiting time penalties under Labor Code §§ 201-203 and/or 2698 *et seq.*

10 45. Furthermore, at all relevant times, Defendants required Plaintiffs and other aggrieved
11 employees to incur necessary business expenses for work-related purposes but did not reimburse
12 aggrieved employees adequately for these necessary expenditures in violation of Labor Code §§
13 2802-2804. *See Cochran v. Schwan’s Home Service, Inc.*, (2014) 228 Cal.App.4th 1137, 1144 [“[i]f
14 an employee is required to make work-related calls on a personal cell phone, then he or she is
15 incurring an expense for the purposes of section 2802. It does not matter whether the phone bill is
16 paid for by a third person or at all...To show liability under section 2802, an employee need only
17 show that he or she was required to use a personal cell phone to make work-related calls, and he or
18 she was not reimbursed”]. Here, Defendants uniformly failed to reimburse aggrieved employees for
19 the necessary costs incurred in discharging their duties, including personal cell phones, work tools,
20 uniforms, and various work tools. Accordingly, due to Defendants’ uniform failure to adequately
21 reimburse for necessary business expenditures in violation of Labor Code §§ 2800-2802 and
22 applicable Wage Orders. Plaintiff and other aggrieved employees would be entitled to civil penalties
23 under Labor Code § 2698 *et seq.*

24 46. Finally, at all relevant times, Defendants, as the relevant employer here, was required
25 to maintain certain employment and payroll records for Plaintiffs and other aggrieved employees.

26 47. Pursuant to Labor Code § 1174, subdivision (d), an employer shall keep at a central
27 location in the state or at the plants or establishments at which employees are employed, payroll
28 records showing the hours worked daily by and wages paid to employees employed at the respective

1 plants or establishments. These records must be kept in accordance with rules established for this
2 purpose by the commission, but in any case, shall be kept on file for not less than two years

3 48. Defendants have intentionally and willfully failed to keep accurate and complete
4 records showing the daily hours worked and wages paid to Plaintiffs and other aggrieved employees.
5 Thus, Plaintiffs and the other aggrieved employees have been denied their legal right and protected
6 interest in having available at a central location at the plant or establishment where they are employed
7 accurate and complete payroll records showing the hours worked daily and the wages paid to,
8 employees at those respective locations pursuant to Labor Code § 1174.

9 49. Accordingly, to the extent permitted by law, Plaintiffs and other aggrieved employees
10 are entitled to recover a civil penalty of \$500 for an employer's failure to maintain accurate and
11 complete records pursuant to Labor Code § 1174.

12 **FIRST CAUSE OF ACTION**

13 **PRIVATE ATTORNEYS GENERAL ACT**

14 **(Plaintiffs and Similarly Aggrieved Employees Against All Defendants)**

15 50. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in
16 the preceding paragraphs.

17 51. Defendants have committed several Labor Code violations against Plaintiffs and
18 other similarly aggrieved employees. Plaintiffs, are "aggrieved employees" within the meaning of
19 Labor Code § 2698 *et seq.*, acting on behalf of the State of California, brings this representative action
20 against Defendant to recover the civil penalties due to Plaintiff, other similarly aggrieved employees,
21 and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including,
22 but not limited to (1) \$100 for each initial violation and \$200 for each subsequent violation per
23 employee per pay period for those violations of the Labor Code for which no civil penalty is
24 specifically provided based on the following Labor Code violations:

- 25 a) Defendants' failure to record and pay for all hours worked;
- 26 b) Defendants' failure to pay all overtime wages at the "regular rate of pay" because
27 Defendant failed to include all forms of compensation, including, but not limited to, shift differential,
28 commissions, incentives, non-discretionary bonuses, and other forms of remuneration;

- 1 c) Defendants' failure to pay all sick pay at the "regular rate of pay";
- 2 d) Defendants' failure to allow and permit legally compliant meal periods or compensation
- 3 at the "regular rate of pay" in lieu thereof;
- 4 e) Defendants' failure to allow and permit legally compliant rest periods or compensation
- 5 at the "regular rate of pay" in lieu thereof;
- 6 f) Defendants' failure to furnish legally compliant wage statements pursuant to Labor
- 7 Code § 226(a);
- 8 g) Defendants' failure to pay final wages to aggrieved employees in a timely manner at the
- 9 time of separation from employment was unlawful;
- 10 h) Defendants' failure to pay all vested vacation time;
- 11 i) Defendants' failure to properly elect and implement an alternate workweek schedule;
- 12 j) Defendants' failure to pay wages, made unlawful deductions;
- 13 k) Defendants' requirement of unlawful agreements and waivers;
- 14 l) Defendants' unlawful inquiries into criminal history
- 15 m) Defendants' failure to reimburse aggrieved employees for all necessary business
- 16 expenses in violation of Labor Code §§ 2802-2804; and
- 17 n) Defendants' failure to maintain payroll records and personnel files in violation of Labor
- 18 Code §§ 432, 1174, 1174.5 and applicable Wage Orders.

19 52. Plaintiffs have notified Defendant Behr Process Corporation ("Defendants") via
20 certified mail and the California Labor and Workforce Development Agency ("LWDA") via its
21 website of Defendant's violations of the California Labor Code § 2698 *et. seq.* with respect to
22 violations of the California Labor Code identified in Paragraph 51 (a)-(i). Now that sixty-five days
23 (65) have passed from Plaintiff notifying Defendant of these violations, Plaintiffs have exhausted
24 their administrative requirements for bringing a claim under the Private Attorneys General Act
25 concerning these violations.

26 53. Plaintiffs were compelled to retain the services of counsel to file this court action to
27 protect their interests and the interests of other similarly aggrieved employees and to assess and
28 collect the civil penalties owed by Defendants. Plaintiffs have, therefore, incurred attorneys' fees and

costs, which they are entitled to receive under California Labor Code § 2698 *et seq.*

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment on behalf of the State of California against Defendants, as follows:

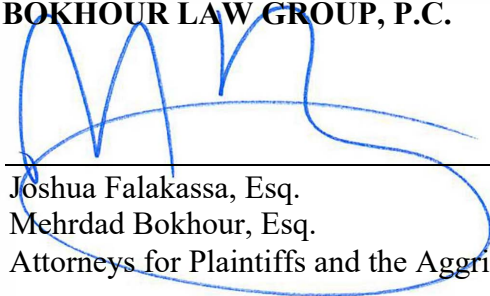
1. Upon the First Cause of Action, for civil penalties due to Plaintiffs, other similarly aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to (1) \$100 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided under the Labor Code;

2. For attorneys' fees and costs as provided by Labor Code § 2698 *et seq.*, and Code of Civil Procedure §1021.5; and

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

Dated: March 13, 2025

FALAKASSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.

By: 

Joshua Falakassa, Esq.
Mehrdad Bokhour, Esq.
Attorneys for Plaintiffs and the Aggrieved Employees

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EXHIBIT “B”

TRUE AND CORRECT COPY OF
PAGA SETTLEMENT AGREEMENT

[SEE ATTACHED]

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement ("Settlement") of claims brought under the Private Attorneys General Act, Labor Code § 2698 *et seq.* ("PAGA"), is made and entered into between Plaintiffs David Avila and David Juarez, acting in their capacity as representatives of the State of California, and on behalf of other aggrieved employees, and the Labor and Workforce Development Agency ("LWDA"), and Defendant Behr Process LLC (former Behr Process Corporation) in accordance with the terms of the Memorandum of Understanding signed by the Plaintiffs and Defendant and subject to preliminary and final approval by the Court for the settlement of the representative action *David Avila, et al. v. Behr Process Corp.*, Orange County Superior Court, Case No. 30-2023-01366549.

I. DEFINITIONS

The following terms, when used in this Settlement, will have the following meanings:

1. "Avila Action" means the civil action entitled *David Avila and David Juarez v. Behr Process Corp.*, pending in Orange County Superior Court, Case No. 30-2023-01366549. This action was subsequently amended to include the claims and parties from the related Juarez Action.

2. "Juarez Action" means the civil action entitled *David Juarez v. Behr Process Corp.*, pending in the Orange County Superior Court, Case No. 30-2025-01452707.

3. "Plaintiffs" means David Avila and David Juarez.

4. "Defendant" means Behr Process LLC.

5. "PAGA Members" are comprised of all current and former hourly, non-exempt employees who worked for the Defendant in California at any time during the PAGA Period.

6. "Court" means the Superior Court of California for the County of Orange.

7. "Effective Date" means the date on which the Court enters an order approving the Settlement without material modification, either (a) the time to appeal or seek review of the Court's approval has expired with no appeal or request for review having been filed, or (b) any appeal or request for review has been resolved in a manner that upholds the Court's approval of the Settlement.

8. "Individual Settlement Payment" means the amount to be paid to each PAGA Member based on the formula described herein.

9. "LWDA" means the California Labor and Workforce Development Agency.

10. "Gross Settlement Amount" means the non-reversionary sum of Five Hundred and Sixty Thousand Dollars and No Cents (\$560,000.00), which represents the total maximum

amount Defendant is obligated to pay under this Settlement. This amount includes, without limitation, Plaintiffs' attorneys' fees, Plaintiffs' costs, settlement administration costs, PAGA payments to the LWDA, payments to PAGA Members, and any other amounts associated with or arising from this Settlement. Defendant shall fund the Gross Settlement Amount by paying it to the Settlement Administrator within thirty (30) calendar days after the Effective Date.

11. "Net Settlement Amount" is the amount remaining to distribute to the LWDA and PAGA Members after the following amounts (subject to Court approval) are subtracted from the Gross Settlement Amount: (a) Plaintiffs' attorneys fees of up to one-third (33.33%) of the Gross Settlement Amount, (b) Plaintiffs' reasonable litigation costs and expenses as requested pursuant to motion and subject to Court approval, and (c) reasonable settlement administration costs.

12. "PAGA" means the California Labor Code Private Attorneys General Act, California Labor Code § 2698, *et seq.*

13. "PAGA Period" means the period beginning on December 20, 2022 and ending on March 9, 2025.

14. "Released Parties" means (a) Defendant; (b) the respective former and present parents (including Masco Corporation), subsidiaries, affiliated corporations and entities, clients, vendors, and independent contractors of the entity in subparagraph (a); (c) the successors and predecessors of the entities identified in subparagraphs (a) and (b); and (d) each of the respective current, former, and future officers, directors, members, managers, insurers, accountants, attorneys, investment bankers, trusts, trustees, licensors, licensees, employees, consultants, vendors, payroll companies, staffing agencies, independent contractors, clients, partners, shareholders, joint venturers, and third-party agents of any entities identified in subparagraphs (a) through (c).

15. "Parties" means Plaintiffs and Defendant.

16. "Plaintiffs' Counsel" means Mehrdad Bokhour of Bokhour Law Group, P.C., Joshua Falakassa of Falakassa Law, P.C., and Kane Moon, Julie Oh, and Allen Feghali of Moon Law Group, P.C.

17. "Settlement Administrator" means Simpluris, Inc.

II. RECITALS

1. Plaintiffs allege that Defendant is liable for civil penalties under the PAGA based on various alleged Labor Code violations, including but not limited to failure to accurately record all time worked, including time worked off the clock, failure to compensate employees for all hours and overtime hours worked, failure to pay employees at the correct overtime rate, failure to pay all required sick days at the legal rate of pay, failure to provide meal periods or pay meal period

premiums at the regular rate of pay, failure to provide rest periods or pay rest period premiums at the regular rate of pay, failure to provide accurate itemized wage statements, failure to timely pay final wages at termination, failure to reimburse for necessary business expenses, failure to pay all vested vacation time, failure to properly elect and implement an alternative workweek schedule, failure to keep accurate and complete time and pay records, failure to timely produce or make available personnel records and payroll records, refusal to pay wages, unlawful deductions, requiring unlawful agreements and waivers, and conducting unlawful inquiries into criminal history. Defendant denies all of Plaintiffs' allegations and expressly denies any liability or wrongdoing. By entering into this Settlement, Defendant does not admit the sufficiency of any claims, allegations, assertions, or contentions made against it in the Avila and Juarez Actions.

2. On January 8, 2025, the Parties participated in a full-day mediation with Judge Carl J. West (Ret.). As a result of that mediation, the Parties reached a global settlement resolving all PAGA claims asserted in the Avila and Juarez Actions on behalf of Plaintiffs and the PAGA Members.

III. OPERATIVE TERMS OF SETTLEMENT

The Parties agree as follows:

1. **Non-Admission of Liability.** Defendant denies liability as to Plaintiffs Avila and Juarez and the PAGA Members upon any claim or cause of action. This Settlement does not constitute, and is not intended to constitute, and admission by Defendant as to the merits, validity, or accuracy of any of the allegations or claims made against it in the Avila and Juarez Actions.

Nothing in this Settlement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the negotiations leading to this Settlement, is intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. The Parties themselves agree not to introduce, use, or admit this Settlement, directly or indirectly, in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding, as purported evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity, or for any other purpose. Notwithstanding the foregoing, this Settlement may be used in any proceeding before the Court that has as its purpose the interpretation, implementation, or enforcement of this Settlement or any orders or judgments of the Court entered in connection with the Settlement.

2. **Gross Settlement Amount.** Defendant will pay Five Hundred and Sixty Thousand Dollars and No Cents (\$560,000.00) as the non-reversionary Gross Settlement Amount. The Gross Settlement Amount shall be funded within 30 calendar days after the Effective Date.

3. **Dismissal of the Juarez Action and Amendment of Claims in the Avila Action.** Plaintiff Juarez will dismiss the Juarez Action without prejudice, including the class claims not previously dismissed. Plaintiff Avila has already submitted a supplemental PAGA Notice to the LWDA, incorporating the claims discussed and resolved during the course of mediation. Plaintiff Avila has also filed a Second Amended Complaint in the Avila Action asserting all PAGA claims to be released, and will seek approval of this Settlement in the Avila Action. All individual claims belonging to Avila and Juarez and all PAGA representative claims ever asserted in the Avila and Juarez Actions shall be finally resolved through a final judgment in the Avila Action.

4. **Net Settlement Amount.** The Parties agree that the following amounts should be subtracted from the Gross Settlement Amount, subject to Court approval, resulting in a Net Settlement Amount to distribute to the LWDA and PAGA Members.

- a. **Plaintiffs' Attorneys' Fees and Costs.** Defendant will not oppose Plaintiff's request for attorneys' fees in the amount not to exceed one-third of the Gross Settlement Amount and actual costs and expenses incurred in prosecuting the Actions. In the event the Court approves a payment of less than these amounts, the difference will be added to the Net Settlement Amount. The Settlement Administrator will report these payments on IRS Form 1099 issued to Plaintiffs' Counsel.
- b. **Administration Costs.** Defendant will not oppose the Settlement Administrator's reasonable costs for administering the Settlement. The Settlement Administrator will report this payment on IRS Form 1099 issued to the Settlement Administrator.

5. **Allocation of Net Settlement Amount.** The amount that each PAGA Member will be eligible to receive from the Net Settlement Amount will be calculated by dividing the number of pay periods worked by each PAGA Member by the total pay periods of all PAGA Members.

6. **PAGA Released Claims.** In consideration for the payments awarded pursuant to the terms of this Settlement, upon Court approval of the PAGA Settlement, Plaintiffs and PAGA Members, on behalf of themselves and as representatives of the state of California and its LWDA, will fully and finally release and discharge Released Parties from claims for penalties and attorneys' fees and costs recoverable under PAGA which Plaintiffs, PAGA Members, and/or the LWDA had, or may claim to have, against Released Parties, arising out of the violations alleged or that could have been alleged based on the facts alleged in the Avila and Juarez Actions or the PAGA Notices by Plaintiffs, including but not limited to, PAGA Penalties for or arising out of the following: failure to accurately record all time worked, including time worked off the clock, failure to compensate employees for all hours and overtime hours worked, failure to pay employees at the correct overtime rate, failure to pay all required sick days at the legal rate of pay, failure to provide meal periods or pay meal period premiums at the regular rate of pay, failure to provide rest periods

or pay rest period premiums at the regular rate of pay, failure to provide accurate itemized wage statements, failure to timely pay final wages at termination, failure to reimburse for necessary business expenses, failure to pay all vested vacation time, failure to properly elect and implement an alternative workweek schedule, failure to keep accurate and complete time and pay records, failure to timely produce or make available personnel records and payroll records, refusal to pay wages, unlawful deductions, requiring unlawful agreements and waivers, and conducting unlawful inquiries into criminal history, and violations of Labor Code sections 201-203, 204, 208, 210, 216, 218.5, 223, 226, 226.3, 226.7, 227.3, 233, 234, 245-248.5, 256, 432, 432.5, 432.6, 432.7, 510, 511, 512, 516, 558, 559.1, 1194, 1194.2, 1197.1, 1198, 1198.5, 1199, 2698, et seq., and 2800-2804. This release shall apply to claims arising during the PAGA Period and will be binding and effective upon Plaintiffs, PAGA Members, and the LWDA regardless of whether the PAGA Member cashes his or her settlement check. Released PAGA Claims do not include any individual claims PAGA Members may have.

7. **Covenants and Representations by Plaintiffs.** Plaintiffs represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Settlement. Plaintiffs acknowledge that they have read this Settlement, and that they fully understand their rights, privileges, and duties under the Settlement, and enter into this Settlement freely and voluntarily. Plaintiffs further acknowledge that they have had the opportunity to consult with their attorneys to explain the terms of this Settlement and the consequences of signing this Settlement.

8. **Judgment.** As part of the Motion to approve the Settlement, Plaintiffs will submit a proposed order and judgment in the Avila Action that (a) approves the Settlement as fair, adequate, and reasonable; (b) enters judgment in accordance with the terms of the Settlement; and (c) retains jurisdiction of the Court over the Avila Action for the purpose of enforcing the Settlement. This Settlement is expressly conditioned upon the Court entry of such an approval order and judgment in the Avila Action and the dismissal without prejudice of the Juarez Action. The Court's entry of judgment in the Avila Action will not release or bar any claims other than the PAGA Released Claims as to Plaintiffs and the PAGA Members. The Parties agree to reasonably cooperate in preparing any other filings required by the Court for the approval of this Settlement.

9. **Publicity.** Plaintiffs and their counsel agree that they have not and will not publish the Avila or Juarez Action or the Settlement until Plaintiffs have filed their motion for approval of the Settlement. Until Plaintiffs have filed their motion for approval of the Settlement, Plaintiffs' counsel shall not report the Avila or Juarez Action or the Settlement in any medium or in any publication, shall not post or report anything regarding the claims of Plaintiffs, the PAGA Members, or the Settlement on their websites, and shall not contact any reporters or media regarding the Settlement. Nothing herein will restrict Plaintiffs' Counsel from including publicly available information regarding this settlement in future judicial submissions regarding Plaintiffs' Counsel's qualifications and experience.

10. **Escalator Clause:** Defendant represents that PAGA Members worked approximately 21,723 pay periods during the PAGA Period, defined as the period from December

20, 2022 through January 8, 2025. If the total number of pay periods worked by PAGA Members during the PAGA Period exceeds 21,723 by more than ten percent (10%), the Gross Settlement Amount shall be increased proportionally, but only for the percentage exceeding the ten percent (10%) threshold. For example, if the total pay periods exceed 21,723 by eleven percent (11%), the Gross Settlement Amount will increase by one percent (1%).

IV. ADMINISTRATION OF SETTLEMENT.

1. **Settlement Administrator.** The Parties agree to use Simpluris to handle the administration of this Settlement.

2. **Provisions of Information for PAGA Members.** Within twenty-one (21) calendar days after the Effective Date, Defendant will provide the Settlement Administrator with the following information for the PAGA Members: (1) full name; (2) last known home address; (3) social security number; and (4) number of pay periods worked by each employee of Defendant in the State of California during the PAGA period ("PAGA Members List"). The PAGA Members List shall be deemed confidential and may not be disclosed or used by the Settlement Administrator for any purpose except to facilitate the PAGA Settlement. Upon receipt of the PAGA Member List, the Settlement Administrator shall access the National Change of Address ("NCOA") Database, and update the addresses contained therein.

Within five (5) business days of receiving the PAGA Members' information from Defendant, the Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the Individual Settlement Payments to each PAGA Member and the data used to calculate said payments. The Settlement Administrator will obtain approval from all counsel for the parties to the calculations before mailing Individual Settlement Payments.

3. **Explanatory Letters and Individual Settlement Payments.** Within five (5) business days of receiving approval from all counsel for the Parties, the Settlement Administrator will mail copies of the explanatory letter, which will be mutually approved by the Parties, along with the Individual Settlement Payments to all PAGA Members via First-Class U.S. Mail.

Each Individual Settlement Payment will be deemed penalties and reported using IRS Form 1099. Checks will remain negotiable for ninety (90) days from the date they are mailed by the Settlement Administrator. Any check that is not negotiated within one hundred twenty (120) days of mailing to a PAGA Member will be transferred to the California State Controller's Unclaimed Property Fund.

4. **Undeliverable Letters.** The Settlement Administrator will exercise its best judgment to determine the current mailing address for each PAGA Member. The address identified by the Settlement Administrator as the current mailing address will be presumed to be the best mailing address for each PAGA Member. Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly

attempt to determine the correct address using a Skip-Trace or other search using the name, address, or Social Security number of the PAGA Member involved, and will perform a single re-mailing.

Defendant fully discharges its obligations to those PAGA Members to whom it will pay an Individual Settlement Payment through the Settlement Administrator's initial mailing of a check, regardless of whether such checks are actually received and/or negotiated by the PAGA Members.

Plaintiffs and their counsel, as well as Defendant and its counsel, shall not bear any responsibility for errors or omissions in the calculation or distribution of the settlement payments or the development of the list of recipients of settlement payments.

5. **Payment of Remainder.** Within ten (10) business days of receiving the Gross Settlement Amount from Defendant, the Settlement Administrator shall distribute the following: (1) seventy-five percent (75%) of the Net Settlement Amount to the California Labor and Workforce Development Agency ("LWDA") pursuant to Labor Code § 2699(i); (2) Court-approved attorneys' fees and litigation costs to Plaintiffs' Counsel; and (3) Court-approved settlement administration costs to the Settlement Administrator.

6. **Accounting.** The Settlement Administrator will provide an accounting declaration under oath to the Parties of the amounts paid from the Settlement as soon as practicable after the check cashing deadline described in Paragraph IV.3.

7. **Tax Consequences.** Individual Settlement Payments made under this Settlement will be attributed 100% as penalties and paid via IRS Form 1099 issued to each PAGA Member. Neither Plaintiffs nor Defendant, nor counsel for any of the Parties, makes any representations or warranties with respect to tax consequences of any payment under this Settlement.

V. CIRCULAR 230 DISCLAIMER.

EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE

IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

VI. MISCELLANEOUS PROVISIONS.

1. **Successors.** This Settlement will be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, and successors.

2. **Governing Law.** This Settlement will be construed under and governed by the laws of the State of California, without regard to choice of law principles. All questions of validity, interpretation, or performance of any of its terms or of any rights or obligations of the Parties to this Settlement will be governed by California law. If any legal or equitable action is necessary to enforce the terms of this Settlement, it will be brought in the State of California, County of Orange.

3. **Nullification of Settlement.** In the event that: (i) the Court does not approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then this Settlement and any documents generated to bring it into effect will be null and void, and the Parties will be returned to their original respective positions.

4. **Judgment and Continued Jurisdiction.** After approval of this Settlement, the Court will have continuing jurisdiction per California Code of Civil Procedure § 664.6 solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement; (ii) settlement administration matters; and (iii) such post-judgment matters as may be appropriate under court rules or as set forth in this Settlement.

5. **Amendment or Modification.** This Settlement may be amended or modified only by a written instrument, signed by the Parties or their successors-in-interest or counsel for the Parties.

6. **Authorization to Enter Into Settlement.** Counsel for the Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Settlement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If they are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

7. **Execution and Counterparts.** This Settlement is subject only to the execution of the Parties. However, the Settlement may be executed in one or more counterparts. All executed

counterparts, and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

8. **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties believe this Settlement is a fair, adequate, and reasonable settlement of the Avila and Juarez Actions, and have arrived at this Settlement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

9. **Invalidity of Any Provision.** Before declaring any provision of this Settlement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible, consistent with applicable precedents, so as to define all provisions of this Settlement valid and enforceable.

10. **Severability.** If any term or provision of this Settlement is held to be invalid or unenforceable, the remaining portions of this Settlement will continue to be valid and will be performed, construed, and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Settlement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

11. **Waiver.** No waiver of any condition or covenant contained in this Settlement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right, or remedy.

12. **Enforcement Action.** In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

13. **Mutual Preparation.** The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement. Accordingly, this Settlement will not be construed more strictly against one Party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement.

14. **Representation by Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement, and this Settlement has been executed with the consent and advice of counsel and reviewed in full.

15. **Cooperation and Execution of Necessary Documents.** The Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate

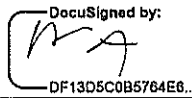
the terms of this Settlement. The Parties agree to work cooperatively, diligently, and in good faith to ensure that all documents necessary to seek the Court's approval of this Settlement are timely filed.

16. **Binding Agreement.** The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement will be fully enforceable and binding on all Parties and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

IN WITNESS THEREOF, the Parties to this Settlement each acknowledge that they have read the foregoing Settlement, accept and agree to the provisions contained in this Settlement, and hereby execute it voluntarily and with full understanding of its consequences.

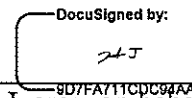
4/23/2025

DATED: _____, 2025

By: 
David Avila, on behalf of himself, the
PAGA Members, and the LWDA

4/22/2025

DATED: _____, 2025

By: 
David Juarez, on behalf of himself, the
PAGA Members, and the LWDA

DATED: April 23, 2025

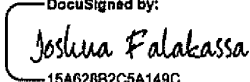
By: 
Behr Process LLC
By: Richard Mans
Its: Sr. Vice President, People Services

APPROVED AS TO FORM ONLY:

4/22/2025

DATED: _____, 2025

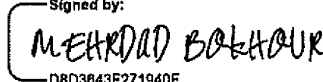
FALAKASSA LAW GROUP PC

By 
Joshua Falakassa
Attorney for Plaintiff David Avila

4/22/2025

DATED: _____, 2025

BOKHOUR LAW GROUP PC

By 
Mehrdad Bokhour
Attorney for Plaintiff David Avila

DATED: 04/22, 2025

MOON LAW GROUP PC

By 
Allen Feghali
Attorney for Plaintiff David Juarez

DATED: April 23, 2025

O'HAGAN MEYER LLP

By 
Soojin Kang
Alison Korgan
Attorneys for Defendant Behr Process LLC

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EXHIBIT “C”

TRUE AND CORRECT COPY OF
BOKHOUR LAW GROUP’S BILLING ENTRIES

[SEE ATTACHED]

DAVID AVILA, ET AL. V. BEHR PROCESS CORPORATION

Table 1

<i>Task 1: Investigations/Complaint</i>			
Attorney	Rate	Hours	Fee
Mehrdad Bokhour	\$650	20.1	\$13,032.50
Subtotals for Task 1		20.1	\$13,032.50

<i>Task 3: Mediation/Settlement</i>			
Attorney	Rate	Hours	Fee
Mehrdad Bokhour	\$650	22.9	\$14,885.00
Subtotals for Task 4		22.9	\$14,885.00

<i>Task 4: PAGA Approval Motion</i>			
Attorney	Rate	Hours	Fee
Mehrdad Bokhour	\$650	7.2	\$4,680.00
Subtotals for Task 5		7.2	\$4,680.00

<i>Task 5: Est. Future Work</i>			
Attorney	Rate	Hours	Fee
Mehrdad Bokhour	\$650	15.0	\$9,750.00
Subtotals for Task 6		15.0	\$9,750.00

Grand Total for All Attorneys		65.2	\$42,347.50
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DAVID AVILA, ET AL. V. BEHR PROCESS CORPORATION

Table 2

Attorney/Timekeeper	Rate	Task/Category	Hours	Fee
Mehrdad Bokhour <i>Bokhour Law Group , P.C.</i>	\$650	1. Investigations/Complaint	20.1	\$13,032.50
		2. Mediation/Settlement	22.9	\$14,885.00
		3. PAGA Approval Motion	7.2	\$4,680.00
		4. Est. Future Work	15.0	\$9,750.00
		TOTAL for Mehrdad Bokhour	65.2	\$42,347.50

DAVID AVILA, ET AL. V. BEHR PROCESS CORPORATION

Detailed PAGA Counsel Time Records

11/28/2023	Mehrdad Bokhour	Reviewe intake notes to decide to pursue a case.	0.3	\$650	\$ 195.00	Investigations/Complaint
11/29/2023	Mehrdad Bokhour	Discuss with co-counsel to about pursuing class action case.	1	\$650	\$ 650.00	Investigations/Complaint
12/8/2023	Mehrdad Bokhour	Draft letter requesting employment records	0.75	\$650	\$ 487.50	Investigations/Complaint
12/8/2023	Mehrdad Bokhour	Draft, review, and finalize PAGA letter	1.6	\$650	\$ 1,040.00	Investigations/Complaint
12/8/2023	Mehrdad Bokhour	Draft, review and finalize class action complaint	2	\$650	\$ 1,300.00	Investigations/Complaint
12/8/2023	Mehrdad Bokhour	Oversee submission of PAGA letter to LWDA	0.2	\$650	\$ 130.00	Investigations/Complaint
12/8/2023	Mehrdad Bokhour	Oversee submission of class action complaint	0.2	\$650	\$ 130.00	Investigations/Complaint
12/13/2023	Mehrdad Bokhour	Oversee service of process on defendant	0.2	\$650	\$ 130.00	Investigations/Complaint
12/29/2023	Mehrdad Bokhour	Review Plaintiff's Payroll Records	0.9	\$650	\$ 585.00	Investigations/Complaint
1/11/2024	Mehrdad Bokhour	Review Plaintiff's Employment Records	3	\$650	\$ 1,950.00	Investigations/Complaint
1/25/2024	Mehrdad Bokhour	Review Joint Stipulation to Extend Defendant's Responsive Pleading Deadline	0.6	\$650	\$ 390.00	Investigations/Complaint
1/25/2024	Mehrdad Bokhour	Review Supplemental Employment Records	1	\$650	\$ 650.00	Investigations/Complaint
2/23/2024	Mehrdad Bokhour	Draft and finalize Request for Dismissal of Class Claims and Suppoting documents.	0.75	\$650	\$ 487.50	Investigations/Complaint
2/23/2024	Mehrdad Bokhour	Draft and finalize First Amended PAGA Complaint	1	\$650	\$ 650.00	Investigations/Complaint
2/23/2024	Mehrdad Bokhour	Oversee the submission of Request for Dismissal of Class Claims and First Amended PAGA Complaint	0.3	\$650	\$ 195.00	Investigations/Complaint
2/29/2024	Mehrdad Bokhour	Review Order Dismissing Class Claims	0.4	\$650	\$ 260.00	Investigations/Complaint
3/5/2024	Mehrdad Bokhour	Review and finalize the Notice and Acknowledgment of Receipt	0.4	\$650	\$ 260.00	Investigations/Complaint
3/5/2024	Mehrdad Bokhour	Oversee the service of Notice and Acknowledgment of Receipt on Defendant	0.2	\$650	\$ 130.00	Investigations/Complaint
4/8/2024	Mehrdad Bokhour	Review and draft the Joint Stipulation to Continue Initial Case Management Conference, Stay Responsive Deadline and Proposed Order	0.7	\$650	\$ 455.00	Investigations/Complaint
4/9/2024	Mehrdad Bokhour	Review Order Continuing the Initial Case Management Conference and Stay Responsive Pleading Deadline	0.2	\$650	\$ 130.00	Investigations/Complaint
5/2/2024	Mehrdad Bokhour	Scheduled Mediation with the Hon. Carl J. West	0.3	\$650	\$ 195.00	Mediation/Settlement
1/5/2025	Mehrdad Bokhour	Discuss and strategize with co-counsel regarding mediation brief.	3	\$650	\$ 1,950.00	Mediation/Settlement
1/6/2025	Mehrdad Bokhour	Draft and Finalize mediation brief. Oversee the submission to mediator	5	\$650	\$ 3,250.00	Mediation/Settlement
1/8/2025	Mehrdad Bokhour	Attend mediation	8	\$650	\$ 5,200.00	Mediation/Settlement
3/13/2025	Mehrdad Bokhour	Review Notice of Change of Address	0.2	\$650	\$ 130.00	Investigations/Complaint
3/13/2025	Mehrdad Bokhour	Draft and Finalized Second Amended PAGA Complaint	1.7	\$650	\$ 1,105.00	Investigations/Complaint
3/13/2025	Mehrdad Bokhour	Draft and Finalized Supplemental PAGA letter	1	\$650	\$ 650.00	Investigations/Complaint
3/13/2025	Mehrdad Bokhour	Oversee the submission of PAGA letter to the LWDA	0.3	\$650	\$ 195.00	Investigations/Complaint
3/13/2025	Mehrdad Bokhour	Draft and Finalized Stipulation to File Second Amended PAGA Complaint; [Proposed] Order	0.75	\$650	\$ 487.50	Investigations/Complaint
3/13/2025	Mehrdad Bokhour	Oversee the Submission of Stipulation to File Second Amended PAGA Complaint	0.2	\$650	\$ 130.00	Investigations/Complaint
4/20/2025	Mehrdad Bokhour	Discuss PAGA Settlement Agreement with Co-Counsel	1.3	\$650	\$ 845.00	Mediation/Settlement
4/20/2025	Mehrdad Bokhour	Draft and Finalize PAGA Settlement Agreement	3.7	\$650	\$ 2,405.00	Mediation/Settlement
4/23/2025	Mehrdad Bokhour	Review PAGA Settlement Agreement with Plaintiff	1.6	\$650	\$ 1,040.00	Mediation/Settlement
7/24/2025	Mehrdad Bokhour	Review Minute Order	0.2	\$650	\$ 130.00	Investigations/Complaint
8/8/2025	Mehrdad Bokhour	Draft Motion for PAGA Approval and Relavant Documents	6	\$650	\$ 3,900.00	PAGA Approval Motion
8/11/2025	Mehrdad Bokhour	Finalize Motion foir PAGA Approval and Related Documents	0.6	\$650	\$ 390.00	PAGA Approval Motion
7/24/2023	Mehrdad Bokhour	Oversee submission and service of Motion for PAGA Approval and prepare for filing and service	0.6	\$650	\$ 390.00	PAGA Approval Motion
	Mehrdad Bokhour	<i>Estimated</i> : work with team to finalize matter	15	\$650	\$ 9,750.00	Est. Future Work
Subtotals for Mehrdad Bokhour			65.15		\$ 42,347.50	

Key for Billing Entries

Investigations/Complaint
Mediation/Settlement
PAGA Approval Motion
Est. Future Work

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EXHIBIT “D”

TRUE AND CORRECT COPY OF
SUBMISSION CONFIRMATION
TO LWDA
RE: PROPOSED SETTLEMENT

[SEE ATTACHED]