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EDGAR HERRERA

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF ALAMEDA**

**(UNLIMITED JURISDICTION)**

EDGAR HERRERA, individually, and on  
behalf of other aggrieved employees  
pursuant to the Labor Code Private  
Attorneys General Act of 2004,

*Plaintiff,*

vs.

ENVIRONMENTAL REMEDIES, INC., a  
California corporation; SCOTT TAMAYO,  
an individual; and DOES 1 to 25, inclusive,

*Defendants.*

Case No.: 24CV092901

**DECLARATION OF MARALLE  
MESSRELIAN IN SUPPORT OF  
PLAINTIFF'S UNOPPOSED MOTION FOR  
APPROVAL OF PAGA SETTLEMENT**

Action filed: September 24, 2024  
Hearing Date: September 25, 2025  
Hearing Time: 2:30 p.m.  
Hearing Dept: 15, Hon. Peter Borkon

Reservation ID: 939189948398

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1. I am an attorney duly licensed to practice before all the Courts of the State of California. I am the managing attorney of MM Law, APC and the attorney of record for Edgar Herrera (individually, “Herrera” or “Plaintiff”) in his lawsuit against Defendant Environmental Remedies, Inc. (“Defendant” or “ENVIRONMENTAL REMEDIES”).

3. A true and correct copy of the Private Attorneys General Act Settlement Agreement and Release (the “Agreement” or “PAGA Settlement”) is attached hereto as **Exhibit 1**.

### *Factual and Procedural Background*

6. Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing this action under the PAGA. On June 25, 2024, Plaintiff, on behalf of himself and ENVIRONMENTAL REMEDIES's other California non-exempt hourly employees (hereafter collectively the "Aggrieved Employees") gave written notice by electronic service to the California Labor and Workforce Development Agency ("LWDA") and via certified mail to Defendant of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations (the "PAGA Notice".) MM, ¶ 6, Ex. 3. The specific provisions alleged to have been violated in the PAGA Notice included Labor Code sections 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 558, 558.1, 1174, 1194,

1 1197, 1198, and 2802, and Industrial Welfare Commission Wage Order No. 4-2001. A true and  
2 correct copy of Plaintiff's PAGA Notice is attached hereto as **Exhibit 3**.

3 7. On September 24, 2024, Plaintiff filed a lawsuit in the Alameda County Superior  
4 Court (the "Action") against Defendant in the Alameda County Superior Court pursuant to  
5 PAGA based on the same allegations set forth in his LWDA letter. Specifically, Plaintiff alleged  
6 that Defendant had 1) failed to pay him and the Aggrieved Employees all wages earned for all  
7 hours worked at the correct rates of pay; 2) failed to provide meal periods or pay correctly-  
8 calculated premium wages in lieu thereof; 3) failed to authorize and permit rest periods or pay  
9 correctly-calculated premium wages in lieu thereof; 4) failed to indemnify for necessary  
10 business expenses; 5) failed to issue only accurate and complete itemized wage statements; 5)  
11 failed to timely pay wages during and upon separation from employment; and 6) failed to  
12 maintain accurate employment records. A true and correct copy of Plaintiff's Complaint is  
13 attached hereto as **Exhibit 4**. On November 15, 2024, Defendant filed its Answer to Plaintiff's  
14 Complaint. A true and correct copy of Defendant's Answer is attached hereto as **Exhibit 5**.

15 8. Upon mutual agreement of the parties, on June 5, 2025, the parties participated  
16 in a full-day mediation session with David Sarnoff, Esq., an experienced and well-regarded  
17 neutral, who has considerable experience mediating complex wage and hour actions.

18 9. The negotiations during the mediation were adversarial and contentious,  
19 although professional in nature. Ultimately, at the mediation, the parties reached a good-faith  
20 agreement to settle the Action. Notably, in advance of the mediation, the Parties engaged in  
21 informal discovery regarding ENVIRONMENTAL REMEDIES's policies, practices,  
22 operations, time and payroll information, and other topics. Specifically, Defendant provided  
23 Plaintiff's counsel with information and documents relating to the Aggrieved Employees,  
24 including timekeeping and payroll data. Defendant also produced Plaintiff's personnel file,  
25 timekeeping records and earnings statements. Through extensive, arm's length negotiations at  
26 the mediation, and only after discovery and investigation were performed, the parties agreed to  
27 settlement terms. Now that the parties have finalized the PAGA Settlement, Plaintiff submits it  
28 to this Court for approval.

1           10. Defendant denies any liability or wrongdoing of any kind whatsoever associated  
2 with the lawsuit. It is the desire of the parties to fully, finally, and forever compromise, and  
3 discharge all claims known or unknown related to those alleged in Plaintiff's lawsuit.

4           11. Counsel for the Parties have further investigated the applicable law as applied to  
5 the facts discovered regarding Plaintiff's claims, the defenses thereto, and the Labor Code  
6 violations claimed by Plaintiff. I am experienced in prosecuting PAGA lawsuits. Counsel for the  
7 Defendant are experienced in defending PAGA cases. Based on the parties' own independent  
8 investigations and evaluations, the parties and their respective counsel are of the opinion that the  
9 Settlement for the consideration and on the terms set forth in the Agreement are fair, reasonable  
10 and adequate and are in the best interests of Plaintiff, the Aggrieved Employees, the State, and  
11 Defendant in light of all known facts and circumstances and the risks inherent in litigation.

12           12. The Settlement of a PAGA claim requires court approval. Lab. Code §2699(s)(2).  
13 The Court necessarily has broad discretion in making the decision to approve or reject a  
14 settlement for civil penalties as the statutory scheme authorizes the Court to determine whether,  
15 in certain circumstances, penalties should be assessed and, if so assessed, the appropriate amount  
16 of penalties based on the facts and circumstances of the particular case. Although the PAGA  
17 does not set forth the particular standards against which a PAGA settlement should be evaluated,  
18 the LWDA has provided guidance for approval that mirrors the standards for evaluating class  
19 action settlements.

20           13. PAGA imposes two requirements for the settlement of a PAGA claim. Both are  
21 met here. First, any civil penalties recovered, whether by judgment or settlement, must be  
22 distributed as follows: 75 percent to the LWDA, and the remaining 25 percent to the aggrieved  
23 employees. *See Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742; Cal. Lab.  
24 Code, § 2699(i). The parties' Settlement so provides (*See Exhibit 1*). Second, the LWDA must  
25 be given notice of the settlement so that it may be heard before the Court decides whether to  
26 grant approval. Cal. Lab. Code § 2699(s)(2). Here, notice is being given to the LWDA  
27 concurrently with the filing of this motion. A true and correct copy of Plaintiff's submission with  
28

1 the LWDA and a confirmation email is attached as **Exhibit 8**. As a result, Plaintiff has met all  
2 procedural statutory requirements for settling a PAGA action.

3 ***My Experience and Qualifications***

4 14. In 2003, I earned a Bachelor of the Science degree with a major in Accounting  
5 from Cal State University, Northridge. In 2017, I earned a Juris Doctor degree from  
6 Southwestern University School of Law.

7 15. In December of 2017, the Supreme Court for the State of California admitted me  
8 as an Attorney and Counselor at Law and licensed me to practice law in all the Courts of this  
9 State.

10 16. I am experienced in handling employment law matters and specifically wage and  
11 hour cases. I have been practicing law since 2017. My experience has been almost exclusively  
12 in the area of employment law representing employees with claims of wrongful termination,  
13 harassment, whistleblower retaliation, discrimination, wage and hour, and family and medical  
14 leave violations. I am a member of the California Employment Lawyers Association (CELA).

15 17. In my representation of employees, I have prosecuted several lawsuits on behalf  
16 of employees with claims of rest and meal period and overtime violations or other wage claims.

17 18. I have been involved in the prosecution of numerous wage and hour class and  
18 representative actions at various stages of litigation. A small sampling of the wage and hour  
19 class and representative action cases in which I have been counsel of record is as follows:

20 a) *Joshua Silva v. Payo Laboratories, Inc., et al.*, San Luis Obispo County  
21 Superior Court, Case No. 19CV-0689 (appointed Class Counsel and granted final approval of  
22 class action settlement by the court).

23 b) *Mervin Perkins v. CC Venice, LLC, et al.*, Los Angeles Superior Court, Case  
24 No. BC703660 (appointed Class Counsel and granted final approval of class action settlement  
25 by the court).

26 c) *Jashar Bryant v. Pinnacle Cabling & Construction, Inc., et al.*, Orange  
27 County Superior Court, Case No. 30-2020-01123094-CU-OE-CXC (appointed Class Counsel  
28 and granted final approval of class action settlement by the court).

1 d) *Collins v. Spa Products Import & Distribution Co., LLC*, et al., Los Angeles  
2 County Superior Court, Case No. 19STCV10586 (granted final approval of class action  
3 settlement by the court)

4 e) *Sabrina Slater v. Avalon Care Center – Sonora, L.L.C., et al.*, Tuolumne  
5 County Superior Court, Case No. CV62006 (granted final approval of class action settlement by  
6 the court)

7 f) *Violet Avalos v. Smithcare Incorporated, et al.*, Tulare County Superior  
8 Court, Case No. VCU272975 (granted final approval of class action settlement by the court)

9 g) *David Contreras v. HTX Services LLC, et al.*, Los Angeles County Superior  
10 Court, Case No. 19STCV43405 (granted final approval of class action settlement by the court)

11 h) *Devin Cherry v. LA Corral Three, Inc., et al.*, Kern County Superior Court,  
12 Case No., BCV-18-101817-DRL (granted final approval of class action settlement by the court)

13 i) *Vikki Curl and Anthony J. Gratton v. Reel Security Corp., et al.*, Los Angeles  
14 County Superior Court, Case No. 18STCV09302 (granted final approval of class action  
15 settlement by the court)

16 j) *Corrine Lashbrook and Joshua Sweat v. Andy's BP, Inc., et al.*, San Mateo  
17 County Superior Court, Case No. 19CIV02344 (granted final approval of class action settlement  
18 by the court)

19 k) *Stephen Aguirre and Christopher Walls v. Anlin Industries*, Fresno County  
20 Superior Court, Case No. 17CECG04326 (order and judgment approving PAGA settlement by  
21 the court)

22 l) *Rebecca Mallory v. Odyssey Healthcare Operating A, L.P.*, Kern County  
23 Superior Court, Case No. BCV-19-102735 (order and judgment approving PAGA settlement by  
24 the court)

25 m) *Wendy Chavez v. Texas De Brazil (Fresno) Corporation, et al.*, Fresno  
26 County Superior Court, Case No. 19CECG04249 (order and judgment approving PAGA  
27 settlement by the court)

28 n) *Kevin Littleton v. Lincoln Military Property Management LP.*, San Diego

1 County Superior Court, Case No. 37-2018-00061799-CU-OE-NC (order and judgment  
2 approving PAGA settlement by the court)

3 o) *Krystal Thomas v. Choice Physicians Network, Inc., et al.*, San Bernardino  
4 County Superior Court, Case No. CIVDS2013964 (order and judgment approving PAGA  
5 settlement by the court)

6 p) *Otina Sengvong v. Probuild Company, LLC, et al.*, United States District  
7 Court, Southern District of California, Case No. 3:19-cv-02231-MMA (JLB) (granted final  
8 approval of class action settlement by the court)

9 q) *Orland Perez Avalos v. Milagros Restaurant LLC, et al.*, San Mateo County  
10 Superior Court, Case No. 22-CIV-01222 (order and judgment approving PAGA settlement by  
11 the court)

12 r) *David Xiqui Vasquez v. The Province LLC, et al.*, Santa Clara County  
13 Superior Court, Case No. 22CV397541 (order and judgment approving PAGA settlement by  
14 the court)

15 s) *Manuel Melendrez v. Clean Auto Inc., et al.*, San Mateo County Superior  
16 Court, Case No. 22CIV01967 (order and judgment approving PAGA settlement by the court)

17 t) *Arturo Vera Lopez v. Green Valley Landscape, et al.*, Monterey County  
18 Superior Court, Case No. 22CV003751 (order and judgment approving PAGA settlement by  
19 the court)

20 u) *Erasmus Gomez v. A-1 Jay's Machining, Inc., et al.*, Santa Clara County  
21 Superior Court, Case No. 22CV394795 (order and judgment approving PAGA settlement by  
22 the court)

23 v) *Iris Rodriguez v. Facility Masters, Inc.*, Santa Clara County Superior Court,  
24 Case No. 23CV423999 (order and judgment approving PAGA settlement by the court)

25 w) *Mariana Ruelas v. Vista La Mesa Senior Living, Inc., et al.*, San Diego  
26 Superior Court, Case No. 37-2023-00050755-CU-OE-CTL (order and judgment approving  
27 PAGA settlement by the court).

28 x) *Jose Angel Lopez v. Moreno & Associates, Inc., et al.*, Santa Clara Superior

1 Court, Case No. 23CV422622 (order and judgment approving PAGA settlement by the court).

2 y) *Irma Tapia v. Posada Associates, et al.*, Santa Cruz Superior Court, Case No.  
3 23CV00355 (order and judgment approving PAGA settlement by the court).

4 z) *Andres Ibarra v. Stadco*, et al. Los Angeles Superior Court, Case No.  
5 23STCV26591 (order and judgment approving PAGA settlement by the court).

6 aa) *Alfredo Betancourt v. L3 Technologies, Inc.*, San Mateo County Superior  
7 Court, Case no. 23-CIV-05704 (appointed Class Counsel and granted final approval of class  
8 action settlement by the court).

9 ***Exposure and Risk Analysis***

10 19. The PAGA Settlement warrants a presumption of fairness for several reasons: (1)  
11 The parties reached the Settlement through arm's-length bargaining with the aid of a respected  
12 mediator; (2) The parties conducted sufficient investigation and discovery to allow Counsel and  
13 the Court to act intelligently. Plaintiff requested and Defendant provided the number of  
14 Aggrieved Employees, the number of total pay periods during the PAGA Period, all policies in  
15 effect during the PAGA Period, and anonymized payroll and time punch data for all of its  
16 California non-exempt employees for the relevant period; and (3) Counsel for the Parties are  
17 experienced with PAGA cases. Moreover, neither Plaintiff nor I have any conflicts of interest  
18 with the absent Aggrieved Employees and there are no issues of ascertainability.

19 20. I considered various sources of information in the lead-up to the mediation of  
20 June 5, 2025 that enabled Plaintiff to achieve the Settlement at issue. Among other things,  
21 Plaintiff considered the following:

- 22 • Defendant produced and Plaintiff's counsel reviewed Plaintiff's personnel file.
- 23 • Plaintiff's counsel requested that Defendant provide any and all policies regarding  
24 overtime and double-time wages, off the clock work, expense reimbursement, meal  
25 periods, rest breaks, meal period waivers and agreements, compensation plans, and  
26 complaints about working conditions in effect during the relevant time period beginning  
27 in June of 2023. Defendant produced its pertinent wage and hour policies, including those  
28 contained within its employee handbook.
- Plaintiff's counsel requested that Defendant provide the total number of employees,  
paychecks, and the pay cycles during the relevant PAGA Period. Defendant provided the

1 answers to each of these questions.

- 2 • Defendant provided Plaintiff's counsel with anonymized payroll and time punch data for  
3 a 20% sample (37 employees) randomly selected by Plaintiff's counsel covering the  
4 period June of 2023 to March of 2025.
- 5 • Plaintiff's counsel then retained a professional data analyst, James Toney, to examine  
6 the records and determine the meal period violation rates, if there was any pay  
7 discrepancy in timesheet hours versus paid hours, and if there was any rounding/time  
8 shaving issues. Plaintiff is prepared to provide the Court with the data analysis for *in*  
9 *camera* inspection upon its request.
- 10 • Plaintiff's counsel analyzed the state of caselaw on PAGA claims, meal and rest break  
11 violations, claims for "off the clock" work and business expense reimbursement,  
12 especially as it relates to "manageability" arguments brought up by the defense.

13 21. Defendant represented that there were approximately 151 Aggrieved Employees  
14 who worked a total of 4,125 Pay Periods between June 25, 2023 to March 30, 2025. Based on  
15 this information, Plaintiff's counsel prepared an estimate of the maximum possible civil penalties  
16 under the PAGA. The maximum possible civil penalties under the PAGA is the total number of  
17 pay periods with one or more violations multiplied by the maximum possible civil penalty  
18 amount per pay period.

19 22. Under the civil penalty formulas applicable under PAGA, Plaintiff's counsel  
20 estimated a maximum possible exposure of approximately \$ 534,650 for civil penalties for  
21 Plaintiff's strongest disputed claims of failure to provide meal and rest periods. Plaintiff's  
22 analysis, which Defendant strongly disputes, revealed a 96.9% violation rate for either late, short,  
23 or no meal periods for shifts over 5 hours and no meal period premiums were observed in the  
24 sample. Since the total number of pay periods in the PAGA period was 4,125 and since  
25 approximately 85.2% of the shifts in the data analysis were over 5 hours and 87% of the shifts in  
26 the sample were over 3.5 hours, the total number of pay periods to consider for potential meal  
27 break violations was 3,515 (85.2% x 4,125 pay periods) and rest break violations was 3,589 (87%  
28 x 4,125 pay periods). As such, with the 96.9% violation rate, the maximum exposure for meal  
break would be \$175,750, which is calculated as \$50 penalty multiplied by 3,515 pay periods  
(85.2% of the 4,125 pay periods to consider for meal violations). Plaintiff extrapolated the same

1 96.9% rate for rest break violations, which would equate to a maximum exposure of \$ 358,900  
2 (\$100 penalty per pay period multiplied by 3,589 pay periods to consider [87% of the 4,125 pay  
3 periods to consider for rest violations]. As such, the aggregate maximum exposure for meal break  
4 and rest break claims would be \$534,650. Assuming that Plaintiff's calculations and analysis are  
5 accurate, the maximum exposure presumes that the Court will not reduce the penalty award as  
6 unjust, arbitrary, oppressive, or confiscatory. For the rest period violations, it also presumes that  
7 the meal and rest period violation rates were identical.

8 23. There are risks to Plaintiff's meal and rest period claims. MM, ¶ 23. Defendant  
9 contends that, to establish a violation for missed meal periods, a plaintiff must do more than show  
10 that a meal break was not taken. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th  
11 1004. So long as an employer provides employees with a "reasonable opportunity" to take a duty-  
12 free meal period, it has no further duty to "police meal breaks and ensure no work thereafter is  
13 performed." *Id.* at 1040-41. Instead, a plaintiff must show the employer impeded, discouraged,  
14 or prohibited the employee from taking a proper break, or otherwise failed to release the  
15 employee of all control. *Id.* "Thus, the crucial issue with regard to the meal break claim is the  
16 reason that a particular employee may have failed to take a meal break." *Washington v. Joe's*  
17 *Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. Determining by a review of Defendant's time  
18 records the exact reasons why a meal period appears to be short or late would be difficult and  
19 pinpointing those days in which Plaintiff and the Aggrieved Employees worked during their meal  
20 periods will be a challenge.

21 24. Defendant contends it provided its non-exempt employees with the opportunity  
22 to take rest breaks in accordance with California law, and, accordingly, that Plaintiff's rest break  
23 claim has no support. Additionally, there are other risks to Plaintiff's rest period claim.  
24 Employers are not required to record rest periods, and such periods are paid. Unlike meal periods,  
25 where there are often records showing whether an employee clocked out or not, there is no such  
26 evidence to prove a missed rest period or that the employer refused to authorize and permit one.

27 25. As it relates to Plaintiff's other claims, and unlike the arguments for meal/rest  
28 period violations, there would be issues with proof. The sampling revealed that only 5% of the

1 payperiods showed unfavorable rounding. In addition, based on the payroll codes provided by  
2 the defense, the majority of bonuses paid to the Aggrieved Employees were discretionary in  
3 nature and as such, would not trigger any regular rate of pay issues. As it relates to any overtime  
4 issues, the data showed the average workday was 7.4 hours and when employees worked over  
5 8.0 hours, they were paid 1.5 times their regular rate. There are also risks to Plaintiff's claim for  
6 unreimbursed expenses. Plaintiff alleges that Defendant did not reimburse him or the other  
7 Aggrieved Employees for use of their personal tools and personal phones for business-related  
8 purposes. Defendant provided evidence at mediation that it provided its employees with all  
9 necessary tools to perform their work. Moreover, there is a risk that the Court may consider  
10 Plaintiff's claims as to Defendant's alleged failure to indemnify for business expenses to be  
11 individual in nature. As such, Plaintiff's Counsel had to significantly discount the value of these  
12 claims during settlement negotiations. Moreover, Defendant provided overall strong written  
13 policies as it related to wage and hour practices and showed that Plaintiff acknowledged the  
14 policies. Plaintiff's other claims for violations of Labor Code sections 203, 204, and 226 (for not  
15 being paid all wages owed every pay period or at the end of employment as well as not receiving  
16 accurate, itemized wage statements) were also reduced because they are derivative claims. Based  
17 on the above calculations, Plaintiff's aggregate exposure for the strongest disputed claims would  
18 be \$534,650. Assuming that Plaintiff's calculations and analysis are accurate, the maximum  
19 exposure presumes that the Court will not reduce the penalty award as unjust, arbitrary,  
20 oppressive, or confiscatory. Based on the above analysis, a gross settlement in the amount of  
21 \$140,250, which represents approximately 26% of the maximum penalty calculation for the meal  
22 and rest period claims, is a very good result, especially in light of the risk factors as discussed  
23 above.

24         26. Moreover, I am unaware of any California State court decision awarding a  
25 plaintiff and the other Aggrieved Employees he represents multiple civil penalties for the same  
26 pay period under different Labor Code provisions. As such, one of the risks Plaintiff faces is that  
27 the Court would refuse to "stack" civil penalties arising under the various Labor Code statutes.  
28 Plaintiff's counsel had to substantially discount the value of these claims in the settlement

1 negotiations for this and a variety of other reasons. At best, Plaintiff could hope to recover one  
2 penalty for each pay period (regardless of the different Labor Code violations that potentially  
3 occurred for the same employee, during the same pay periods).

4         27.       Additionally, PAGA states a court has discretion to award a lesser amount than  
5 the maximum penalty. *See Lab. Code*, § 2699, subd. (e)(2) (“...a court may award a lesser amount  
6 than the maximum civil penalty amount specified by this part if, based on the facts and  
7 circumstances of the particular case, to do otherwise would result in an award that is unjust,  
8 arbitrary and oppressive, or confiscatory.”); *see also Thurman v. Bayshore Transit Management,*  
9 *Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that  
10 the Court could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff’s  
11 evidence of willful and intentional conduct. *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504  
12 (“*Carrington*”) illustrates this. In that case, the Court of Appeal affirmed a trial court’s heavily  
13 discounted award of only \$5 per violation because it was within the Court’s discretion to  
14 significantly reduce PAGA penalties even when there is a finding that a violation of the  
15 California Labor Code occurred. The plaintiff in *Carrington* had requested penalties in excess of  
16 \$70 million and was successful in proving the PAGA claim during a bench trial. However, the  
17 trial court reduced the total award after trial to only \$150,000 (30,000 violations x \$5) and stated  
18 that this reduction was warranted because imposing the maximum penalty would be “unjust,  
19 arbitrary, and oppressive”, based on Starbucks’s “good faith attempts” to comply with meal break  
20 obligations and because the Court found the violations were minimal. Applying the same formula  
21 here and assuming there was one violation during each pay period, the award of civil penalties  
22 could not exceed \$ 20,625 in PAGA penalties (4,125 violations x \$5). As such, this Settlement  
23 is a great result based solely on the risk the Court chooses to apply the *Carrington* formula.  
24 Defendants have also posed formidable defenses to the Labor Code claims underlying Plaintiff’s  
25 allegations. Thus, the chance of Plaintiff recovering a higher amount than the Gross Settlement  
26 Amount is uncertain.

27         28.       The Parties further recognize that the issues presented in the representative PAGA  
28 claim are likely only to be resolved with extensive and costly pretrial and trial proceedings, and

1 that further litigation will cause inconvenience, distraction, disruption, delay, and expense  
2 disproportionate to the maximum potential benefits to the Aggrieved Employees and Plaintiff  
3 from continued litigation.

4 29. The settlement of the representative PAGA claim involves monetary relief to all  
5 Aggrieved Employees, Plaintiff, his attorneys, and the State of California. The Settlement is  
6 reasonable given the uncertainties this lawsuit entails. It is also reasonable given the structure  
7 and purpose of the PAGA, since the PAGA is not a restitution statute. Rather, it is essentially a  
8 punishment statute. It provides for civil penalties only. Within the PAGA framework he is bound  
9 by, Plaintiff, considering the evidence he faced, achieved a great result for the employees  
10 concerned. Furthermore, any employees who are dissatisfied with the amount they received in  
11 civil penalties can pursue any damages they believe they are owed by the Defendant. The  
12 Settlement does not require them to opt out to do so.

13 30. Furthermore, Plaintiff recognizes that continued litigation presents significant  
14 risks that support a significant downward departure from Plaintiff's estimated civil penalties  
15 amount. In view of the risks, the Settlement represents a fair, adequate, and reasonable  
16 compromise amount for these claims and is in the best interest of Plaintiff and Aggrieved  
17 Employees and thus, warrants approval. *See Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479  
18 (9th Cir. June 3, 2014) 2014 WL 2465049, \* 3. The PAGA settlement and its terms are fair, just,  
19 reasonable, adequate, and equitable to Defendants, Plaintiff, and the State, especially in light of  
20 the current economic climate, and are the product of good faith, and informed arms-length  
21 negotiations between the Parties consistent with public policy and fully comply with applicable  
22 provisions of law.

23 31. As such, the settlement of PAGA penalties in the gross sum of \$140,250, of which  
24 65% of the net amount after attorney's fees, litigation costs, and settlement administration costs  
25 (\$53,250.28) will be paid to the LWDA and 35% (\$28,673.23) will be distributed to the Aggrieved  
26 Employees, is reasonable and appropriate under the circumstances.

#### 27 ***Individual PAGA Payments***

28 32. Defendants represent that at the time of mediation there were approximately 151

1 Aggrieved Employees during the PAGA Period. After deducting the requested Court-approved  
2 Attorneys' Fees (\$46,750.00) and litigation expenses (\$7,144.49), and the Settlement  
3 Administration Costs (\$4,432.00), the Net Settlement Amount will be approximately \$81,923.51  
4 allocated as PAGA Penalties. Sixty five percent (65%) of the PAGA Penalties will be paid to the  
5 Labor and Workforce Development Agency ("LWDA") (\$53,250.28), and thirty five percent  
6 (35%) (\$28,673.23) of the PAGA Penalties will be paid to the Aggrieved Employees on a pro-  
7 rata basis based upon their respective number of pay periods during the PAGA Period.  
8 Agreement, ¶ 5(b). With a total of 151 Aggrieved Employees, the average estimated Individual  
9 PAGA Payment for each Aggrieved Employee is approximately \$189.89 (35% of the estimated  
10 PAGA Penalties paid to the Aggrieved Employees of \$28,673.23) / 151 Aggrieved Employees).  
11 This is a great result given the uncertainties this lawsuit entails.

#### 12 ***Plaintiff's Individual Settlement***

13 33. Plaintiff negotiated an individual settlement agreement separate from the PAGA  
14 Settlement. The parties agreed that the consideration Plaintiff received pursuant to the individual  
15 settlement agreement was to settle his individual wage and hour claims.

16 34. As part of this confidential agreement, Plaintiff also provided Defendant with a  
17 general release of all claims, whether known or unknown, including unknown claims covered  
18 by Civil Code Section 1542. Plaintiff has no conflict of interest with the absent Aggrieved  
19 Employees and is adequate to represent the Aggrieved Employees. Plaintiff has maintained  
20 contact with my office and helped me gather information and evidence to prove the alleged  
21 claims and has agreed to remain involved as a PAGA representative even if the Court does not  
22 approve the Settlement. While Plaintiff and I believe that Plaintiff's individual settlement has  
23 no bearing on his adequacy as a PAGA Representative, he is willing to present that Settlement  
24 to the Court *in camera* for review if the Court requests. It represents a fair resolution for  
25 Plaintiff's individual wage and hour claims and claims for harassment, retaliation, and wrongful  
26 constructive discharge. *See generally* Declaration of Edgar Herrera.

27 35. The PAGA statute does not forbid service awards. Courts frequently award them  
28 in PAGA-only cases as well. *See Mancini v. W. & S. Life Ins. Co.* (S.D. Cal. Sept.18, 2018),

1 2018 WL 4489590, at \*2 (approving an incentive award of \$5,000 to named plaintiff in a PAGA-  
2 only settlement); *see also* *Kinney v. Harvest Al Mgmt. Sub LLC*, (E.D. Cal. Sept. 6, 2013) 2013  
3 WL 12415482, at \*3 (awarding an incentive award of \$3,000 to a named plaintiff in a PAGA-  
4 only settlement). The work Plaintiff has done on this case includes hiring my firm, speaking  
5 with our office on many occasions by phone, explaining what his employment at  
6 ENVIRONMENTAL REMEDIES was like, explaining what his employment at  
7 ENVIRONMENTAL REMEDIES had in common with other employees who worked for  
8 ENVIRONMENTAL REMEDIES, explaining his claims to me and my staff, having his  
9 deposition taken, participating in mediation, and communicating with me and my staff about the  
10 settlement agreement and related documents. Despite this, Plaintiff is **not** asking for a service  
11 award for his involvement and the time he spent assisting my firm with the PAGA action. *See*  
12 *generally* Declaration of Edgar Herrera.

### 13 *Attorneys' Fees and Costs*

14 36. I represent Plaintiff on a straight contingency basis. My firm's request for  
15 \$46,750.00 in attorney fees and \$7,144.49 in litigation costs is fair and reasonable. "[R]egardless  
16 whether the percentage method or the lodestar method is used, fee awards in class actions average  
17 around one-third of the recovery." (See *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66,  
18 fn.11 ("*Chavez*")); *In re Pacific Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 379 ("*Pacific*")  
19 [affirming 33% fee award]; *Williams v. MGM-Pathe Communications Co.* (9th Cir. 1997) 129  
20 F.3d 1026, 1027 ("*MGM*") (awarding 33% of total fund amount.) This is also consistent with my  
21 experience in wage and hour class and PAGA settlements.

22 37. To date, I have investigated and prosecuted this matter vigorously, including  
23 reviewing the initial intake; researching the company and past lawsuits against it; drafting the  
24 LWDA letter; drafting the lawsuit and preparing the court filing forms; drafting informal  
25 discovery questions, reviewing Defendant's informal document production, including wage and  
26 hour policies; sending and receiving emails on the case with defense counsel, the legal assistants,  
27 the data analyst, and Plaintiff; multiple calls with Defense counsel; sending the PAGA data to  
28 Plaintiff's expert for review/analysis and reviewing the expert's findings/conclusions; drafting a

1 comprehensive mediation brief and engaging in a full day mediation; reviewing the PAGA  
2 Settlement Agreement; obtaining bids from settlement administrators; and drafting this PAGA  
3 approval motion. I also expect to perform additional work on this case if the Court grants final  
4 approval of the Settlement, including supervision of the Administrator's disbursement of the  
5 settlement funds to the Aggrieved Employees.

6 38. My previous experience in litigating wage and hour actions also supports the  
7 reasonableness of the fee request. Based on past experience with similar matter, I was able to  
8 evaluate the strengths and weaknesses of this case and the reasonableness of the Settlement.  
9 Because it is reasonable to compensate me commensurate with my skill, reputation, and  
10 experience, attorney's fees of approximately one-third of the Gross Settlement Amount is  
11 reasonable. Likewise, the caliber and experience of opposing counsel in labor and employment  
12 litigation, Karina Sterman and Olivia Diab of Greenberg Glusker LLP, also supports the fairness  
13 and reasonableness of the requested fee award. The award of attorneys' fees sought is justified  
14 here by the contingency nature of the attorney-client relationship, the risks of non-payment and  
15 non-reimbursement, the delay in payment and cost reimbursement, and the great results  
16 Plaintiff's Counsel has achieved for the Aggrieved Employees while bearing the substantial  
17 burdens of contingency representation.

18 39. In addition, my firm incurred substantial costs, \$7,144.49 to date, which consist  
19 of mediator fees, data analysis fees, filing fees and attorney service fees. A true and correct  
20 summary of my firm's costs and expenses incurred to date is attached as **Exhibit 6** to this  
21 declaration. I will make detailed copies of such records available to the Court for *in camera*  
22 inspection upon its request. As the evidence submitted herewith shows, all of these costs are  
23 documented and reasonably incurred. Accordingly, they warrant the Court's approval.

#### 24 ***Settlement Administration Costs***

25 40. I can attest that the settlement administration costs provision is reasonable.  
26 Before agreeing to Simpluris, Inc. ("Simpluris"), the parties sought and reviewed bids from other  
27 reputable third-party administrator and Simpluris' bid was the lowest. A true and correct copy  
28 of the bid from Simpluris is attached hereto as **Exhibit 7**. Furthermore, the Declaration of

1 Michael Bui with attached exhibits, filed under separate cover, sets forth Simpluris'  
2 qualifications and costs to administer the settlement. *See generally* Declaration of Michael Bui,  
3 Ex. C. Thus, the settlement administration costs provision should be given approval.

4 ***Notice of Settlement to the LWDA***

5 41. Pursuant to Lab. Code § 2699(s)(2), Plaintiff submitted a copy of the Settlement  
6 with the LWDA at the same time the Settlement is being filed with the Court. True and correct  
7 copies of Plaintiff's submission with the LWDA and the confirmation email are collectively  
8 attached as **Exhibit 8** to this declaration.

9 I declare under the penalty of perjury of the laws of the State of California that the  
10 foregoing is true and correct to the best of my knowledge.

11 Executed on August 28, 2025 , at Glendale, California.

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14 MARALLE MESSRELIAN,  
15 Declarant  
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# **EXHIBIT 1**

**PRIVATE ATTORNEYS GENERAL ACT  
SETTLEMENT AGREEMENT AND RELEASE**

This Private Attorneys General Act Settlement Agreement and Release (“Settlement Agreement” or “Settlement”) is entered into by and between Edgar Herrera (“Plaintiff”), individually and as a representative of the State of California and the Aggrieved Employees (as defined in Section 3(a)(4) below) and Environmental Remedies, Inc. (“Defendant”), subject to approval by the Court. The term “Party” or “Parties” as used herein shall refer to Plaintiff, Defendant, or both, as may be appropriate.

1. **Recitals.** This Settlement Agreement is made with reference to the following facts:

(a) On June 25, 2024, MM Law, APC (“Plaintiff’s Counsel”), submitted a letter on behalf of Plaintiff to the California Labor and Workforce Development Agency (“LWDA”) and Defendant to notify the LWDA and Defendant pursuant to the Private Attorneys General Act of 2004, Labor Code section 2698, *et seq.* (“PAGA”), of Plaintiff’s intent to seek civil penalties under PAGA for Defendant’s alleged violations of California Labor Code sections 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1198, 2802, 2804, and the applicable Industrial Welfare Commission Wage Orders, thereby initiating LWDA Case Number LWDA-CM-1036357-24 (“PAGA Letter”);

(b) On September 24, 2024, Plaintiff filed a Complaint for Enforcement Action Under the Private Attorneys General Act, Cal. Labor Code §§ 2698 *Et Seq.* (“Operative Complaint”), commencing a representative action under PAGA against Defendant, entitled *Edgar Herrera v. Environmental Remedies, Inc.*, Alameda County Superior Court Case No. 24CV092901 (“Action”). The Operative Complaint asserts nine (9) causes of action against Defendant for (1) Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198); (2) Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198); (3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, and 1198); (4) Failure to Indemnify (Lab. Code § 2802); (5) Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226); (6) Failure to Pay Wages When Employment Ends (Lab. Code §§ 201-203); (7) Failure to Pay Wages Owed Every Pay Period (Lab. Code § 204); (8) Civil Penalties (Lab. Code §§ 2698, *et seq.*); and (9) Unfair Competition (Bus. & Prof. Code, § 17200 *et seq.*);

(c) On June 5, 2025, the Parties mediated Plaintiff’s individual claims and the PAGA Action with David Sarnoff, Esq., and reached an agreement to settle and resolve Plaintiff’s individual claims along with the PAGA Action;

(d) Prior to mediation, Plaintiff obtained, through informal discovery, the following documents: time and pay data for Plaintiff, time and pay data for a sample of Aggrieved Employees (as defined in Section 3(a)(4) below), the number of Aggrieved Employees, the total number of pay periods worked by Aggrieved Employees, the number of meal premium payments to Aggrieved Employees, and the number of Aggrieved Employees who stopped working for Environmental Remedies at any time during the PAGA Period (as defined in Section 3(a)(4) below);

(e) There has been no determination on the merits of the Action or the PAGA Letter but, in order to avoid additional cost and the uncertainty of litigation, the Parties desire to resolve the Action and Released PAGA Claims (as defined in Section 6 below);

(f) The Parties, Plaintiff's Counsel, and Defendant's Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

2. **No Admission of Wrongdoing.** The Parties agree that neither this Settlement Agreement nor the furnishing of the consideration for this Settlement Agreement shall be deemed or construed at any time for any purpose as an admission by the Released Parties of wrongdoing or evidence of any liability or unlawful conduct of any kind.

3. **Consideration.**

(a) Defendant shall pay the maximum gross sum of One Hundred Forty Thousand Two Hundred Fifty Dollars and Zero Cents (\$140,250.00) (the "Gross Settlement Amount") to resolve the Action and Released PAGA Claims (as defined in Section 6 below). The Settlement Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant. The Settlement Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Order and Judgment:

(1) Attorneys' fees in the amount of one third (33 1/3%) of the Gross Settlement Amount (i.e., \$46,750.00 based on the Gross Settlement Amount is \$140,250.00), and reimbursement of litigation costs and expenses in the amount of up to Ten Thousand Dollars and Zero Cents (\$10,000.00) (collectively, "Attorneys' Fees and Costs") to Plaintiff's Counsel, which Defendant will not contest, provided that they do not exceed these amounts. Plaintiff and/or Plaintiff's Counsel will file an application or motion for Attorneys' Fees and Costs. If the Court approves Attorney's Fees and Costs less than the amounts requested, the Settlement Administrator will allocate the remainder to the Net Settlement Amount (as defined in Section 3(a)(3) below). Released Parties shall have no liability to Plaintiff's Counsel or any other Plaintiff's Counsel arising from any claim to any portion of any payment for Plaintiff's Attorney's Fees and Costs. The Settlement Administrator will pay the Attorney's Fees and Costs using one or more IRS 1099 Forms. Plaintiff's Counsel assumes full responsibility and liability for taxes owed on the Attorney's Fees and Costs and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these payments.

(2) Costs and expenses of administration of the Settlement up to the amount of Five Thousand Dollars and Zero Cents (\$5,000.00) ("Settlement Administration Costs") to Simpluris ("Settlement Administrator"). To the extent the Settlement Administration Costs are less or the Court approves payment less than (\$5,000.00), the Settlement Administrator will apply the remainder to the Net Settlement Amount (as defined in Section 3(a)(3) below).

(3) The amounts stated in Sections 3(a)(1) – 3(a)(2) above, once approved by the Court, shall be paid from the Gross Settlement Amount. The balance remaining after these deductions is referred to as the “Net Settlement Amount.”

(4) Sixty-five percent (65%) of the Net Settlement Amount will be distributed to the LWDA (“LWDA Payment”); and the remaining thirty-five percent (35%) will be distributed to all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the PAGA Period (“Aggrieved Employees”). The period June 25, 2023 through the date the Court enters the order granting approval of the Settlement or sixty (60) calendar days after the date of mediation, whichever is earlier, is the “PAGA Period.” The thirty-five percent (35%) portion of the Net Settlement Amount payable to the Aggrieved Employees is referred to as the “Employees’ Portion.”

(5) Defendant has represented that the Aggrieved Employees worked approximately 4,125 pay periods during the period June 25, 2023 to March 30, 2025. If it is determined by the Settlement Administrator that the total number of Pay Periods (as defined in Section 5(b) below) worked by the Aggrieved Employees during the PAGA Period actually exceeds 4,125 by more than ten percent (10%) (i.e., if the Pay Periods exceed 4,537), then the Gross Settlement Amount will be increased on a *pro rata* basis equal to the percentage increase in the number of Pay Periods worked by the Aggrieved Employees above ten percent (10%) (i.e., if the number of Pay Periods increases by 11%, then the Gross Settlement Amount will increase by 1%). If this escalator clause provision is triggered, the Parties agree that the portion of the Gross Settlement Amount allocated to attorneys’ fees will increase proportionally such that the total amount of attorneys’ fees remains one-third of the Gross Settlement Amount after the upward adjustment required by the escalator provision is implemented. If the Court approves an LWDA Payment and the Employees’ Portion of less than the amounts requested, the Settlement Administrator will allocate the remainder to the Net Settlement Amount.

(b) Because this is a settlement of PAGA claims for civil penalties only, no portion of the Settlement is allocated to unpaid wages. One hundred percent (100%) of the payments for Attorneys’ Fees and Costs and the Net Settlement Amount to be paid to the LWDA and Aggrieved Employees as described in Section 3(a) above will be treated and reported for tax purposes as non-wage payments and the Settlement Administrator will be responsible for issuing IRS Forms 1099, as required.

#### **4. Approval and Implementation of the PAGA Settlement.**

(a) The Parties are aware that some courts have approved a PAGA settlement and entered an order approving the settlement and judgment and thereafter closed the case, while others have approved a PAGA settlement and entered only an order approving the settlement with later instructions to file a request for dismissal of the action. The Parties agree to cooperate and take any and all steps required by the Court in the Action to implement the settlement and terminate the Action pursuant to settlement (i.e., to terminate the Action by way of judgment or dismissal).

(b) The Parties further agree to cooperate in the drafting and/or filing of any further documents and/or filings reasonably necessary to be prepared and/or filed, and to take all steps that may be requested by the Court in order to obtain approval and implementation of this

Settlement Agreement, and the payments described in Section 3(a) above. Plaintiff's Counsel and Defendant's Counsel are jointly responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement no later than sixty (60) calendar days after the full execution of this Settlement Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. Plaintiff's Counsel is responsible for delivering the Court's Order and Judgment of the Settlement to the Settlement Administrator.

(c) The Parties shall seek to obtain Court approval of this Settlement Agreement by way of an unopposed motion to be filed by Plaintiff's Counsel. Plaintiff's Counsel shall provide a draft of all documents to be submitted in connection with the motion to approve this Settlement Agreement to Defendant's counsel of record ("Defendant's Counsel") for review, including: (i) a draft proposed Order and Judgment Granting Approval of PAGA Settlement ("Order and Judgment"); (ii) a signed declaration from the Settlement Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, Plaintiff's Counsel, or Defendant's Counsel; (iii) a signed declaration from Plaintiff's Counsel's firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (1)(1)), this Settlement Agreement (Labor Code section 2699, subd. (1)(2)); and (iv) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Settlement Administrator. In their declarations, Plaintiff and Plaintiff's Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement. Defendant's Counsel will be given an opportunity to comment on the papers prior to their being filed with the Court, and such comments will be implemented to the extent reasonable.

(d) If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, Plaintiff's Counsel and Defendant's Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Settlement Agreement, Plaintiff's Counsel and Defendant's Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Settlement Agreement and otherwise satisfy the Court's concerns.

(e) The Parties expressly acknowledge that the Court's approval of the Settlement Agreement is a condition precedent to any payments described in this Settlement Agreement. Therefore, the Parties further acknowledge that, should the Court not grant approval of this Settlement Agreement and/or should the Court refuse to grant judgment or dismissal of the Action and close the Action based on the Settlement, the entirety of this Settlement Agreement shall be null and void.

## **5. Payment of the Gross Settlement Amount / Notice to Recipients.**

**PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT AND RELEASE**

Page 4

(a) Subject to Court approval of this Settlement Agreement, payment of the sums described in Section 3(a) above shall be made by Defendant by transmitting the Gross Settlement Amount to a qualified settlement account established by the Settlement Administrator for administration of this Settlement, within twenty-one (21) calendar days of the Court's order granting approval of this Settlement Agreement. If the date by which payment by Defendant is due falls on a Saturday, Sunday, or legal holiday in the State of California, then the due date shall be extended to the next following day which is not a Saturday, Sunday, or legal holiday in the State of California.

(b) Each Aggrieved Employee will be entitled to a *pro rata* share of 35% of the Net Settlement Agreement (i.e., the Employees' Portion) based upon the number of pay periods they each worked during the PAGA Period ("Pay Periods"), based on Defendant's payroll records. Specifically, to calculate each Aggrieved Employee's share of the Employees' Portion ("Individual PAGA Payment"), the Settlement Administrator shall: (i) for each Aggrieved Employee, divide the number of Pay Periods the Aggrieved Employee worked by the total aggregate number of Pay Periods worked by all Aggrieved Employees, and then (ii) multiply this amount by the Employees' Portion to arrive at each Aggrieved Employee's Individual PAGA Payment.

(1) One hundred percent (100%) of all Individual PAGA Payments are to be considered penalties and the Settlement Administrator will not undertake any deductions, withholding, or remittances for local, state, or federal taxes. Aggrieved Employees' Individual PAGA Payments will be reported on an IRS Form 1099, as required.

(c) The Settlement Administrator shall distribute each Individual PAGA Payment by way of check, along with a cover letter ("Cover Letter") agreed to by the Parties and approved by the Court, in substantially the form attached hereto as "**Exhibit A**," in the following manner:

(1) No later than seven (7) calendar days after the Court's order granting approval of the Settlement, Defendant shall provide the Settlement Administrator with a list of all Aggrieved Employees (the "Aggrieved Employees List"), containing the following information for each Aggrieved Employee: (i) first and last name; (ii) last known address; (iii) last known telephone number; (iv) Social Security number; and (v) dates worked during the PAGA Period. To protect Aggrieved Employees' privacy rights, the Settlement Administrator must maintain the Aggrieved Employees List in confidence, use the Aggrieved Employees List only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employees List to Settlement Administrator employees who need access to the Aggrieved Employees List to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Plaintiff's Counsel if it discovers that the Aggrieved Employees List omitted employee identifying information and to provide corrected or updated Aggrieved Employees List as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Aggrieved Employees List to the Settlement Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employees List.

(2) The Settlement Administrator shall conduct one (1) National Change of Address (“NCOA”) search for all individuals identified on the Aggrieved Employees List.

(3) No later than seven (7) calendar days after the Settlement Administrator receives the Aggrieved Employees List and Gross Settlement Amount, the Settlement Administrator shall mail the agreed-upon Cover Letter and Individual PAGA Payment checks (together, the “PAGA Settlement Package”) to all Aggrieved Employees by First-Class United States mail. For each PAGA Settlement Package that is returned undeliverable within thirty (30) calendar days of the initial mailing, the Settlement Administrator shall promptly attempt to locate an alternative, updated address for the Aggrieved Employee at issue, by using a skip-trace search and shall attempt one (1) re-mailing of the PAGA Settlement Package.

(4) The Individual PAGA Payment checks issued to Aggrieved Employees shall remain valid for one hundred eighty (180) calendar days, and thereafter, shall be canceled. Funds associated with such canceled checks shall be transmitted to the State Controller’s Office Unclaimed Property Division in the name of the Aggrieved Employee(s) at issue and in the amount of their respective Individual PAGA Payment(s). The payment of Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Settlement Agreement.

(5) No later than seven (7) calendar days after the Settlement Administrator receives the Aggrieved Employees List and Gross Settlement Amount, the Settlement Administrator shall transmit the LWDA Payment to the LWDA.

(6) No later than seven (7) calendar days after the Settlement Administrator receives the Aggrieved Employees List and Gross Settlement Amount, the Settlement Administrator shall transmit the Attorneys’ Fees and Costs to Plaintiff’s Counsel.

(7) No later than seven (7) calendar days after the Settlement Administrator receives the Aggrieved Employees List and Gross Settlement Amount, the Settlement Administrator shall transmit the Settlement Administration Costs to itself.

6. **Release of Claims by Plaintiff and the Aggrieved Employees.** Upon the date of the Court’s order granting approval of the Settlement Agreement and full funding of the Gross Settlement Amount, Plaintiff and the Aggrieved Employees, will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged Defendant and its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates (collectively, the “Released Parties”) from any and all claims arising from any of the factual allegations in the PAGA Letter and only to the extent that they are alleged in the Operative Complaint, arising during the PAGA Period, for civil penalties under the Private Attorneys General Act of 2004, California Labor Code sections 2698 *et seq.*, which specifically includes claims for Defendant’s alleged failure to pay overtime and minimum wages, to pay all wages earned for all hours worked, provide compliant meal and rest periods, provide compliant wage statements, timely pay wages upon termination, and reimburse necessary business-related expenses in violation of California Labor Code §§ 201, 202, 203, 204, 226, 226.2,

226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1198, 2802, 2804, and the applicable Industrial Welfare Commission Wage Orders (collectively, “Released PAGA Claims”).

7. **Release by Plaintiff’s Counsel.** Plaintiff’s Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for Attorney’s Fees and Costs incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Letter.

8. **Settlement Administration.** The Parties have jointly selected Simpluris to serve as the Settlement Administrator and verified that, as a condition of appointment, Simpluris agrees to be bound by this Settlement Agreement and to perform, as a fiduciary, all duties specified in this Settlement Agreement in exchange for payment of the Settlement Administration Costs. The Parties and their counsel represent that they have no interest or relationship, financial or otherwise, with the Settlement Administrator other than a professional relationship arising out of prior experiences administering settlements.

(a) The Settlement Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

(b) The Settlement Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.

(c) The Settlement Administrator has a duty to perform or observe all tasks to be performed or observed by the Settlement Administrator contained in this Settlement Agreement or otherwise.

9. **Governing Law and Interpretation.**

(a) This Settlement Agreement shall be governed and conformed in accordance with the laws of the State of California. Should any non-material provision of this Settlement Agreement be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable, such provision immediately shall become null and void, leaving the remainder of this Settlement Agreement in full force and effect.

(b) In the event of a breach of any provision of this Settlement Agreement, any Party reserves the right to institute an action specifically to enforce any term or terms of this Settlement Agreement or seek damages for breach. In an action to enforce any term or terms of this Settlement Agreement or to seek damages for breach of this Settlement Agreement, the prevailing Party in that action shall be entitled to recover reasonable attorneys’ fees and costs from the non-prevailing Party.

10. **Amendment.** This Settlement Agreement may not be modified, altered, or changed except in writing and signed by both Parties’ counsel, subject to approval by the Court.

11. **Continuing Jurisdiction of the Court (CCP § 664.6).** The Parties agree that, after entry of Order and Judgment, the Court will retain jurisdiction over the Parties, Action, and the

**PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT AND RELEASE**

Settlement solely for purposes of (i) enforcing this Settlement Agreement and/or Order and Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

(a) Provided the Order and Judgment is consistent with the terms and conditions of this Settlement Agreement, specifically including the Attorney's Fees and Costs, the Parties and their respective counsel waive all rights to appeal from the Order and Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs, or appeals. If another party appeals the Order and Judgment, the Parties' obligations to perform under this Settlement Agreement will be suspended until such time as the appeal is finally resolved and the Order and Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

(b) **Miscellaneous.**

(a) The Parties agree to stay all proceedings in the Action, including with respect to California Code of Civil Procedure section 583.310, except such proceedings necessary to implement and complete the Settlement, pending approval of the Settlement.

(b) This Settlement Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which, taken together shall constitute the same instrument. A signature made on a faxed or electronically transmitted copy of the Settlement Agreement or a signature transmitted by facsimile or electronic mail shall have the same effect as the original signature.

(c) The section headings used in this Settlement Agreement are intended solely for convenience of reference and shall not in any manner amplify, limit, modify, or otherwise be used in the interpretation of any of the provisions hereof.

(d) This Settlement Agreement was the result of negotiations between the Parties and their respective counsel under the auspices of mediator David Sarnoff, Esq. In the event of vagueness, ambiguity, or uncertainty, this Settlement Agreement shall not be construed against the Party preparing it but shall be construed as if both Parties prepared it jointly, and the Parties may present their disputes to the mediator to resolve any vagueness, ambiguity, or uncertainty.

(e) If Plaintiff or Defendant fail to enforce this Settlement Agreement or to insist on performance of any term, that failure does not mean a waiver of that term or of the Settlement Agreement. This Settlement Agreement remains in full force and effect anyway.

HAVING ELECTED TO EXECUTE THIS SETTLEMENT AGREEMENT, TO FULFILL THE PROMISES, AND TO RECEIVE THE CONSIDERATION SET FORTH ABOVE, PLAINTIFF AND DEFENDANT, FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTER INTO THIS SETTLEMENT AGREEMENT.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Settlement Agreement as of the date set forth below:

**PLAINTIFF EDGAR HERRERA**

Dated: 06/18/2025

Edgar E Herrera  
Edgar E Herrera (Jun 18, 2025 16:27 PDT)  
Edgar Herrera

**DEFENDANT ENVIRONMENTAL  
REMEDIES, INC.**

Dated: 6/17/2025

[Signature]  
Full Name: Scott Tamayo

Title: CEO  
On behalf of Environmental Remedies, Inc.

**APPROVED AS TO FORM ONLY:**

**MM LAW, APC**

Dated: 06/18/2025

Maralle Messrelian  
Maralle Messrelian  
Attorneys for Plaintiff Edgar Herrera

**GREENBERG GLUSKER FIELDS  
CLAMAN & MACHTINGER LLP**

Dated: 06/18/2025

Olivia Diab  
Karina B. Serman  
Olivia Diab  
Attorneys for Defendant Environmental  
Remedies, Inc.

## Exhibit A

To: <<First Name>><<Last Name>>  
<<Street Address>>  
<<City>><<State>><<Zip>>

Re: Settlement Payment from *Edgar Herrera v. Environmental Remedies, Inc.*,  
Alameda County Superior Court Case No. 24CV092901

Dear <<First Name>><<Last Name>>:

Please find enclosed a check in the amount of <<amount of payment>> (“Individual PAGA Payment”). This check is your payment from the settlement in the lawsuit entitled *Edgar Herrera v. Environmental Remedies, Inc.*, Alameda County Superior Court Case No. 24CV092901 (“Action”).

The lawsuit was filed on September 24, 2024 by Edgar Herrera (“Plaintiff”) against his former employer Environmental Remedies, Inc. (“Defendant”), on behalf of the State of California, with respect to himself and other alleged aggrieved employees, to seek recovery of civil penalties pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”), for multiple alleged violations of the California Labor Code and Industrial Welfare Commission Wage Orders, including, *inter alia*, for failure to properly pay minimum and overtime wages, failure to provide compliant meal and rest periods and associated premiums, failure to pay wages during employment and upon termination, failure to provide compliant wage statements, failure to keep requisite payroll records, and failure to reimburse business expenses. Prior to initiating the lawsuit, on June 25, 2024, Plaintiff submitted a letter to the California Labor and Workforce Development Agency (“LWDA”), pursuant to PAGA, to provide notice of his intent to seek civil penalties under PAGA for Defendant’s alleged violations of California Labor Code sections 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1198, 2802, 2804, and the applicable Industrial Welfare Commission Wage Orders, thereby initiating LWDA Case Number LWDA-CM-1036357-24 (“PAGA Letter”).

Defendant denies all of Plaintiff’s allegations and denies any wrongdoing of any kind associated with Plaintiff’s allegations. A settlement was reached between Plaintiff and Defendant.

On <<Date>>, the settlement was approved by the Court, with a portion to be paid to the LWDA and a portion to be paid to all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the PAGA Period (“Aggrieved Employees”). The period June 25, 2023 through the [date the Court enters the order granting approval of the Settlement or sixty (60) calendar days after the date of mediation, whichever is earlier] is the “PAGA Period.”

You are receiving a portion of the settlement (the enclosed Individual PAGA Payment) because you have been identified as an Aggrieved Employee. Your Individual PAGA Payment is based on the total number of pay periods that you worked for Defendant in California during the PAGA Period, excluding leaves of absence/vacation. The Individual PAGA Payment is considered to be 100% penalties, which will be reported on an IRS Form 1099 (if applicable). You are responsible for paying any and all taxes that may be due as a result of any payment issued to you under the settlement and should consult a tax advisor regarding the tax consequences of such payment.

Under the settlement, as of <<date of Court’s order granting approval of the Settlement Agreement and full funding of the Gross Settlement Amount>>, the Released Parties were fully, finally, and forever released, settled, compromised, relinquished, and discharged from the Released PAGA Claims.

“Released Parties” means discharged Defendant and its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.

“Released PAGA Claims” means any and all claims arising from any of the factual allegations in the PAGA Letter and only to the extent that they are alleged in the Operative Complaint, arising during the PAGA Period, for civil penalties under the Private Attorneys General Act of 2004, California Labor Code sections 2698 *et seq.*, which specifically includes claims for Defendant’s alleged failure to pay overtime and minimum wages, provide compliant meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide complaint wage statements, maintain complete and accurate payroll records, and reimburse necessary business-related expenses in violation of California Labor Code §§ 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1198, 2802, 2804, and the applicable Industrial Welfare Commission Wage Orders.

The enclosed check is valid for 180 calendar days from the original date of issuance and mailing, and if it is not cashed, deposited, or otherwise negotiated within the 180-day timeframe, it will be canceled, and the funds associated with the canceled check will be transmitted to the State Controller’s Office Unclaimed Property Division in your name and in the amount of your Individual PAGA Payment.

**Do not call or write the Court, Office of the Clerk of the Court, Defendant, or Defendant’s counsel to ask questions about the settlement or to ask tax-related questions.** If you have any such questions, you may contact [Settlement Administrator] at [toll-free phone number].

# **EXHIBIT 2**

## Exhibit A

To: <<First Name>><<Last Name>>  
<<Street Address>>  
<<City>><<State>><<Zip>>

Re: Settlement Payment from *Edgar Herrera v. Environmental Remedies, Inc.*,  
Alameda County Superior Court Case No. 24CV092901

Dear <<First Name>><<Last Name>>:

Please find enclosed a check in the amount of <<amount of payment>> (“Individual PAGA Payment”). This check is your payment from the settlement in the lawsuit entitled *Edgar Herrera v. Environmental Remedies, Inc.*, Alameda County Superior Court Case No. 24CV092901 (“Action”).

The lawsuit was filed on September 24, 2024 by Edgar Herrera (“Plaintiff”) against his former employer Environmental Remedies, Inc. (“Defendant”), on behalf of the State of California, with respect to himself and other alleged aggrieved employees, to seek recovery of civil penalties pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”), for multiple alleged violations of the California Labor Code and Industrial Welfare Commission Wage Orders, including, *inter alia*, for failure to properly pay minimum and overtime wages, failure to provide compliant meal and rest periods and associated premiums, failure to pay wages during employment and upon termination, failure to provide compliant wage statements, failure to keep requisite payroll records, and failure to reimburse business expenses. Prior to initiating the lawsuit, on June 25, 2024, Plaintiff submitted a letter to the California Labor and Workforce Development Agency (“LWDA”), pursuant to PAGA, to provide notice of his intent to seek civil penalties under PAGA for Defendant’s alleged violations of California Labor Code sections 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1198, 2802, 2804, and the applicable Industrial Welfare Commission Wage Orders, thereby initiating LWDA Case Number LWDA-CM-1036357-24 (“PAGA Letter”).

Defendant denies all of Plaintiff’s allegations and denies any wrongdoing of any kind associated with Plaintiff’s allegations. A settlement was reached between Plaintiff and Defendant.

On <<Date>>, the settlement was approved by the Court, with a portion to be paid to the LWDA and a portion to be paid to all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the PAGA Period (“Aggrieved Employees”). The period June 25, 2023 through the [date the Court enters the order granting approval of the Settlement or sixty (60) calendar days after the date of mediation, whichever is earlier] is the “PAGA Period.”

You are receiving a portion of the settlement (the enclosed Individual PAGA Payment) because you have been identified as an Aggrieved Employee. Your Individual PAGA Payment is based on the total number of pay periods that you worked for Defendant in California during the PAGA Period, excluding leaves of absence/vacation. The Individual PAGA Payment is considered to be 100% penalties, which will be reported on an IRS Form 1099 (if applicable). You are responsible for paying any and all taxes that may be due as a result of any payment issued to you under the settlement and should consult a tax advisor regarding the tax consequences of such payment.

Under the settlement, as of <<date of Court’s order granting approval of the Settlement Agreement and full funding of the Gross Settlement Amount>>, the Released Parties were fully, finally, and forever released, settled, compromised, relinquished, and discharged from the Released PAGA Claims.

“Released Parties” means discharged Defendant and its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.

“Released PAGA Claims” means any and all claims arising from any of the factual allegations in the PAGA Letter and only to the extent that they are alleged in the Operative Complaint, arising during the PAGA Period, for civil penalties under the Private Attorneys General Act of 2004, California Labor Code sections 2698 *et seq.*, which specifically includes claims for Defendant’s alleged failure to pay overtime and minimum wages, provide compliant meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide complaint wage statements, maintain complete and accurate payroll records, and reimburse necessary business-related expenses in violation of California Labor Code §§ 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1198, 2802, 2804, and the applicable Industrial Welfare Commission Wage Orders.

The enclosed check is valid for 180 calendar days from the original date of issuance and mailing, and if it is not cashed, deposited, or otherwise negotiated within the 180-day timeframe, it will be canceled, and the funds associated with the canceled check will be transmitted to the State Controller’s Office Unclaimed Property Division in your name and in the amount of your Individual PAGA Payment.

**Do not call or write the Court, Office of the Clerk of the Court, Defendant, or Defendant’s counsel to ask questions about the settlement or to ask tax-related questions.** If you have any such questions, you may contact [Settlement Administrator] at [toll-free phone number].

# **EXHIBIT 3**



June 25, 2024

**NOTICE VIA ONLINE SUBMISSION**

California Labor & Workforce Development Agency (LWDA)  
Attn: PAGA Administrator  
<https://dir.tfaforms.net/308>

**VIA U.S. CERTIFIED MAIL (RETURN RECEIPT REQUESTED)**

Environmental Remedies, Inc.  
c/o Scott Tamayo, Agent  
1113 Bangor St.  
San Diego, CA 92106

**RE: Edgar Herrera/Environmental Remedies, Inc.  
Private Attorneys General Act**

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.* ("PAGA"), Mr. Edgar Herrera (hereafter "Herrera") provides notice on behalf of himself and of all individuals currently and formerly employed in California as non-exempt hourly paid or piece rate employees (hereafter the "Aggrieved Employees"), by Environmental Remedies, Inc. and Scott Tamayo (hereafter collectively "ENVIRONMENTAL REMEDIES"), of violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, and 2802. Scott Tamayo is being included in this PAGA notice pursuant to Labor Code Section 558.1 as he was or is an owner/director/managing agent of Environmental Remedies, Inc., was involved in the day-to-day operations of the business, and as such, controlled the wages, hours, and working conditions of Herrera and the other Aggrieved Employees. On behalf of himself and all other Aggrieved Employees, Herrera hereby provides this notice to the Labor & Workforce Development Agency and ENVIRONMENTAL REMEDIES and its agents and representatives.

At all relevant times, ENVIRONMENTAL REMEDIES has employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Herrera and the Aggrieved Employees are "employees" within the meaning of Wage Order 4-2001/16-2001 (hereafter "the Wage Order") § 2, subdivisions (F) and (H) respectively, and "Aggrieved Employees" within the meaning of Labor Code § 2699, subdivision (c).

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## **STATEMENT OF FACTS**

ENVIRONMENTAL REMEDIES first began to employ Herrera in or around April /May 2021 as a laborer and driver. Herrera generally worked Monday through Friday (and Saturdays as required) from approximately 7:00 a.m. to 3:30 p.m. Herrera's employment ended on or around June 14, 2024.

At all relevant times, ENVIRONMENTAL REMEDIES issued wages to Herrera and all of the other Aggrieved Employees on a biweekly basis and paid them by the hour. Herrera's latest rate of pay was \$27.00 per hour. At all relevant times, Herrera and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

ENVIRONMENTAL REMEDIES failed to pay Herrera and the other Aggrieved Employees for all time worked or subject to its control. This is so because the company had a policy of rounding down the number of hours worked, resulting in "time shaving" and further resulting in Herrera and the Aggrieved Employees not being paid for all hours worked, including the minimum wage. Moreover, during his employment, Herrera performed work after clocking out for the end of his shifts, such as having to return to job sites after he had already gotten home. ENVIRONMENTAL REMEDIES did not compensate Herrera for this off-the-clock work. In addition, to the extent Herrera and the other Aggrieved Employees worked through their meal periods and those meal periods were interrupted, they were not compensated for that time, which would be akin to a minimum wage violation. Additionally, the company did not properly compensate Herrera and others for drive time/travel time. Finally, ENVIRONMENTAL REMEDIES required Herrera and the other employees to use their own personal tools and did not pay Herrera and others twice the minimum wage rate in violation of the Wage Orders.

ENVIRONMENTAL REMEDIES failed to pay Herrera and the Aggrieved Employees properly-calculated overtime wages even though they worked more than 8 hours per day and/or 40 hours per week throughout their employment. Herrera's and the Aggrieved Employees' actual work hours (including the "off the clock" hours mentioned above) entitled them to overtime compensation. However, ENVIRONMENTAL REMEDIES did not compensate Herrera and the Aggrieved Employees with the correct amount of overtime/doubletime. It was not company policy to keep accurate track of all hours worked and to pay employees the accurate amount of overtime, especially since the "off the clock" work was not factored into the equation. Furthermore, any incentive payments and/or bonus payments were not factored into employees' regular rate of pay for purposes of deciphering the correct overtime rate of pay. In addition, any bonus and/or incentive payments were not factored into the correct sick pay wages and meal and rest break premium pay per *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863.

ENVIRONMENTAL REMEDIES failed to provide all compliant meal periods and authorize and permit all compliant rest periods to which Herrera and the other Aggrieved Employees were entitled. Herrera and the other Aggrieved Employees were entitled to take off-duty, uninterrupted 30-minute meal periods before the fifth and tenth hours of work and to take uninterrupted 10-

minute rest periods for every four hours or major fraction thereof worked. Due to the workload, Herrera would not be able to take timely, uninterrupted meal periods before the 5<sup>th</sup> hour worked. Similarly, Herrera and the other Aggrieved Employees were not able to take compliant 10-minute rest breaks. In fact, the ENVIRONMENTAL REMEDIES instructed Herrera and the other Aggrieved Employees to combine their rest breaks with their meal period and take a one hour meal period. When Herrera and the other Aggrieved Employees tried to take their meal periods, ENVIRONMENTAL REMEDIES foremen/supervisors would interrupt them with questions about work related matters or their meal periods were cut short due to their workload. On information and belief, ENVIRONMENTAL REMEDIES did not keep track of Herrera's and the Aggrieved Employees' meal periods. Per *Donohue v. AMN Services, LLC*, (2021) 11 Cal.5th 58, where time records do not facially show an employee took a compliant meal period, a rebuttable presumption arises that the employer failed to provide it, giving rise to a meal period violation. As such, the culture as well as the policies and procedures of ENVIRONMENTAL REMEDIES did not lend itself to the employees receiving consistent statutory rest breaks wherein they were relieved of all work duties. The environment at ENVIRONMENTAL REMEDIES was not conducive to receiving multiple statutory rest breaks under California law and timely, statutory rest breaks were not authorized or enforced. On information and belief, ENVIRONMENTAL REMEDIES did not provide premium wages for these meal and rest break violations; if ENVIRONMENTAL REMEDIES did provide premium wages, they were not paid at the correct rate, as explained above.

ENVIRONMENTAL REMEDIES failed to reimburse Herrera and the other Aggrieved Employees for business expenses they incurred in direct consequence of the discharge of their duties. ENVIRONMENTAL REMEDIES required Herrera and the other Aggrieved Employees to use their own personal tools, including but not limited to pliers, hammers, measuring tape, and screwdrivers, among others. ENVIRONMENTAL REMEDIES did not reimburse Herrera and the other Aggrieved Employees for these tools expenses. Accordingly, ENVIRONMENTAL REMEDIES was in violation of California Labor Code sections 2800 and 2802.

ENVIRONMENTAL REMEDIES failed to pay its employees all wages due to them within any time period specified by California Labor Code section 204, including the minimum wages and overtime as described above as well as meal/rest break premiums.

ENVIRONMENTAL REMEDIES did not provide Herrera and the other Aggrieved Employees accurate, itemized wage statements in violation of Labor Code 226. Wage statements must include all hours worked, overtime hours worked, all applicable hourly rates, the correct legal name and correct address of employer entity, gross wages earned, all deductions, net wages earned, reimbursement for business expenses, the correct start and end of the applicable pay period, the employee ID numbers or social security numbers, among other items. Labor Code § 226(a)(2). ENVIRONMENTAL REMEDIES's failure to maintain accurate records as to the hours worked daily by employees also constitutes a violation of Labor Code section 1174(d).

Finally, because ENVIRONMENTAL REMEDIES did not properly pay all wages earned as explained herein, ENVIRONMENTAL REMEDIES also failed to pay final wages owed to the

Aggrieved Employees in violation of Labor Code section 203. These earned but unpaid wages include minimum wages and compensation for all hours worked, overtime compensation, premium pay for missed meal and rest breaks, and business expense reimbursement, among others.

In addition, ENVIRONMENTAL REMEDIES failed to provide Herrera and all of the other Aggrieved Employees with an adequate number of suitable seats, toilet facilities, potable water, soap, or other suitable cleaning agent and single use towels for handwashing.

For the reasons herein, on behalf of himself and the Aggrieved Employees, Herrera alleges that ENVIRONMENTAL REMEDIES committed the following violations of the California Labor Code and the Wage Order: 1) failed to pay wages for all time worked or subject to ENVIRONMENTAL REMEDIES's control, including minimum wages and correctly-calculated overtime wages; 2) failed to provide meal periods or pay correctly-calculated premium wages in lieu thereof; 3) failed to authorize and permit rest periods or pay correctly-calculated premium wages in lieu thereof; 4) failed to reimburse reasonably necessary business expenses; 5) failed to provide compliant wage statements; 6) failed to maintain accurate records; and 7) failed to timely pay all wages owed during and upon separation of employment.

Accordingly, Herrera now seeks civil penalties on behalf of himself and the Aggrieved Employees based on ENVIRONMENTAL REMEDIES's alleged violations of the California Labor Code and the Wage Order.

### **THE WAGE ORDER**

Wage Order 4-2001 applies to "all persons employed in professional, technical, clerical, mechanical, and similar occupations whether paid on a time, piece rate, commission, or other basis[.]" § 1.

Wage Order 16-2001 applies to "all job classifications associated with construction, including but not limited to work involving alteration, demolition, building, excavation, renovation, remodeling, maintenance, improvement, and repair work, by the California Business and Professions Code, Division 3, Chapter 9, Sections 7025 et seq., and any other similar or related occupations or trades. (§ 2(C)).

At all relevant times during the applicable limitations period, ENVIRONMENTAL REMEDIES, Herrera, and the Aggrieved Employees were covered by the Wage Orders because Herrera and all of the Aggrieved Employees worked for ENVIRONMENTAL REMEDIES as laborers and in similar occupations. Accordingly, Herrera and the Aggrieved Employees are entitled to the protections provided under the Wage Orders.

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**FAILURE TO PAY WAGES FOR ALL HOURS WORKED AT THE CORRECT  
RATES OF PAY**

Labor Code §§ 510, 558, 1194, 1197, and 1198

Labor Code sections 510, 1194, and 1197 require employers to pay the wages agreed to and at least minimum wages for all time under the employer's control, overtime wages for hours worked over eight per day or forty per week at one and one-half times the employee's regular rate of pay, and double-time wages for hours worked over twelve in one day or for the first eight hours of work on the seventh consecutive day of work at two times the employee's regular rate of pay. Labor Code section 558 establishes a civil penalty for violation of Labor Code section 510. Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

ENVIRONMENTAL REMEDIES failed to pay all minimum, regular, overtime, and doubletime wages to Herrera and the other Aggrieved Employees because ENVIRONMENTAL REMEDIES paid wages based on rounded times, did not pay for off-the-clock work, and failed to pay overtime wages based on correct regular rates of pay.

**FAILURE TO PROVIDE MEAL PERIODS**

Labor Code §§ 226.7, 512, and 1198

Employers must provide employees a 30-minute, uninterrupted meal period after no more than five hours of work, and a second such meal period after no more than 10 hours work. Labor Code § 512(a); IWC Wage Order(s) §§ 11(A)-(B); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. If an employer fails to provide an employee a meal period in accordance with California law, the employer must pay the employee one hour of pay at the employee's regular rate for each work day the meal period is not provided. Lab. Code § 226.7(c); IWC Wage Order(s), § 11(D); *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863.

ENVIRONMENTAL REMEDIES failed to provide Herrera and the other Aggrieved Employees with compliant meal periods and failed to pay one hour of correctly-calculated premium pay for each day such a meal period was not provided.

**FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

Labor Code § 226.7 & 1198

The Rest Period section of the applicable Wage Order provides: "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. Nothing in this provision shall prevent an employer from staggering rest periods to avoid interruption in the flow of work and to maintain continuous operations, or from scheduling rest periods to coincide with breaks in the flow of work that occur in the course of the workday. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof. Rest periods shall take place at employer designated areas, which may include or be limited to the

employees' immediate work area." IWC Wage Order(s), § 11; Labor Code § 226.7(c); *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863.

ENVIRONMENTAL REMEDIES failed to authorize and permit Herrera and the other Aggrieved Employees to take rest periods and failed to pay one hour of correctly-calculated premium pay for each day such a rest period was not provided.

**FAILURE TO PAY FOR REST AND RECOVERY PERIODS AND OTHER  
NONPRODUCTIVE TIME**

Labor Code § 226.2

In relevant part, Labor Code section 226.2 states,

- (a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:
  - (1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.  
...
  - (3) (A) Employees shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the higher of:
    - (i) An average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods.
    - (ii) The applicable minimum wage.

At all relevant times during the applicable limitations period, ENVIRONMENTAL REMEDIES compensated Herrera and the other Aggrieved Employees on a piece rate basis and failed to separately compensate Herrera and all of the other Aggrieved Employees for rest and recovery periods and other nonproductive time. Accordingly, Herrera seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 226.2, subdivisions (a)(1) and (a)(4) and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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### **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

Labor Code §§ 226

California employers are required to provide itemized wage statements showing, among other things, “gross wages earned,” “total hours worked by the employee,” “net wages earned,” and “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.” Labor Code §§ 226(a)(1), (2), (5), (9).

ENVIRONMENTAL REMEDIES did not provide itemized wage statements accurately reflecting Herrera’s and the other Aggrieved Employees’ gross wages earned, total hours worked, net wages earned, and all applicable hourly rates and the number of hours worked at each rate.

### **FAILURE TO PROVIDE ACCURATE RECORDS**

Labor Code §§ 1174, 1174.5, 1198; IWC Wage Order(s), § 6

An employer must maintain payroll records showing hours worked daily by, and wages paid to, its employees, in accordance with rules established by the Industrial Welfare Commission. Labor Code §1174. An employer must also maintain time records showing when each work period, and meal period, begins and ends. IWC Wage Order(s), § 6.

Because ENVIRONMENTAL REMEDIES rounded employees’ time worked, did not record off-the-clock work, and did not keep track of meal periods and/or interrupted employees’ meal periods, ENVIRONMENTAL REMEDIES failed to maintain accurate records as to the hours worked daily by employees and as to when each work period and meal period began and ended.

### **FAILURE TO REIMBURSE FOR EXPENSES**

Labor Code §§ 1198, 2802, and 2804

An employer must reimburse its employees for their reasonable business-related expenses. Labor Code § 2802. The right to reimbursement cannot be waived. Labor Code § 2804.

ENVIRONMENTAL REMEDIES failed to reimburse Herrera and the other Aggrieved Employees for their reasonable business-related expenses, including use of their own personal tools in effectuating their job duties.

### **FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT & UPON SEPARATION**

Labor Code §§ 201-204

An employer must pay “[a]ll wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment...twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Labor Code § 204. An employer must pay all wages owed to terminated employees at the time of termination, or within 72 hours to employees who quit. Labor Code §§ 201-202. If an employer willfully fails to timely pay all

wages to separated employees, the wages continue at the same rate for up to 30 days, until paid. Labor Code § 203.

As a result of its failure to pay all wages earned, as described above, ENVIRONMENTAL REMEDIES failed to pay all wages due to Herrera and the Aggrieved Employees during employment and all final wages due to the Aggrieved Employees upon separation of employment and violated Labor Code Sections 201-204.

**PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES LABOR CODE**

Labor Code § 558.1

In relevant part, Labor Code section 558.1 states:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

At all relevant times, Scott Tamayo was an employer of Herrera and all of the other Aggrieved Employees, and/or “owner,” “managing agent,” and/or “officer” of ENVIRONMENTAL REMEDIES Systems, Inc. Scott Tamayo directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of Herrera and the Aggrieved Employees, and caused the violations to the Labor Code and the Wage Order described above. On behalf of himself and all of the other Aggrieved Employees, Herrera seeks the same civil penalties against Scott Tamayo on the same grounds for which he seeks civil penalties against Environmental Remedies, Inc.

**CONCLUSION**

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that Edgar Herrera will seek both reasonable attorneys’ fees and costs under Labor Code § 2699, subdivision (g) (1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure §1021.5 to resolve this matter before litigation.

Sincerely,



Maralle Messrelian, Esq.

[maralle@mmlawapc.com](mailto:maralle@mmlawapc.com)

# **EXHIBIT 4**

**ELECTRONICALLY FILED**

Superior Court of California,  
County of Alameda

**09/24/2024 at 12:41:08 PM**

By: Danielle Harbour,  
Deputy Clerk

MARALLE MESSRELIAN (SBN 316974)

maralle@mmlawapc.com

MM LAW, APC

500 N. Brand Blvd., Ste 2000

Glendale, CA 91203

Telephone (818) 810-7747

Facsimile (818) 230-9018

Attorneys for Plaintiff,

EDGAR HERRERA

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF ALAMEDA**

**(UNLIMITED JURISDICTION)**

EDGAR HERRERA, individually, and on  
behalf of other aggrieved employees pursuant to  
the Labor Code Private Attorneys General Act  
of 2004,

*Plaintiff,*

vs.

ENVIRONMENTAL REMEDIES, INC., a  
California corporation; SCOTT TAMAYO, an  
individual; and DOES 1 to 25, inclusive,

*Defendant(s).*

Case No.: **24CV092901**

**COMPLAINT FOR:**

- 1) Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198);
- 2) Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
- 3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
- 4) Failure to Indemnify (Lab. Code § 2802);
- 5) Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226);
- 6) Failure To Pay Wages When Employment Ends (Lab. Code §§ 201–203);
- 7) Failure to Pay Wages Owed Every Pay Period (Lab. Code § 204);
- 8) Civil Penalties (Lab. Code §§ 2698, *et seq.*); and
- 9) Unfair Competition (Bus. & Prof. Code, § 17200 *et seq.*)

**JURY TRIAL DEMANDED**

1 Plaintiff, EDGAR HERRERA (hereafter “Plaintiff”), individually, and on behalf of  
2 other Aggrieved Employees, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this individual and representative action based on alleged  
5 violations of the California Labor Code, Industrial Welfare Commission Order No. 4/16-2001  
6 (hereafter “the Wage Order”) and the Business and Professions Code against  
7 ENVIRONMENTAL REMEDIES, INC., a California corporation; SCOTT TAMAYO, an  
8 individual; and DOES 1 to 25, inclusive, (collectively “ENVIRONMENTAL REMEDIES” or  
9 “Defendants”).

10 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to  
11 him, the State of California, and other similarly situated aggrieved current and former non-  
12 exempt hourly employees who worked for Defendants in California at any time during the  
13 relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code  
14 Private Attorneys General Act of 2004 (“PAGA”), for civil penalties and other related relief.  
15 These claims are based on Defendants’ alleged failures to: (1) pay all wages earned for all  
16 hours worked at the correct rates of pay; (2) provide all rest breaks and meal periods; (3)  
17 indemnify for business expenses; (4) provide accurate and complete written wage statements;  
18 (5) timely pay wages during and upon termination of employment; and (6) fairly compete.  
19 Accordingly, Plaintiff now seeks to recover unpaid wages, civil penalties, and related relief  
20 through this action.

21 **JURISDICTION AND VENUE**

22 3. Jurisdiction and venue are proper in this Court and this action is properly filed  
23 in the County of Alameda because Defendants ENVIRONMENTAL REMEDIES, INC., a  
24 California corporation; SCOTT TAMAYO, an individual, and DOES 1 to 25, inclusive, do  
25 business in the County of Alameda and because Defendants’ obligations and liabilities arise  
26 therein, and because the work that was performed by Plaintiff in the County of Alameda is the  
27 subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$35,000.

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**THE PARTIES**

4. Plaintiff Edgar Herrera is a resident of the city of Oakland in the county of Alameda. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations Section 11040/11160 and an “Aggrieved Employee” within the meaning of Labor Code Section 2699(c).

5. Defendant ENVIRONMENTAL REMEDIES, INC. is a corporation organized and existing under the laws of California and a citizen of California based on Plaintiff’s information and belief.

6. Defendant SCOTT TAMAYO is a citizen of California based on Plaintiff’s information and belief.

7. In relevant part, Labor Code section 558.1 states:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

8. Based on Plaintiff’s information and belief, Defendant SCOTT TAMAYO is a natural person, and an owner, director, officer, and/or managing agent of ENVIRONMENTAL REMEDIES, INC., who directly or indirectly, or through his agent, employed or exercised control over the wages, hours, or working conditions of Plaintiff and the Aggrieved Employees (defined below). Therefore, he is liable to Plaintiff and the Aggrieved Employees for his violations of, or causing Defendants to violate, Labor Code sections 203, 226, 226.7, 1194, and 2802 pursuant to Labor Code section 558.1.

9. The “Aggrieved Employees” are all -exempt hourly paid or piece rate employees who worked for Defendants in California during the relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

10. Plaintiff is ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but is informed and believes and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names. Plaintiff will amend the Complaint to allege the true names and capacities of the DOE defendants when ascertained.

11. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees and/or servants, masters or employers of the remaining Defendants, and in doing the things hereinafter alleged, were acting within the course and scope of such agency or employment, and with the approval and ratification of each of the other Defendants.

12. Plaintiff is informed and believes and thereon alleges that each and every one of the acts and omissions alleged herein were performed by, and/or are attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other Defendants, and that said acts and failures to act were within the course and scope of said agency, employment, and/or direction and control.

13. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack of a practice which resulted in Defendants not paying Plaintiff and the Aggrieved Employees in accordance with applicable California labor laws as alleged herein.

## GENERAL ALLEGATIONS

14. ENVIRONMENTAL REMEDIES first began to employ Plaintiff in or around April/May 2021 as a laborer and driver. Plaintiff generally worked Monday through Friday (and Saturdays as required) from approximately 7:00 a.m. to 3:30 p.m. Plaintiff's employment ended on or around June 14, 2024.

15. At all relevant times, ENVIRONMENTAL REMEDIES issued wages to Plaintiff and all of the other Aggrieved Employees on a biweekly basis and paid them by the hour. Plaintiff's latest rate of pay was \$27.00 per hour. At all relevant times, Plaintiff and all of

1 the other Aggrieved Employees as non-exempt employees entitled to the protections of the  
2 Labor Code and the Wage Order.

3 16. ENVIRONMENTAL REMEDIES failed to pay Plaintiff and the other  
4 Aggrieved Employees for all time worked or subject to its control. This is so because the  
5 company had a policy of rounding down the number of hours worked, resulting in “time  
6 shaving” and further resulting in Plaintiff and the Aggrieved Employees not being paid for all  
7 hours worked, including the minimum wage. Moreover, during his employment, Plaintiff  
8 performed work after clocking out for the end of his shifts, such as having to return to job sites  
9 after he had already gotten home. ENVIRONMENTAL REMEDIES did not compensate  
10 Plaintiff for this off-the-clock work. In addition, to the extent Plaintiff and the other Aggrieved  
11 Employees worked through their meal periods and those meal periods were interrupted, they  
12 were not compensated for that time, which would be akin to a minimum wage violation.  
13 Additionally, the company did not properly compensate Plaintiff and others for drive  
14 time/travel time. Finally, ENVIRONMENTAL REMEDIES required Plaintiff and the other  
15 employees to use their own personal tools and did not pay Plaintiff and others twice the  
16 minimum wage rate in violation of the Wage Orders.

17 17. ENVIRONMENTAL REMEDIES failed to pay Plaintiff and the Aggrieved  
18 Employees properly-calculated overtime wages even though they worked more than 8 hours  
19 per day and/or 40 hours per week throughout their employment. Plaintiff’s and the Aggrieved  
20 Employees’ actual work hours (including the “off the clock” hours mentioned above) entitled  
21 them to overtime compensation. However, ENVIRONMENTAL REMEDIES did not  
22 compensate Plaintiff and the Aggrieved Employees with the correct amount of  
23 overtime/doubletime. It was not company policy to keep accurate track of all hours worked and  
24 to pay employees the accurate amount of overtime, especially since the “off the clock” work  
25 was not factored into the equation. Furthermore, any incentive payments and/or bonus  
26 payments were not factored into employees’ regular rate of pay for purposes of deciphering the  
27 correct overtime rate of pay. In addition, any bonus and/or incentive payments were not  
28 factored into the correct sick pay wages and meal and rest break premium pay per *Ferra v.*

1 *Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863.

2       18. ENVIRONMENTAL REMEDIES failed to provide all compliant meal periods  
3 and authorize and permit all compliant rest periods to which Plaintiff and the other Aggrieved  
4 Employees were entitled. Plaintiff and the other Aggrieved Employees were entitled to take  
5 off-duty, uninterrupted 30-minute meal periods before the fifth and tenth hours of work and to  
6 take uninterrupted 10-minute rest periods for every four hours or major fraction thereof  
7 worked. Due to the workload, Plaintiff would not be able to take timely, uninterrupted meal  
8 periods before the 5<sup>th</sup> hour worked. Similarly, Plaintiff and the other Aggrieved Employees  
9 were not able to take compliant 10-minute rest breaks. In fact, the ENVIRONMENTAL  
10 REMEDIES instructed Plaintiff and the other Aggrieved Employees to combine their rest  
11 breaks with their meal period and take a one hour meal period. When Plaintiff and the other  
12 Aggrieved Employees tried to take their meal periods, ENVIRONMENTAL REMEDIES  
13 foremen/supervisors would interrupt them with questions about work related matters or their  
14 meal periods were cut short due to their workload. On information and belief,  
15 ENVIRONMENTAL REMEDIES did not keep track of Plaintiff's and the Aggrieved  
16 Employees' meal periods. Per *Donohue v. AMN Services, LLC*, (2021) 11 Cal.5th 58, where  
17 time records do not facially show an employee took a compliant meal period, a rebuttable  
18 presumption arises that the employer failed to provide it, giving rise to a meal period violation.  
19 As such, the culture as well as the policies and procedures of ENVIRONMENTAL  
20 REMEDIES did not lend itself to the employees receiving consistent statutory rest breaks  
21 wherein they were relieved of all work duties. The environment at ENVIRONMENTAL  
22 REMEDIES was not conducive to receiving multiple statutory rest breaks under California law  
23 and timely, statutory rest breaks were not authorized or enforced. On information and belief,  
24 ENVIRONMENTAL REMEDIES did not provide premium wages for these meal and rest  
25 break violations; if ENVIRONMENTAL REMEDIES did provide premium wages, they were  
26 not paid at the correct rate, as explained above.

27       19. ENVIRONMENTAL REMEDIES failed to reimburse Plaintiff and the other  
28 Aggrieved Employees for business expenses they incurred in direct consequence of the

1 discharge of their duties. ENVIRONMENTAL REMEDIES required Plaintiff and the other  
2 Aggrieved Employees to use their own personal tools, including but not limited to pliers,  
3 hammers, measuring tape, and screwdrivers, among others. ENVIRONMENTAL REMEDIES  
4 did not reimburse Plaintiff and the other Aggrieved Employees for these tools expenses.  
5 Accordingly, ENVIRONMENTAL REMEDIES was in violation of California Labor Code  
6 sections 2800 and 2802.

7         20. ENVIRONMENTAL REMEDIES failed to pay its employees all wages due to  
8 them within any time period specified by California Labor Code section 204, including the  
9 minimum wages and overtime as described above as well as meal/rest break premiums.

10         21. ENVIRONMENTAL REMEDIES did not provide Plaintiff and the other  
11 Aggrieved Employees accurate, itemized wage statements in violation of Labor Code 226.  
12 Wage statements must include all hours worked, overtime hours worked, all applicable hourly  
13 rates, the correct legal name and correct address of employer entity, gross wages earned, all  
14 deductions, net wages earned, reimbursement for business expenses, the correct start and end of  
15 the applicable pay period, the employee ID numbers or social security numbers, among other  
16 items. Labor Code § 226(a)(2). ENVIRONMENTAL REMEDIES's failure to maintain  
17 accurate records as to the hours worked daily by employees also constitutes a violation of  
18 Labor Code section 1174(d).

19         22. Finally, because ENVIRONMENTAL REMEDIES did not properly pay all  
20 wages earned as explained herein, ENVIRONMENTAL REMEDIES also failed to pay final  
21 wages owed to the Aggrieved Employees in violation of Labor Code section 203. These earned  
22 but unpaid wages include minimum wages and compensation for all hours worked, overtime  
23 compensation, premium pay for missed meal and rest breaks, and business expense  
24 reimbursement, among others.

25         23. In addition, ENVIRONMENTAL REMEDIES failed to provide Plaintiff and all  
26 of the other Aggrieved Employees with an adequate number of suitable seats, toilet facilities,  
27 potable water, soap, or other suitable cleaning agent and single use towels for handwashing.

28         24. Accordingly, Plaintiff now seeks civil penalties on behalf of himself and the

1 Aggrieved Employees based on ENVIRONMENTAL REMEDIES's alleged violations of the  
2 California Labor Code and the Wage Order.

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

5 **(Lab. Code §§ 510, 1194, 1197, and 1198)**

6 **(By Plaintiff against all Defendants)**

7 25. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

8 26. At all relevant times, Plaintiff was a non-exempt employee of Defendants and  
9 entitled to the benefits and protections of California Labor Code §§ 510, 1194, 1197, and 1198,  
10 and the Wage Order.

11 27. Section 2(K) of Wage Order 4-2001 and section 2(J) of Wage Order 16-2001  
12 define "hours worked" as "the time during which an employee is subject to the control of an  
13 employer, and includes all the time the employee is suffered or permitted to work, whether or  
14 not required to do so."

15 28. Section 3 of the Wage Order states:

16 (A) Daily Overtime - General Provisions

17 (1) The following overtime provisions are applicable to  
18 employees 18 years of age or over and to employees 16 or  
19 17 years of age who are not required by law to attend  
20 school and are not otherwise prohibited by law from  
21 engaging in the subject work. Such employees shall not  
22 be employed more than eight (8) hours in any workday or  
23 more than 40 hours in any workweek unless the employee  
24 receives one and one-half (1 ½) times such employee's  
25 regular rate of pay for all hours worked over 40 hours in  
26 the workweek. Eight (8) hours of labor constitutes a day's  
27 work. Employment beyond eight (8) hours in any  
28 workday or more than six (6) days in any workweek is  
permissible provided the employee is compensated for  
such overtime at not less than:

(a) One and one-half (1 ½) times the employee's  
regular rate of pay for all hours worked in excess  
of eight (8) hours up to and including 12 hours in  
any workday, and for the first eight (8) hours  
worked on the seventh (7th) consecutive day of

work in a workweek.

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7<sup>th</sup>) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

29. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consist of all hours that an employer has actual or constructive knowledge that employees are working.

30. Labor Code section 510 states:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

31. California Labor Code § 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

32. California Labor Code § 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

1           33.     California Labor Code § 1198 makes it unlawful for an employer to employ an  
2 employee under conditions that violate the Wage Order.

3           34.     In conjunction, these provisions of the California Labor Code require employers  
4 to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates  
5 for all hours worked, including unrecorded hours when the employer knew or reasonably should  
6 have known that employees were working during those hours. (*See Morillion v. Royal Packing*  
7 *Co.* (2000) 22 Cal.4th 575, 585.)

8           35.     Defendants required Plaintiff to work in excess of eight (8) hours in one workday  
9 and forty (40) hours in one workweek without compensating him for such time worked at the  
10 premium rates required by California law.

11          36.     As described more fully above, Defendants failed to pay all minimum, regular,  
12 overtime, and double time wages to Plaintiff because Defendants paid wages based on rounded  
13 times, did not pay for off-the-clock work, and failed to pay overtime and double time wages  
14 based on correct regular rates of pay.

15          37.     As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an  
16 amount, subject to proof, to the extent that he was not paid the full amount of wages earned  
17 during each pay period during the applicable limitations period, including minimum, overtime,  
18 and double-time wages.

19          38.     As a result of Defendants' conduct, Plaintiff seeks damages and/or restitution for  
20 unpaid wages which Defendants failed to pay him at the rates set forth herein, interest thereon,  
21 and costs of suit and reasonable attorney's fees pursuant to California Labor Code §§ 1194.

22                   **SECOND CAUSE OF ACTION**

23                   **FAILURE TO PROVIDE REST BREAKS**

24                   **(Lab. Code §§ 226.7 and 1198)**

25                   **(By Plaintiff against all Defendants)**

26          39.     Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

27          40.     At all relevant times during the applicable limitations period, Plaintiff was a  
28 non-exempt employee of Defendants and entitled to the benefits and protections of California

1 Labor Code §§ 226.7, 1198, and the Wage Order.

2 41. Labor Code § 1198 states,

3 “The maximum hours of work and the standard conditions of labor  
4 fixed by the commission shall be the maximum hours of work and the  
5 standard conditions of labor for employees. The employment of any  
6 employee for longer hours than those fixed by the order or under  
conditions of labor prohibited by the order is unlawful.”

7 42. In relevant part, Section 12 of Wage Order 4-2001 states:

8 (A) Every employer shall authorize and permit all employees to take rest  
9 periods, which insofar as practicable shall be in the middle of each work  
10 period. The authorized rest period time shall be based on the total hours  
11 worked daily at the rate of ten (10) minutes net rest time per four (4)  
12 hours or major fraction thereof. However, a rest period need not be  
authorized for employees whose total daily work time is less than three  
and one-half (3 1/2) hours. Authorized rest period time shall be counted  
as hours worked for which there shall be no deduction from wages.

13 (B) If an employer fails to provide an employee a rest period in  
14 accordance with the applicable provisions of this order, the  
15 employer shall pay the employee one (1) hour of pay at the employee’s  
16 regular rate of compensation for each workday that  
the rest period is not provided.

17 43. In relevant part, Section 11 of Wage Order 16-2001 states:

18 (A) Every employer shall authorize and permit all employees to take rest  
19 periods, which insofar as practicable shall be in the middle of each work  
20 period. Nothing in this provision shall prevent an employer from  
21 staggering rest periods to avoid interruption in the flow of work and to  
22 maintain continuous operations, or from scheduling rest periods to  
23 coincide with breaks in the flow of work that occur in the course of the  
24 workday. The authorized rest period time shall be based on the total  
hours worked daily at the rate of ten (10) minutes net rest time for every  
four (4) hours worked, or major fraction thereof. Rest periods shall take  
place at employer designated areas, which may include or be limited to  
the employees’ immediate work area.

25 (D) If an employer fails to provide an employee a rest period in  
26 accordance with the applicable provisions of this order, the employer  
27 shall pay the employee one (1) hour of pay at the employee’s regular rate  
of compensation for each workday that the rest period is not provided.

28 44. In addition, Labor Code Section 226.7 states

1 (b) An employer shall not require an employee to work during a  
2 meal or rest or recovery period mandated pursuant to an applicable  
3 statute, or applicable regulation, standard, or order of the Industrial  
Welfare Commission, the Occupational Safety and Health Standards  
Board, or the Division of Occupational Safety and Health.

4 (c) If an employer fails to provide an employee a meal or rest or  
5 recovery period in accordance with a state law, including, but not  
6 limited to, an applicable statute or applicable regulation, standard, or  
7 order of the Industrial Welfare Commission, the Occupational Safety  
8 and Health Standards Board, or the Division of Occupational Safety and  
Health, the employer shall pay the employee one additional hour of pay  
9 at the employee's regular rate of compensation for each workday that  
the meal or rest or recovery period is not provided.

10 45. Pursuant to the Wage Order, Plaintiff was entitled to be provided with net rest  
breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

11 46. Defendants failed to authorize and permit Plaintiff to take compliant rest  
12 periods and failed to pay one hour of correctly-calculated premium pay for each day such a  
13 rest period was not provided.

14 47. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in  
15 an amount subject to proof to the extent he was not paid additional wages owed for all rest  
16 breaks not provided to him.

17 48. By reason of the above, Plaintiff is entitled to premium wages for workdays in  
18 which one or more rest breaks were not provided to him pursuant to California Labor Code §  
19 226.7, plus interest and costs.

20 **THIRD CAUSE OF ACTION**

21 **FAILURE TO PROVIDE MEAL PERIODS**

22 **(Lab. Code §§ 226.7, 512, and 1198)**

23 **(By Plaintiff against all Defendants)**

24 49. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

25 50. At all relevant times during the applicable limitations period, Plaintiff was a  
26 non-exempt employee of Defendants and entitled to the benefits and protections of California  
27 Labor Code §§ 226.7, 512 and 1198, and the Wage Order.  
28

- 1           51.    Labor Code § 1198 states,  
2                “The maximum hours of work and the standard conditions of labor  
3                fixed by the commission shall be the maximum hours of work and the  
4                standard conditions of labor for employees. The employment of any  
5                employee for longer hours than those fixed by the order or under  
6                conditions of labor prohibited by the order is unlawful.”
- 7           52.    In relevant part, Labor Code Section 512 states  
8                “An employer may not employ an employee for a work period of more  
9                than five hours per day without providing the employee with a meal  
10              period of not less than 30 minutes, except that if the total work period  
11              per day of the employee is no more than six hours, the meal period may  
12              be waived by mutual consent of both the employer and employee. An  
13              employer may not employ an employee for a work period of more than  
14              10 hours per day without providing the employee with a second meal  
15              period of not less than 30 minutes, except that if the total hours worked  
16              is no more than 12 hours, the second meal period may be waived by  
17              mutual consent of the employer and the employee only if the first meal  
18              period was not waived.”
- 19           53.    In relevant part, Section 11 of Wage Order 4-2001 states:  
20                (A) An employer may not employ an employee for a work period of more than  
21                five (5) hours without providing the employee with a meal period of not  
22                less than 30 minutes, except that when a work period of not more than six  
23                (6) hours will complete the day's work the meal period may be waived by  
24                mutual consent of employer and employee. Unless the employee is relieved  
25                of all duty during a 30 minute meal period, the meal period shall be  
26                considered an “on duty” meal period and counted as time worked. An “on  
27                duty” meal period shall be permitted only when the nature of the work  
28                prevents an employee from being relieved of all duty and when by written  
                agreement between the parties an on-the-job paid meal period is agreed to.
- (B) An employer may not employ an employee for a work period of more than  
                ten (10) hours per day without providing the employee with a second meal  
                period of not less than 30 minutes, except that if the total hours worked is  
                no more than 12 hours, the second meal period may be waived by mutual  
                consent of the employer and the employee only if the first meal period was  
                not waived.
54.    In relevant part, Section 10 of Wage Order 16-2001 states:  
                (A) No employer shall employ any person for a work period of more than five  
                (5) hours without a meal period of not less than 30 minutes, except that when a  
                work period of not more than six (6) hours will complete the day's work the  
                meal period may be waived by mutual consent of employer and employee. (See  
                Labor Code Section 512.)

1 (F) If an employer fails to provide an employee a meal period in accordance  
2 with the applicable provisions of this order, the  
3 employer shall pay the employee one (1) hour of pay at the employee's regular  
4 rate of compensation for each workday that the meal period  
5 is not provided.

6 55. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff was  
7 entitled to be provided with uninterrupted meal periods of at least 30 minutes for each day he  
8 worked five or more hours. Pursuant to California Labor Code § 512, Plaintiff was also  
9 entitled to a second 30-minute meal period when he worked more than ten (10) hours in a  
10 workday.

11 56. During the relevant time period, Defendants failed to provide Plaintiff with  
12 compliant meal periods before the fifth hour of work and failed to pay one hour of correctly-  
13 calculated premium pay for each day such a meal period was not provided.

14 57. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in  
15 an amount subject to proof to the extent he was not paid additional wages owed for all meal  
16 periods not provided to him.

17 58. By reason of the above, Plaintiff is entitled to premium wages for workdays in  
18 which one or more meal periods were not provided to him pursuant to California Labor Code  
19 § 226.7, plus interest and costs.

#### 20 **FOURTH CAUSE OF ACTION**

#### 21 **FAILURE TO INDEMNIFY**

#### 22 **(Lab. Code §§ 1198 & 2802)**

#### 23 **(By Plaintiff against all Defendants)**

24 59. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

25 60. At all relevant times, Plaintiff was a non-exempt employee of Defendants and  
26 entitled to the benefits and protections of the California Labor Code §§ 1198 and 2802, and the  
27 Wage Order.

28 61. In pertinent part, California Labor Code § 2802(a) states:

An employer shall indemnify his or her employee[s] for all necessary  
expenditures incurred by the employee in direct consequence of the  
discharge of his or her duties.

1           62.     Section 9(B) of the Wage Order states:

2                     When tools or equipment are required by the employer or are necessary to  
3                     the performance of a job, such tools and equipment shall be provided and  
4                     maintained by the employer, except that an employee whose wages are at  
5                     least two (2) times the minimum wage provided herein may be required to  
6                     provide and maintain hand tools and equipment customarily required by  
7                     the trade or craft.

8           63.     California Labor Code § 1198 prohibits employers from employing their  
9                     employees under conditions prohibited by the Wage Order.

10           64.     At all relevant times, Defendants required Plaintiff to use his own tools and to  
11                     purchase specific tools to perform their assigned job duties. Such tools included, but are not  
12                     limited to, pliers, hammers, measuring tape, and screwdrivers, among others. However,  
13                     Defendants did not provide these items and did not reimburse Plaintiff for these tools expenses.

14           65.     Plaintiff is informed and believes and thereon alleges that, at all relevant times,  
15                     Defendants have maintained a policy, practice, or a lack of a policy which resulted in  
16                     Defendants' failure to indemnify Plaintiff for the reasonable expenses he incurred in the course  
17                     of performing his duties.

18           66.     By reason of the above, Plaintiff is entitled to reimbursement for all necessary  
19                     expenditures and losses and interest due and owing to within three years (3) of the date of the  
20                     filing of the Complaint until the date of entry of judgment pursuant to California Labor Code §  
21                     2802(b). Further, Plaintiff seeks reasonable attorney's fees pursuant to Labor Code § 2802(c).

22                     **FIFTH CAUSE OF ACTION**

23                     **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

24                     **(California Labor Code Section 226)**

25                     **(By Plaintiff against all Defendants)**

26           67.     Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

27           68.     Pursuant to California Labor Code Section 226, every employer must furnish  
28                     each employee an itemized statement of wages and deductions at the time of payment of wages.

          69.     Defendants knowingly and intentionally did not furnish Plaintiff with pay stubs  
                   that accurately reflected all information required by Labor Code Section 226, including but not

1 limited to, all hours worked, gross wages earned, including minimum wages, overtime wages,  
2 and premium pay for missed meal and rest breaks, net wages earned, total hours worked by the  
3 employee, all deductions, and business expense reimbursement. Therefore, Defendants failed  
4 to maintain and provide accurate itemized wage statements to Plaintiff in accordance with  
5 California Labor Code Section 226(a).

6 70. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover  
7 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a  
8 violation occurs and one hundred dollars (\$100) per employee for each violation in a  
9 subsequent pay period, not exceeding an aggregate amount of four thousand dollars (\$4,000),  
10 plus costs and reasonable attorney's fees. Plaintiff only claims damages under this cause of  
11 action pursuant to the 3-year period immediately preceding the date this lawsuit was filed.

12 71. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has  
13 sustained damages, including loss of earnings, in an amount to be established at trial. As a  
14 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,  
15 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs  
16 and attorney's fees pursuant to statute.

17 72. Under this cause of action, Plaintiff prays for penalties due under the statutes  
18 alleged along with any allowable interest, penalties, attorney's fees, and costs according to  
19 proof at trial.

## 20 **SIXTH CAUSE OF ACTION**

### 21 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

#### 22 **(California Labor Code Sections 201-203)**

#### 23 **(By Plaintiff against all Defendants)**

24 73. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

25 74. Pursuant to California Labor Code Section 201(a), an employer who discharges  
26 an employee must immediately pay for all compensation due and owing.

27 75. Pursuant to California Labor Code Section 202, when an employee resigns, the  
28 employer must pay all compensation due and owing within 72 hours of resignation, or on the

1 employee's last day of work, if the employee gives more than 72 hours notice of resignation.

2 76. Pursuant to California Labor Code Section 203, if an employer willfully fails to  
3 pay, without abatement or reduction, any wages of an employee whose employment ends, the  
4 wages of the employee shall continue as a penalty from the due date at the same rate until paid  
5 or until an action is commenced; however, the wages shall not continue for more than 30 days  
6 for failure to pay an employee owed wages.

7 77. After Plaintiff's employment with Defendants ended, Defendants willfully  
8 refused and continue to refuse to pay his unpaid wages as required by Labor Code Section 203.

9 78. Under this cause of action, Plaintiff prays for penalties due under the statutes  
10 alleged along with any allowable interest, penalties, attorney's fees, and costs according to  
11 proof at trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years  
12 immediately preceding the filing of this lawsuit.

13 79. Under this cause of action, Plaintiff also prays for attorney's fees and costs  
14 under California Labor Code Section 218.5 for time spent pursuing the non-payment of wages  
15 as set forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

16 80. Under this cause of action, Plaintiff prays for penalties due under the statutes  
17 alleged along with any allowable interest, penalties, attorney's fees, and costs according to  
18 proof at trial.

19 **SEVENTH CAUSE OF ACTION**

20 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

21 **(California Labor Code Section 204)**

22 **(By Plaintiff against all Defendants)**

23 81. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

24 82. California Labor Code Section 204 establishes the fundamental right of all  
25 employees in the State of California to be paid wages in a timely fashion for their work.

26 83. At all times relevant during the liability period, Defendants failed to pay  
27 Plaintiff the full amount of all owed wages when due as required by California Labor Code  
28 Section 204.

1           84. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is  
2 informed, believes, and thereon alleges, that all times relevant during the applicable limitations  
3 period, Defendants maintained a policy or practice of not paying Plaintiff wages for all hours  
4 worked, including the minimum wage, overtime hours, double time hours, and premium pay  
5 for missed meal and rest breaks.

6           85. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in  
7 an amount, subject to proof, to the extent he was not paid all wages each pay period. The  
8 precise amount of unpaid wages is not presently known to Plaintiff but can be determined  
9 directly from Defendants' records or indirectly based on information from Defendants' records.

10           86. Under this cause of action, Plaintiff prays for penalties due under the statutes  
11 alleged along with any allowable interest, penalties, attorney's fees, and costs according to  
12 proof at trial.

13                                   **EIGHTH CAUSE OF ACTION**

14                                   **CIVIL PENALTIES**

15                                   **(Lab. Code §§ 2698, *et seq.*)**

16                                   **(By Plaintiff against all Defendants)**

17           87. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

18           88. Plaintiff is an Aggrieved Employee under the Private Attorneys General Act of  
19 2004 ("PAGA") because he was employed by Defendants during the applicable statutory  
20 period and suffered one or more of the violations of the Labor Code set forth in this Complaint.  
21 Plaintiff seeks to recover on his own behalf, on behalf of the State of California, and on behalf  
22 of all current and former Aggrieved Employees of Defendants, the civil penalties provided by  
23 PAGA, plus reasonable attorney's fees and costs in this representative action.

24           89. During the applicable time period, Defendants violated California Labor Code  
25 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, and 2802.

26           90. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on  
27 behalf of themselves and other current or former employees, to bring a civil action to recover  
28 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

1           91. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the  
2 Aggrieved Employees are entitled to recover civil penalties for each of the Defendants'  
3 violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 558.1,  
4 1174, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following  
5 amounts:

6           A. For violations of California Labor Code § 204, one hundred dollars  
7 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars  
8 (\$200.00) for each Aggrieved Employee for each subsequent violation (penalty amounts  
9 established by California Labor Code § 210).

10           B. For violations of California Labor Code § 226(a), two hundred fifty  
11 dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars  
12 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts  
13 established by California Labor Code § 226.3).

14           C. For violations of California Labor Code §§ 510, 512, and 558.1, fifty  
15 dollars (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars  
16 (\$100.00) for each Aggrieved Employee for each subsequent violation (penalty amounts  
17 established by California Labor Code § 558).

18           D. For violations of California Labor Code § 1174, five hundred dollars  
19 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by  
20 California Labor Code § 1174.5).

21           E. For violations of California Labor Code § 1197, one hundred dollars  
22 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two  
23 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation,  
24 per pay period (regardless of whether the initial violations were intentionally committed)  
25 (penalty amounts established by California Labor Code § 1197.1).

26           F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,  
27 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period  
28 for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per

1 pay period for each subsequent violation (penalty amounts established by California Labor  
2 Code § 2699(f)(2)).

3 92. Plaintiff has complied with the procedures for bringing suit specified in  
4 California Labor Code § 2699.3. By letter dated June 25, 2024, Plaintiff filed written notice  
5 online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice  
6 by certified mail to Defendants of the specific provisions of the California Labor Code alleged  
7 to have been violated, including the facts and theories to support the alleged violations. Plaintiff  
8 accompanied his LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to  
9 take action in response within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff  
10 anticipates that the LWDA will provide written notice to Plaintiff informing him that it does  
11 not intend to investigate these allegations.

12 93. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved  
13 Employees are entitled to an award of civil penalties and reasonable attorney’s fees and costs in  
14 connection with their claims for civil penalties.

### 15 **NINTH CAUSE OF ACTION**

#### 16 **UNFAIR COMPETITION**

17 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

18 **(By Plaintiff against all Defendants except Scott Tamayo)**

19 94. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

20 95. At all relevant times during the applicable limitations period, Plaintiff has been  
21 an employee of Defendants and entitled to the benefits and protections of the Business and  
22 Professions Code §§ 17200, *et seq.*

23 96. Defendants engaged in unfair competition by failing to 1) pay employees for all  
24 hours worked at the correct rates of pay and 2) pay their employees premium wages for  
25 workdays during which one or more meal or rest periods were not provided, and 3) reimburse  
26 employees for necessary business expenses incurred in the course of performing their duties.

27 97. The unlawful conduct of Defendants alleged herein amounts to and constitutes  
28 unfair competition within the meaning of California Business & Professions Code §§ 17200,

1 *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have  
2 unfairly gained a competitive advantage over other comparable companies doing business in  
3 California that comply with their legal obligations to, among other things, to pay their  
4 employees premium wages for workdays in which they did not provide employees with one or  
5 more meal and rest periods, indemnify them for all business expenses incurred during the  
6 course of performing their duties, including, but not limited to, personal tools, and pay them  
7 all wages earned.

8 98. As a result of Defendants' unfair competition as alleged herein, Plaintiff has  
9 suffered injuries in fact and lost money or property. Defendants failed to pay Plaintiff for all  
10 hours worked, failed to provide him with premium wages for missed meal and rest periods,  
11 and failed to reimburse Plaintiff for all expenses he incurred in the course of performing his  
12 duties.

13 99. Pursuant to California Business & Professions Code § 17203, Plaintiff is  
14 entitled to restitution of all monies rightfully belonging to him that Defendants did not pay him  
15 or otherwise retained by means of their unlawful and unfair business practices.

16 100. Plaintiff is entitled to reasonable attorneys' fees in connection with his unfair  
17 competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial  
18 benefit doctrine and/or the common fund doctrine.

19 101. Accordingly, with respect to this cause of action, Plaintiff prays for the herein  
20 stated relief, and an award of all reasonable costs and attorneys' fees, including interest  
21 thereon, as permitted by law, all in amounts subject to proof.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff prays for relief and judgment against Defendants as follows:

- 24 1. For general damages according to proof;
- 25 2. For special and consequential damages to the extent allowed by law;
- 26 3. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount  
27 subject to proof at trial;
- 28 4. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to

5. proof at trial;
6. For one hour of wages due to Plaintiff for each work period of more than five (5) hours when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
7. For one hour of wages due to Plaintiff for each work period of four (4) hours or major fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
8. For maximum civil penalties available under the Labor Code and applicable Wage Order against Defendants as described more particularly in the Complaint;
9. For restitution and disgorgement for all unfair business practices by Defendant ENVIRONMENTAL REMEDIES, INC. against Plaintiff in an amount according to proof;
10. For an order enjoining Defendant ENVIRONMENTAL REMEDIES, INC. from further unfair and unlawful business practices in violation of Business and Professions Code Sections 17200, et seq.;
11. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated damages, damages, penalties, and waiting time penalties according to proof to the extent permitted by law;
12. For the imposition of civil penalties and/or statutory penalties;
13. For all interest as allowed by law;
14. For all costs and disbursements incurred in this suit;
15. Reasonable attorney's fees where available by law, including but not limited to, pursuant to, Code of Civil Procedure section 1021.5, and/or other applicable laws; and

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16. For such other and further relief as this Court may deem proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial on all issues so triable.

Dated: September 23, 2024

MM LAW, APC

By Maralle Messrelan  
Maralle Messrelan, Esq.  
Attorney for Plaintiff,  
EDGAR HERRERA

# **EXHIBIT 5**

KARINA B. STERMAN (SBN 193182)  
KSterman@ggfirm.com  
OLIVIA B. DIAB (SBN 347922)  
ODiab@ggfirm.com  
GREENBERG GLUSKER FIELDS CLAMAN &  
MACHTINGER LLP  
2049 Century Park East, Suite 2600  
Los Angeles, California 90067  
Telephone: 310-553-3610  
Facsimile: 310-553-0687

Attorneys for Defendants  
Environmental Remedies, Inc. and Scott Tamayo

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

EDGAR HERRERA, individually, and on  
behalf of other aggrieved employees pursuant  
to the Labor Code Private Attorneys General  
Act of 2004,

Plaintiff,

v.

ENVIRONMENTAL REMEDIES, INC., a  
California corporation; SCOTT TAMAYO, an  
individual; and DOES 1 to 25, inclusive,

Defendants.

Case No. 24CV092901

*Hon. Peter Borkon, Dept. 15*

**ANSWER OF DEFENDANTS  
ENVIRONMENTAL REMEDIES, INC.  
AND SCOTT TAMAYO TO  
UNVERIFIED COMPLAINT**

Action Filed Date: September 24, 2024

Defendants Environmental Remedies, Inc. (“Employer”) and Scott Tamayo (collectively, “Defendants”), hereby answer the unverified Complaint (“Complaint”) of Plaintiff Edgar Herrera (“Plaintiff”) and Aggrieved Employees, as follows:

**GENERAL DENIAL**

Pursuant to California Code of Civil Procedure section 431.30(d), Defendants deny generally and specifically each and every allegation of the Complaint, and specifically deny that Plaintiff and Aggrieved Employees have been damaged in any sum by reason of any act or omission of Defendants, or that Plaintiff and Aggrieved Employees are entitled to relief in any amount against Defendants.

**SEPARATE AND AFFIRMATIVE DEFENSES**

As and for their separate affirmative defenses to the Complaint, without waiving any additional affirmative defenses and reserving the right to assert such additional defenses after they are ascertained, Defendants allege as follows:

**FIRST AFFIRMATIVE DEFENSE**

**(Failure to State Sufficient Facts)**

1. Defendants allege that the Complaint, and each cause of action alleged therein, fails to state sufficient facts to constitute a cause of action against Defendants.

**SECOND AFFIRMATIVE DEFENSE**

**(Conformity with Governmental Codes and Regulations)**

2. Defendants allege that Employer’s policies, practices and procedures are in conformity with applicable governmental codes and regulations existing at all relevant times. Therefore, no legal liability may be imposed on Defendants as to any act or practice that is in conformity with such governmental codes and regulations.

**THIRD AFFIRMATIVE DEFENSE**

**(Conforming Wage Statements)**

3. Defendants allege that Employer’s wage statements fulfill the requirements of [Labor Code §226](#) and [Maldonado v. Epsilon Plastics, Inc. \(2018\) 18 Cal. Daily Op. Serv. 4300](#).

**FOURTH AFFIRMATIVE DEFENSE**

**(No Knowledge of Uncompensated Work)**

4. Defendants had no knowledge of any alleged work by Plaintiff or Aggrieved Employees for which they were entitled to but did not receive compensation, and did not authorize, require, request, suffer, or permit activity by Plaintiff or Aggrieved Employees that caused them to be an employee without compensation.

**FIFTH AFFIRMATIVE DEFENSE**

**(Good Faith Dispute Exists)**

5. Defendants allege, without admitting any liability or obligation, if any, without impairing the general denials herein, that the Complaint, and each purported cause of action contained therein, is barred in whole or in part, because a good faith dispute exists as to whether any wages are due.

**SIXTH AFFIRMATIVE DEFENSE**

**(No Willful Failure to Pay Wages)**

6. Defendants allege, without admitting any liability or obligation, if any, without impairing the general denials herein, that the Complaint, and each purported cause of action contained therein, is barred and relief cannot be obtained because if Plaintiff and Aggrieved Employees were not paid all wages (which Defendants deny), such nonpayment was not done willfully, and an award of penalties or fees is unjustified.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Consent/Ratification/Disregard of Policies)**

7. Defendants allege, without admitting any liability or obligation, if any, without impairing the general denials herein, that to the extent that Plaintiff and Aggrieved Employees failed to take a legally-mandated meal or rest break, each purported cause of action based on such instances is barred by the fact of Plaintiff's and Aggrieved Employees' ratification or consent, notwithstanding Employer's policy regarding meal and rest breaks applicable to employees. To the extent Plaintiff or Aggrieved Employees failed to take any legally-mandated meal and rest breaks, it was a result of their own voluntary acts and waivers. To the extent Plaintiff and

1 Aggrieved Employees have alleged that they have not been paid in full, Plaintiff and Aggrieved  
2 Employees have disregarded Employer's policies regarding payment of wages, overtime,  
3 benefits, vacation pay, rest breaks and meal periods, deductions and/or reimbursement of business  
4 expenses, if any.

5 **EIGHTH AFFIRMATIVE DEFENSE**

6 **(Not an Aggrieved Employee)**

7 8. Plaintiff lacks standing to bring a representative action under PAGA as to some or  
8 all claims because he is not an "aggrieved employee."

9 **NINTH AFFIRMATIVE DEFENSE**

10 **(PAGA Penalties are Unconstitutional as a Denial of Due Process Rights)**

11 9. Defendants are informed and believe and based thereon allege that an award of  
12 penalties, including penalties under PAGA, Labor Code section 2698, *et seq.*, would be  
13 unconstitutional under the Fourteenth Amendment of the United States Constitution and under the  
14 California Constitution.

15 **TENTH AFFIRMATIVE DEFENSE**

16 **(Set-Off/Offset)**

17 10. The Complaint, and each purported cause of action alleged therein, is subject to  
18 offset and/or recoupment to the extent Plaintiff and Aggrieved Employees have already been  
19 compensated for the hours worked for which he seeks relief here.

20 **ELEVENTH AFFIRMATIVE DEFENSE**

21 **(Defendant's Good Faith)**

22 11. Defendants allege that Plaintiff and Aggrieved Employees are not entitled to any  
23 remedy or penalty award under California Labor Code sections 201, 202, 203, 204, 226, 226.7,  
24 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, and 2802 because Defendants did not willfully fail  
25 to comply with the compensation provisions of the California Labor Code but acted in good faith  
26 and had reasonable grounds for believing they did not violate them.

**TWELFTH AFFIRMATIVE DEFENSE**

**(Unmanageability of PAGA Trial)**

12. The Complaint requests relief for Aggrieved Employees across numerous locations throughout California requiring hiring individualized inquiry and assessment. Plaintiff's and Aggrieved Employees' claims are barred, in whole or in part, due to the unmanageability of a PAGA trial that would be created by such disparate individualized claims.

**THIRTEENTH AFFIRMATIVE DEFENSE**

**(No Right to Jury Trial for PAGA Claims)**

13. Defendants allege, without admitting any liability or obligation, if any, without impairing the general denials herein, that to the extent that the Complaint, and each cause of action alleged therein, arises from California Labor Code §§ 2698-2699.8, the Private Attorneys General Act ("PAGA"), Plaintiff and Aggrieved Employees have no right to a jury trial.

**FOURTEENTH AFFIRMATIVE DEFENSE**

**(No Derivative Penalties)**

14. Defendants allege, without admitting any liability or obligation, if any, without impairing the general denials herein, that to the extent that Plaintiff and Aggrieved Employees seek to impose penalties on Defendants for both an underlying wage violation and derivative claims, penalties for the derivative claims are not permitted.

**FIFTEENTH AFFIRMATIVE DEFENSE**

**(Unjust Penalties)**

15. Defendants allege, without admitting any liability or obligation, if any, without impairing the general denials herein, that Plaintiff and Aggrieved Employees seek an award of penalties an amount of which would be unjust, arbitrary and oppressive, or confiscatory and the Court in its discretion should award reduced penalties, if any, under California Labor Code § 2699(e).

**SIXTEENTH AFFIRMATIVE DEFENSE**

**(Insufficient Notice Under Labor Code § 2699.3)**

16. Defendants allege that Plaintiff and Aggrieved Employees failed to comply with

1 the notice requirements under California Labor Code § 2699.3.

2 **SEVENTEENTH AFFIRMATIVE DEFENSE**

3 **(Not Entitled to Penalties for Violations Plaintiff Did Not Suffer)**

4 17. Defendants allege, without admitting any liability or obligation, if any, without  
5 impairing the general denials herein, that to the extent Plaintiff seeks recovery for violations of  
6 the California Labor Code which Plaintiff did not personally experience, Plaintiff is not entitled to  
7 such recovery on his own behalf or as a representative of Aggrieved Employees under California  
8 Labor Code § 2699.

9 **EIGHTEENTH AFFIRMATIVE DEFENSE**

10 **(No Penalties for Subsequent Violations)**

11 18. Defendants allege, without admitting any liability or obligation, if any, without  
12 impairing the general denials herein, that to the extent that Plaintiff and Aggrieved Employees  
13 seek to impose penalties on Defendants for alleged initial violations of PAGA as well as for  
14 alleged subsequent violations, penalties for any subsequent violations are not permitted as  
15 Defendants have not been found to be in violation of the Labor Code within the last five years,  
16 and because Defendants acted in good faith and any violation was not willful or malicious.

17 **PRAYER**

18 WHEREFORE, Defendants pray for judgment on the Complaint as follows:

- 19 1. That Plaintiff and Aggrieved Employees take nothing by reason of the Complaint;  
20 2. That Plaintiff and Aggrieved Employees' claims be adjudicated individually, and  
21 that Defendants should prevail;  
22 3. That Defendants be awarded their reasonable attorneys' fees and costs of the suit  
23 incurred herein pursuant to section 218.5 of the California Labor Code or to the extent otherwise  
24 permitted by law; and  
25 4. That Defendants be awarded such other and further relief as the Court deems just  
26 and proper.

27 //

28 //

1 DATED: November 15, 2024

GREENBERG GLUSKER FIELDS CLAMAN  
& MACHTINGER LLP

2  
3  
4 By:



KARINA B. STERMAN (SBN 193182)  
OLIVIA B. DIAB (SBN 347922)  
Attorneys for Defendants Environmental  
Remedies, Inc. and Scott Tamayo

# **EXHIBIT 6**

*Edgar Herrera v. Environmental Remedies, Inc.*  
Alameda County Superior Court, Case No. 24CV092901

| <b>MM Law, APC - Costs and Expenses</b> | <b>Total</b>       |
|-----------------------------------------|--------------------|
| LWDA Notice Filing Fee                  | \$ 75.00           |
| Complaint Filing                        | \$ 469.65          |
| Court filing costs                      | \$ 117.39          |
| Atty Service Fees                       | \$ 315.00          |
| Mediator Fees                           | \$ 5,098.50        |
| Data Analyst for Mediation              | \$ 1,000.00        |
| PAGA Motion filling fee                 | \$ 68.95           |
| <b>Current Costs through 08/28/2025</b> | <b>\$ 7,144.49</b> |

# **EXHIBIT 7**



3194-C Airport Loop Drive  
Costa Mesa, CA 92626  
800-779-2104  
www.simpluris.com

|                           |                 |                            |                                                              |
|---------------------------|-----------------|----------------------------|--------------------------------------------------------------|
| Estimate Number:          | 20250612-PJI-02 | Prepared By:               | Patrick J. Ivie                                              |
| Estimate Date:            | 6/12/2025       | Telephone Number (mobile): | 310.995.6455                                                 |
| Estimate Expiration Date: | 9/10/2025       | Email:                     | <a href="mailto:pjvie@simpluris.com">pjvie@simpluris.com</a> |

**Attorney Contact**  
Attorney: **Maralle Messrelan, Esq.**  
Firm: MM Law, APC  
Email: [maralle@mmlawapc.com](mailto:maralle@mmlawapc.com)

**Opposing Counsel Contact**  
Attorney: **Karina Sterman, Esq.**  
Firm: Greenberg Glusker LLP  
Email: [ksterman@greenbergglusker.com](mailto:ksterman@greenbergglusker.com)

**Case Name: *Herrera v. Environmental Remedies, Inc.***  
**PAGA Settlement**

## Assumptions

In addition to the assumptions enumerated below, this estimate assumes that

- (1) Simpluris will receive data in a single, complete file; (2) there will be no substantial change to class size or in response rate;
- (3) administration costs will be paid from the QSF, and (4) Simpluris will submit revisions to this estimate to account for any material changes to scope.

|                               |          |                          |           |
|-------------------------------|----------|--------------------------|-----------|
| Class/Aggrieved Employees:    | 151      | Undeliverable Rate:      | 10%       |
| Claims Rate:                  | n/a      | Call Rate:               | n/a       |
| Opt-out Rate:                 | n/a      | Average Call Length:     | n/a       |
| Language(s) for Communication | EN/SP    | Fund Distribution:       | Simpluris |
| Reminder Mailing:             | n/a      | Number of Distributions: | 1         |
| Unclaimed Funds:              | Escheat  | State(s):                | CA        |
| Length of Administration:     | 7 Months | Tax Year(s):             | 1         |

## Case Setup

- Data compilation: develop case-specific response tracking

| Category                                 | Unit Value | # of Units | Total    |
|------------------------------------------|------------|------------|----------|
| Project Manager - Case Setup             | \$110.00   | 1          | \$110.00 |
| Database Manager - Initial Data Analysis | \$125.00   | 1          | \$125.00 |
| Total:                                   |            |            | \$235.00 |

## Award Disbursement

- Establish 26 CFR § 1.468B-1 compliant Qualified Settlement Fund ("QSF")
- Spanish translation of the 1-page cover letter
- Disburse 1-page Letter with award payments and tax documents
- All funds not claimed within 180 days of mailing of payment shall be sent to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 et seq., for the benefit of those Aggrieved Employees who did not cash their checks until such time that they claim their property
- Conduct regular and annual IRS-mandated QSF reporting and reconciliation (one per calendar year)
- Complete all required filings with state and federal tax authorities

| Category                                     | Unit Value | # of Units | Total      |
|----------------------------------------------|------------|------------|------------|
| Disbursement Data Preparation                | \$125.00   | 2          | \$250.00   |
| Disbursement Manager - Data Validation       | \$90.00    | 1          | \$90.00    |
| Setup Banking Account/QSF                    | \$675.00   | 1          | \$675.00   |
| QSF Monthly Reconciliation and Maintenance   | \$125.00   | 7          | \$875.00   |
| Spanish Translation (assuming 450 words)     | \$0.25     | 450        | \$112.50   |
| NCOA/CASS/LACS                               | \$0.14     | 151        | \$21.14    |
| Print & Mail Distribution Check and Tax Docs | \$1.40     | 151        | \$211.40   |
| Postage                                      | \$0.76     | 151        | \$114.76   |
| Process Returned Checks                      | \$0.20     | 16         | \$3.20     |
| Skip Trace Search Undeliverable Checks       | \$0.12     | 16         | \$1.92     |
| Remail Checks (includes postage)             | \$2.30     | 16         | \$36.80    |
| Escheat Uncashed Checks                      | \$500.00   | 1          | \$500.00   |
| QSF Reporting and Final Declaration          | \$500.00   | 1          | \$500.00   |
| Reissue Checks / Mailing                     | \$2.50     | 2          | \$5.00     |
| Reissue 1099s                                | \$2.50     | 2          | \$5.00     |
| Responding to IRS/State/Agency Inquiries     | \$75.00    | 1          | \$75.00    |
| QSF Annual Tax Reporting and Reconciliation  | \$850.00   | 1          | \$850.00   |
| Distribution Manager                         | \$90.00    | 1          | \$90.00    |
| Total:                                       |            |            | \$4,416.72 |

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## Case Completion

- Final audit and review
- Send final declaration and reporting to counsel

| Category                             | Unit Value | # of Units | Total    |
|--------------------------------------|------------|------------|----------|
| Data Manager-Final Reporting         | \$125.00   | 1          | \$125.00 |
| Clerical-Clean Up Any Misc.          | \$45.00    | 1          | \$45.00  |
| Project Manager-Wrap-up Final Issues | \$110.00   | 1          | \$110.00 |
| Total:                               |            |            | \$280.00 |

|                                         |                |
|-----------------------------------------|----------------|
| Total Estimated Cost of Administration: | \$4,932        |
| Less Client Courtesy Discount:          | -\$500         |
| Discounted Total:                       | <u>\$4,432</u> |

# Terms and Conditions

All administration services to be provided by Simpluris to Client, are provided subject to the following terms and conditions ("Agreement"):

**1. Services:** Simpluris agrees to provide Client those services set forth in the Proposal (the "Services") to which these terms and conditions are attached and which has been provided to Client. As compensation for such Services, Client agrees to pay the fees for Services outlined in the Proposal. Simpluris will often take direction from Client's representatives, employees, agents and or professionals (collectively, the "Client Parties") with respect to the Services. The parties agree that Simpluris may rely upon, and Client agrees to be bound by, any direction, advice or information provided by the Client Parties to the same extent as if provided by Client. Client agrees and understands that Simpluris shall not provide Client or any other party with any legal advice.

**2. Fee Estimates Not Binding:** Simpluris and Client acknowledge that it is difficult to determine all necessary work required for the Services or the total amount of fees that may be incurred in performing the Services. Client agrees that fees for Services described in the Proposal are estimated based on the requirements provided by Client. Actual fees charged by Simpluris may be greater or less than such estimate. Client specifically agrees that it will be responsible for the payment of all such fees. Simpluris will provide estimates and budgets, but they are not intended to be binding; are subject to unforeseen circumstances, and by their nature are inexact.

**3. Billing and Payment:** Simpluris will invoice Client on a regular basis unless a specific timeframe is otherwise set forth in the Proposal. Client shall pay all invoices within 30 days of receipt. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Services are not provided on a contingency basis and Client shall remain liable to Simpluris for all fees incurred by Simpluris in performing the Services, regardless of any circumstance that impacts the outcome of Client's matter, including but not limited to, court decisions, actions by the parties, or a failure to consummate a settlement.

**4. Further Assurances:** Client agrees that it will use its best efforts to include provisions reasonably acceptable to Simpluris in any relevant court order, settlement agreement or similar document that provide for the payment of Simpluris' fees and expenses hereunder. No agreement to which Simpluris is not a party shall reduce or limit the full and prompt payment of Simpluris' fees and expenses as set forth herein and in the Proposal.

**5. Rights of Ownership:** The parties understand that the software programs and other materials furnished Simpluris to Client and/or developed during the course of the performance of Services are the sole property of Simpluris. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. Client agrees not to copy or permit others to copy the source code from the support software or any other programs or materials furnished to Client. Fees and expenses paid by Client do not vest in Client any rights in such property, it being understood that such property is only being made available for Client's use during and in connection with the Services provided by Simpluris.

**6. Bank Accounts:** Simpluris will establish a demand deposit checking account (i.e. non-interest bearing) for funds received related to a distribution, unless directed otherwise in writing by the parties or unless the settlement agreement stipulates otherwise. Simpluris may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and compensation for services Simpluris performs for financial institutions to be eligible for FDIC deposit insurance. The amounts held pursuant to these Terms and Conditions are at the sole risk of Client and, without limiting the generality of the foregoing, Simpluris shall have no responsibility or liability for any diminution of the fund that may result from any deposit made with a financial institution including any losses resulting from a default by such institution or other credit losses. It is acknowledged and agreed that Simpluris will have acted prudently in depositing the fund at such institution.

**7. Retention of Documents & Data:** Unless otherwise required in writing by the Client or court orders, all returned/undeliverable physical documents will be securely shredded after the data has been confirmed uploaded to our systems. Simpluris will retain bank and tax documents for such period of time as it determines is required to maintain compliance with various federal and state law requirements. Unless otherwise required in writing by the Client or court orders, Simpluris will adhere to the Company's data deletion policies and will destroy all remaining project-related information from our systems three (3) years after the conclusion of the project. Storage beyond three (3) years is available upon request and will be billed as incurred.

**8. Limitation of Liability; Disclaimer of Warranties:** Simpluris warrants that it will perform the Services diligently, with competence and reasonable care. In no event will Simpluris be liable to Client or any third party for any claims, losses, costs, penalties, fines, judgments, tax activities, lost profits or business opportunities, business interruptions or delay, special, exemplary, punitive, consequential, indirect or incidental damages relating to the performance of the Services, regardless of whether Client's claim is for breach of contract, tort (including negligence and strict liability) or otherwise, regardless of whether such damage was foreseeable and whether such party has been advised of the possibility of such damages. Simpluris' cumulative liability for damages to Client hereunder will be limited to the total fees charged or chargeable to Client for the particular portion of the Services affected by Simpluris' omission or error. THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

**9. Force Majeure:** To the extent performance by Simpluris of any of its obligations hereunder is substantially prevented or delayed by reason of any act of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date

that Simpluris began performing Services, epidemic, pandemic, quarantine, civil commotion, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an export or import restriction, quota, or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation or because of any other matter beyond Simpluris' reasonable control, then Simpluris' performance shall be excused and this Agreement, at Simpluris' option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

**10. Rights in Data:** Client agrees that it will not obtain, nor does Simpluris convey, any rights of ownership in the programs, system data, or materials provided or used by Simpluris in the performance of the Services.

**11. Electronic Communications:** During the provision of the Services, the parties may wish to communicate electronically with each other at a business e-mail address. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, each party agrees to use commercially reasonable procedures to check for the then most commonly known viruses and to check the integrity of data before sending information to the other electronically, but each party recognizes that such procedures cannot be a guarantee that transmissions will be virus free. It remains the responsibility of the party receiving an electronic communication from the other to carry out a virus check on any attachments before launching any documents whether received on disk or otherwise.

**12. Notice:** Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier to the address identified by each Party in the Proposal. Notice shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service. Notice should be addressed to an officer or principal of Client and Simpluris, as the case may be.

**13. Waiver:** Failure or delay on the part of a party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof or any of other subject, right, power or privilege.

**14. Termination:** Client may terminate the Services at any time upon 30 days prior written notice to Simpluris. Termination of Services shall in no event relieve Client of its obligation make any payments due and payable to Simpluris for Services rendered up to the effective date of Termination. Simpluris may terminate this Agreement (i) for any reason upon no less than 60 days prior written notice to the Client; or (ii) upon 15 calendar days' prior written notice if the Client is not current in payment of fees.

**15. Jurisdiction:** These Terms and Conditions will be governed by and construed in accordance with the laws of the state of California, without giving effect to any choice of law principles.

**16. Survival:** Any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 4 - Limitation of Liability; Disclaimer of Warranties, Section 6 – Rights in Data, and Section 12- Jurisdiction, 14 -Confidentiality, and Section 15 – Indemnification.

**17. Confidentiality:** Simpluris maintains reasonable and appropriate safeguards to protect the confidentiality and security of data provided by Client to Simpluris in connection with the Services. If, pursuant to a court order or other proceeding, a third-party requests that Simpluris to disclose any confidential data provided by or for Client, Simpluris will promptly notify the Client unless prohibited by applicable law. Client will then have the option to provide Simpluris with qualified legal representation at Client's expense to defend against such request. If, pursuant to a court order, Simpluris is required to disclose data, produce documents, or otherwise act in contravention of the obligation to maintain confidentiality set forth in these terms and conditions, Simpluris will not be liable for breach of said obligation.

**18. Indemnification:** Client will indemnify and hold Simpluris (and the officers, employees, affiliates and agents) harmless against any losses whatsoever incurred by Simpluris, arising out of any action by a third party, including governmental agencies, in connection with , or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by Simpluris in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by Simpluris pursuant to Client's instructions.

**19. Severability:** If any term or condition or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**20. Database Administration:** Simpluris' database administration for Client assumes that Client will provide complete data that includes all information required to send notifications and calculate and mail settlement payments. Data must be provided in a complete, consistent, standardized electronic format. Simpluris' standardized format is Microsoft Excel, however, Simpluris may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by Simpluris on a time and materials basis according to Simpluris' Standard Rates.

**21. Entire Agreement:** These Terms and Conditions together with the Proposal constitutes the entire agreement between the parties with respect of the subject matter hereof and supersede all prior understandings, agreements, or representations by or among the parties, written or oral, to the extent they relate in any way to the subject matter hereof.

# **EXHIBIT 8**