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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

JOSE JIMENEZ, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

FENCEWORKS, INC., a California Corporation;
and DOES 1 through 100,

Defendants.

Case No. 30-2018-01034150-CU-OE-CXC

CLASS ACTION

*[Assigned for all purposes to the Hon.
William D. Claster; Dept. CX-104]*

**DECLARATION OF PAUL K. HAINES
IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: July 10, 2020
Time: 9:00 a.m.
Dept.: CX-104

Complaint Filed: November 26, 2018
Trial Date: None.

1 I, PAUL K. HAINES, declare as follows:

2 1. I am a shareholder and principal of Haines Law Group, APC, and counsel for the
3 named Plaintiff Jose Jimenez (“Plaintiff”) and the proposed Settlement Class in the above-
4 captioned matter. I am a member in good standing of the bar of the State of California and am
5 admitted to practice in this Court. I have personal knowledge of the facts stated in this declaration
6 and could testify competently to them if called upon to do so.

7 2. I am a 2006 graduate of Pepperdine University School of Law, where I graduated
8 cum laude. During law school, I worked as a law clerk for the appellate firm of Horvitz & Levy,
9 located in Encino, California. I also spent a semester in law school working as an extern for the
10 Honorable Edward Rafeedie, District Judge for the United States District Court for the Central
11 District of California.

12 3. Since graduating from law school, my practice has focused almost exclusively on
13 employment litigation. In September 2007, I began working as an associate attorney at the
14 international law firm of Littler Mendelson P.C., at its Los Angeles office, which according to its
15 website is the “largest U.S.-based law firm exclusively devoted to representing management in
16 every aspect of labor and employment law.” While at Littler Mendelson, I was primarily staffed
17 on wage and hour class actions venued in both state and federal courts, and I also worked on a
18 number of single and multi-plaintiff wage and hour matters as well.

19 4. During my employment at Littler Mendelson, I played a significant role in the
20 class actions that I was staffed on, as I was often the only associate staffed on such cases. In
21 particular, I received a wide-array of wage and hour class action experience performing the
22 following types of tasks: drafting demurrers, motions to strike and/or dismiss; removing actions
23 from state court to federal court; drafting and responding to written discovery; drafting and
24 opposing discovery related motions; arguing discovery related motions; drafting motions to
25 consolidate related matters; interviewing putative class members and obtaining declarations in
26 connection with class certification; drafting oppositions to motions for class certification; drafting
27 motions for decertification following class certification; conducting exposure analyses to assess
28 the strengths and weaknesses of asserted claims, the likelihood of prevailing at class certification

1 and potential damages resulting from such claims; drafting mediation briefs; serving as the
2 primary contact to in-house counsel; deposing named plaintiffs and putative class members;
3 deposing retained expert witnesses; and defending the depositions of corporate witnesses. In
4 short, I played an integral role in all aspects of litigation from the inception of a matter through
5 and beyond class certification. I also supervised the work of several junior attorneys who were
6 staffed on the same wage and hour class actions.

7 5. In June 2011, I voluntarily resigned from Littler Mendelson in order to accept an
8 associate attorney position with the international law firm of Morgan, Lewis & Bockius LLP, at
9 its Los Angeles office, where I began working in July 2011. During my employment at Morgan,
10 Lewis & Bockius LLP, I worked exclusively on the defense of wage and hour class and collective
11 actions. For the vast majority of these cases, I was the only associate staffed on the matter, and I
12 performed the same job duties as described in the immediately preceding paragraph. In addition
13 to working on wage and hour class actions, at Morgan, Lewis & Bockius I also worked on a
14 number of “hybrid” actions asserting nationwide wage and hour claims under the Fair Labor
15 Standards Act (“FLSA”), as well as California-specific claims under Rule 23 of the Rules of Civil
16 Procedure.

17 6. In July 2012, I transitioned into litigating wage and hour class actions from the
18 Plaintiff’s side, first as a Partner with the law firm of Boren, Osher & Luftman, LLP, and since
19 February 2016, as a Shareholder of the Haines Law Group, APC. Currently, over ninety percent
20 (90%) of my practice is dedicated exclusively to the prosecution of wage and hour class actions,
21 and I am currently responsible for prosecuting over fifty (50) wage and hour class actions filed in
22 both State and Federal courts throughout California. A few examples of the matters in which I
23 have been appointed as Class Counsel, all of which have been granted final approval, include the
24 following: *Sanchez v. Res-Care, Inc.*, Case No. BC526175, California Superior Court, County of
25 Los Angeles, Hon. John Shepard Wiley, Jr., presiding; *Prado v. Warehouse Demo Services, Inc.*,
26 Case No. CV14-3170 JFW (Ex), United States District Court, Central District of California, Hon.
27 John F. Walter presiding; *Tesla Motors Wage and Hour Litigation*, JCCP 4792, California
28 Superior Court, Santa Clara County, Hon. Peter H. Kirwan presiding; *Bower v. Cycle Gear, Inc.*,

Case No. CV14-2712 HSG, United States District Court, Northern District of California, Hon. Haywood S. Gilliam, Jr. presiding; *Longstreth v. PAQ, Inc., dba Food 4 Less*, Case No. 15CV-0206, California Superior Court, County of San Luis Obispo, Hon. Charles S. Crandall presiding; *Nunez v. CompuCom Systems, Inc.*, Case No. BC618385, California Superior Court, County of Los Angeles, Hon. John Shepard Wiley, Jr. presiding; *Mansilla v. Haeco Americas Line Services, LLC, et al*, Case No. BC615310, Superior Court of California, County of Los Angeles, Hon. Elihu M. Berle presiding; *Leverage, et al v. Traeger Pellet Grills, LLC, et al*, Case No. 4:16-cv-00784-KAW, United States District Court, Northern District of California, Hon. Kandis A. Westmore presiding.

7. I have also moved to certify and have received an order certifying a class action and/or conditionally certifying a collective action, in the following cases:

- *Medeiros v. Vortex Financial Management Inc.*, Case No. 30-2013-00644741-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge Gail A. Andler, presiding (certifying a class of employees who were misclassified as independent contractors);
- *Javine v. San Luis Ambulance Service, Inc.*, Case No. CV13-07480 BRO (SSx), United States District Court, Central District of California, Honorable Judge Beverly Reid O'Connell, presiding (conditionally certifying an unpaid FLSA overtime wage class);
- *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States District Court, Central District of California, Honorable Judge John F. Walter, presiding (certifying a rest period violation class and conditionally certifying an FLSA unpaid overtime wage class);
- *Bower v. Cycle Gear, Inc.*, Case No. CV14-2712 HSG, United States District Court, Northern District of California, Honorable Judge Haywood S. Gilliam, Jr., presiding (conditionally certifying an unpaid FLSA overtime wage class);
- *Vega v. Weatherford U.S., Limited Partnership*, Case No. CV14-1790-JLT, United States District Court, Eastern District of California, Honorable Jennifer L. Thurston, presiding (conditionally certifying an unpaid FLSA overtime wage class);

- *Galvan v. AMVAC Chemical Corporation*, Case No. 30-2014-00716103-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge William Claster, presiding (certifying unpaid overtime wage class and waiting time penalty class);
- *Camacho v. Residential Fire Systems, Inc.*, Case No. 30-2015-775372-CU-OE-CXC, California Superior Court, County of Orange, Honorable Glenda Sanders, presiding (certifying piece rate pay plan classes, expense reimbursement class, wage statement class, and waiting time penalties class);
- *Ontiveros v. Safelite Fulfillment, Inc., et al*, Case No. CV 15-7118-DMG (RAOx), United States District Court, Central District of California, Honorable Dolly M. Gee presiding (certifying six classes of employees for rest period violations, wage statement violations, meal period violations, and overtime and double-time violations);
- *Vazquez, et al v. Kraft Heinz Foods Company*, Case No. 16-cv-2749-WQH-BLM, United States District Court, Southern District of California, Honorable William Q. Hayes presiding (certifying six classes of employees for unpaid wages, meal period violations, wage statement violations, and waiting time penalties);
- *Caudle, et al. v. Sprint/United Management Company, et al.* Case No. C 17-06874-WHA, United States District Court, Northern District of California, Honorable William H. Alsup presiding (certifying three classes of employees for unlawful wage deduction violations, wage statement violations, and waiting time violations);
- *Staublein v. Wells Fargo Bank*, No. CIVDS1712267, San Bernardino County Superior Court, Honorable David S. Cohn presiding (certifying wage statement class); and
- *Perez v. Sunbelt Rentals, Inc.* Case No. 37-2018-00026405-CU-OE-CTL, California Superior Court, County of San Diego, Honorable Eddie C. Sturgeon presiding (certifying class of employees for wage statement violations).

8. In 2015, 2016, and 2017, Thomson Reuters recognized me as a Top Young Attorney in Southern California in the annual Rising Stars Edition of Super Lawyer. This is an honor awarded to no more than two-and-a-half percent of attorneys under the age of forty in Southern California each year. In 2018, 2019, and 2020, Thomson Reuters recognized me as a

1 “Super Lawyer” in the annual Super Lawyer magazine, an honor awarded to no more than five
2 percent of all attorneys in Southern California each year.

3 9. As counsel for Plaintiff and the proposed Settlement Class, I have been intimately
4 involved in every aspect of this case from its inception through the present, and I believe that the
5 proposed Settlement is a favorable result for the Settlement Class.

6 10. Defendant Fenceworks, Inc. (“Fenceworks”) installs and maintains fencing for
7 commercial and residential properties, including wood fencing, concrete fencing, vinyl fencing,
8 and chain link fencing, and operates eight locations in California. Fenceworks pays its employees
9 on an hourly basis and/or on a piece-rate basis, whereby field employees are paid per hole, foot,
10 post, or gate installed and/or completed.

11 11. On November 26, 2018, Plaintiff filed the instant action in this Court, alleging
12 claims for meal period violations, rest period violations, failure to pay all overtime wages,
13 minimum wage violations, waiting time penalties, and unfair competition. Pursuant to the
14 Settlement, the parties have stipulated to the filing of a FAC to add causes of action for failure to
15 furnish accurate and itemized wage statements and for civil penalties under the PAGA.

16 12. The parties engaged in extensive discovery. Fenceworks responded to Plaintiff’s
17 Special Interrogatories, and produced payroll records, time records, written policies, and other
18 documents in response to Plaintiff’s Requests for Production. In connection with mediation,
19 Fenceworks produced an additional sample of timekeeping and payroll data, as well as relevant
20 data points including the total number of class members, average rates of pay, class members’
21 hire and termination dates, and others. This discovery allowed the parties to assess the merits and
22 value of Plaintiff’s claims, as well as Fenceworks’ potential defenses. My office conducted an in-
23 depth review of Fenceworks’ policies, timekeeping, payroll, and other relevant data, and drew on
24 our extensive experience to assess Plaintiff’s claims.

25 13. On January 16, 2020, the parties participated in a full-day mediation with Marc
26 Feder, Esq., a well-respected wage and hour class action mediator. During mediation, the parties
27 vigorously debated their legal positions, the likelihood of class certification, and the legal bases
28 for their respective claims and defenses. With Mr. Feder’s assistance, the parties eventually

1 agreed to a settlement in principle. Over the following months, the parties negotiated and
2 formalized the Settlement now before the Court. A true and correct copy of the Settlement
3 Agreement is attached hereto as **Exhibit 1**. The proposed Class Notice, Request for Exclusion
4 Form, and Notice of Estimated Settlement Award are attached hereto as **Exhibits 2, 3, and 4**,
5 respectively.

6 14. The monetary terms of the Settlement are summarized below:

7	• Gross Settlement Amount (“GSA”):	\$895,000.00
8	• Minus Court-approved attorneys’ fees (one-third):	\$298,333.33
9	• Minus Court-approved verified costs (up to):	\$20,000.00
10	• Minus Court-approved enhancement payment:	\$5,000.00
11	• Minus Amount Designated as PAGA penalties:	\$30,000.00
	• <u>Minus estimated settlement administration costs:</u>	<u>\$15,000.00</u>
	Net Settlement Amount (“NSA”):	\$526,666.67
	• PLUS 25% of PAGA penalties to Settlement Class:	\$7,500.00
	Total Amount Paid to Settlement Class members:	\$534,166.67

12 15. According to the representations made by Fenceworks’ counsel, there are
13 approximately 570 total Settlement Class members. Therefore, the average Settlement Award is
14 projected to be approximately \$937.13.

15 16. Plaintiff alleges that Fenceworks has failed to maintain formal written meal period
16 policies, and that the lack of any meal period policy has resulted in first period violations.
17 Specifically, Plaintiff alleges that first meal periods are regularly late and/or less than 30-minutes,
18 and second meal periods are not provided on shifts of more than 10.0 hours. Based on Plaintiff’s
19 review and extrapolation of the timekeeping data, there were approximately 247,887 meal period-
20 eligible shifts worked during the putative class period, and Plaintiff estimates that up to 75% of
21 such shifts experienced a first meal period violation. In addition, Settlement Class members’
22 average rate of pay during the Class Period was \$14.02/hour. Thus, Plaintiff estimated the total
23 maximum damages on the first meal period claim as \$2,606,532 (247,887 shifts * .75 * \$14.02).
24 Fenceworks counters it maintains a compliant written meal period policy, which it posts in various
25 places at its offices and yards, including directly above employee time-clocks. Fenceworks also
26 produced timekeeping records showing Plaintiff and other non-exempt employees regularly took
27 lawful meal periods, and that included signed attestations affirming that employees received all
28 required meal periods each pay period. Fenceworks further counters that it has always provided

employees the opportunity to take legally compliant meal periods and is not required to ensure they are taken, under the relevant case law. Thus, any missed meal periods were the result of employee choice. Fenceworks also maintains Plaintiff's meal period claim is not suited for class certification, since individual inquiries would be needed to assess which employees, if any, took non-compliant or missed meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee did not take a meal period on a particular shift. Based on these defenses, Plaintiff discounted the maximum amount by 70% for risk of non-certification, and an additional 65% for risk of being unsuccessful on the merits, or failing to recover the full amount sought, to arrive at an estimated exposure of \$273,686.

17. With respect to second meal periods, Plaintiff's analysis of the timekeeping data revealed that during the Class Period there were approximately 68,857 shifts worked in excess of 10.0 hours that did not reflect a second meal period. Thus, assuming a 100% violation rate for those shifts, Plaintiff calculates Fenceworks' maximum exposure for second meal period violations at approximately \$965,375 (68,857 shifts * \$14.02 premium). However, Plaintiff's theory of liability carried significant risks. As noted, Fenceworks argues that it has always provided employees the opportunity for second meal periods, and that any failure to take a second meal period is the result of employee choice. Fenceworks further asserts that many employees choose to waive their second meal periods, as they may do under Labor Code § 512(a), so that they do not need to stay at work for an extra unpaid 30 minutes. Fenceworks also points to employee timekeeping records, which include signed attestations stating employees were provided all required meal periods. In addition, Fenceworks argued Plaintiff's meal period claims would not be certified as requiring individualized inquiries into both the merits and damages, as noted above. In light of these risks, Plaintiff discounted this maximum second meal period liability by 70% for a risk of non-certification, and an additional 75% for a risk of losing on the merits, or having exposure reduced due to Fenceworks' waiver argument, to arrive at an estimated exposure amount of \$72,403.

18. Plaintiff alleges that Fenceworks does not maintain a written rest period policy and as a result, non-exempt employees were not authorized or permitted to take all rest periods. With

1 respect to non-piece rate shifts, and based on Plaintiff's analysis and extrapolation of the
2 timekeeping data as well as discussions with other putative class members, Plaintiff estimated
3 there were 88,827 non-piece rate shifts worked during the Class Period with potential rest period
4 violations. Thus, Plaintiff estimated a maximum potential exposure of \$1,245,354 (\$14.02 rest
5 period premium * 88,827 shifts) for this claim. As noted, however, Fenceworks presented
6 multiple defenses to this claim. Fenceworks counters that it does maintain a compliant written
7 rest period policy; that, in practice, it has always authorized and permitted employees 10-minute
8 rest periods for each 4 hours worked or major fraction thereof; and that timekeeping records
9 included signed attestations for each pay period affirming employees received all rest periods to
10 which they were legally entitled. Any failure to take rest periods was a result of employee choice,
11 Fenceworks argues, rather than a Fenceworks policy or practice. Fenceworks further argues that
12 Plaintiff's rest period claim is not amenable to class treatment, since individual inquiries would
13 be required to determine which employees failed to take rest periods, how many rest periods they
14 failed to take, and the reasons why each employee failed to take rest period(s) on a particular shift,
15 particularly since rest periods are not recorded. Plaintiff discounted the maximum potential
16 exposure by 70% for risk of non-certification, and an additional 80% for a risk of being
17 unsuccessful on the merits or failing to recover the full amount sought, to arrive at an estimated
18 realistic exposure of \$74,721.

19 19. With respect to piece-rate shifts, Plaintiff alleges that Fenceworks' piece-rate
20 compensation plan fails to separately compensate employees for all required rest periods as
21 required under Labor Code § 226.2, and specifically, that it only pays for up to two rest periods
22 even where employees work over 10 hours and are therefore entitled to three paid rest periods.
23 Based on Plaintiff's review of the time records, there were approximately 39,248 shifts in which
24 piece-rate employees worked over 10.0 hours. Thus, assuming a 100% violation rate for such
25 shifts, Plaintiff estimated Fenceworks' potential maximum exposure at \$550,257 (39,248 shifts *
26 \$14.02 rest period premium). Fenceworks argues it separately compensates for all required rest
27 periods, and produced examples of employees paid separately for three rest periods on shifts over
28 10.0 hours. Further, Fenceworks argues that any failure to separately pay for a third rest period

1 was an aberration, and thus any liability would be minimal. Fenceworks further contends that at
2 worst, it is only liable for 10 minutes of unpaid rest period time for any violation, rather than a
3 full hour of premium pay under Labor Code § 226.7, which substantially reduces potential
4 liability. Fenceworks argues that only some of its employees are paid on a piece-rate, and that it
5 does separately compensates piece-rate employees for all required rest periods (noted
6 “INCENTIVE BREAK” in payroll records). Fenceworks also argues that individualized inquiries
7 would be necessary to determine both liability and damages, including how many rest periods
8 were taken and whether they were all separately compensated on each shift. Based on these
9 defenses, Plaintiff discounted the maximum recovery on this claim by 45% for risk of non-
10 certification, and by an additional 75% to account for the risk that Fenceworks could prevail on
11 the merits outright, or could succeed in establishing a much lower damages measure, to arrive at
12 a projected total of \$75,660.

13 20. Plaintiff alleges that Fenceworks was required to separately compensate
14 employees on piece-rate shifts for so-called “non-productive” time, such as time spent obtaining
15 job assignments, gathering necessary materials for job assignments, driving to, from, and between
16 job sites, and unloading materials. In total, Plaintiff estimates Fenceworks is liable for
17 approximately 30 minutes of unpaid non-productive time per piece-rate shift, and Plaintiff’s
18 analysis of the timekeeping data revealed that there were approximately 156,994 piece-rate shifts
19 during the Class Period. Thus, Plaintiff estimates Fenceworks’ maximum liability for unpaid non-
20 productive time at \$1,100,528 (156,994 shifts x .5 hrs x \$14.02 avg. hourly rate). Fenceworks
21 counters, however, that employees work minimal (if any) “non-productive” time, as all of
22 Plaintiff’s alleged non-productive activities are in fact “directly related” to piece-rate tasks under
23 Labor Code § 226.2 and thus do not need to be separately compensated. Fenceworks also argues
24 this claim is not amenable to class treatment, because employees worked at separate jobsites with
25 different requirements, and maintained no records of when they performed any potential “non-
26 productive” activities, and it would therefore require an unmanageable series of mini-trials to
27 determine which tasks were performed by each employee, which tasks were “non-productive,”
28 and how much time was spent on such activities by each employee. Plaintiff therefore discounted

1 Fenceworks’ potential liability by 60% for a risk of non-certification, and by an additional 65%
2 for risk of being unsuccessful on the merits or failure to recover the full amount sought, for a
3 projected total of \$154,074.

4 21. Plaintiff alleges that Fenceworks paid Plaintiff and other non-exempt employees
5 non-discretionary incentive pay, including “Incentive Reg,” and other non-discretionary,
6 performance-based pay, but failed to include these payments when calculating employees’
7 “regular rate” for determining overtime compensation, resulting in underpaid overtime wages.
8 Based on these allegations, Plaintiff’s analysis of the data revealed an average of \$16.18 in
9 underpaid overtime per workweek, and approximately 55,086 workweeks during the Class
10 Period. Thus, Plaintiff estimated a maximum potential liability of approximately \$891,291
11 (55,086 pay periods x \$16.18) in underpaid overtime. Fenceworks counters that any incentive pay
12 or bonus payments were discretionary and, in any event, were not tied to employees’ hours
13 worked, and therefore need not be included in the regular rate under the relevant regulations.
14 Fenceworks also argues that differences in the frequency, type, and amount of incentive pay
15 received by putative class members would preclude class certification of this claim. Fenceworks
16 further argues that employees did not work overtime hours during every workweek and thus,
17 Plaintiff’s damages estimates were severely inflated. Based on these defenses, Plaintiff
18 discounted the estimated maximum by 50% for risk of non-certification, and by an additional
19 70% to account for risk of losing on the merits or failure to recover the full amount sought, to
20 arrive at an estimated exposure of \$133,694.

21 22. Plaintiff alleges that Fenceworks pays its employees in quarter-hour increments,
22 and that its time-rounding practice has resulted in a systemic underpayment of minimum and
23 overtime wages. Fenceworks counters that it utilizes a neutral time-rounding mechanism that
24 results, over time, in employees being paid for all hours worked. Fenceworks also argues that any
25 unpaid time could have only amounted to a few minutes per day, at most, and was thus de minimis.
26 Plaintiff’s analysis of employee timekeeping and payroll records revealed that employees were
27 actually overpaid an average of .39 minutes per shift. Plaintiff’s analysis further showed that
28 Fenceworks’ rounding system favored employees on over 50% of all shifts. Finally, Fenceworks

1 asserts this claim would not be amenable to class certification given the individualized inquiries
2 that would be required, as many employees were overpaid due to rounding. These analyses led
3 Plaintiff to conclude that he would likely not recover on his rounding claim, and thus, Plaintiff
4 assigned this claim zero value.

5 23. As a result of these alleged wage and hour violations, Plaintiff asserts Fenceworks
6 failed to comply with its final payment obligations and therefore owes former employees waiting
7 time penalties under Labor Code § 203. Based on data provided by Fenceworks, there are
8 approximately 286 Settlement Class members who separated their employment between
9 November 26, 2015 and March 16, 2020, the time period relevant to Plaintiff's waiting time claim.
10 Plaintiff estimated an average waiting time penalty of \$3,365 ($\$14.02 \times 8 \text{ hours} \times 30 \text{ days}$), and
11 therefore calculated Fenceworks' maximum waiting time penalty exposure as approximately
12 \$962,390 ($286 \text{ former employees} \times \$3,365 \text{ avg. penalty}$). Fenceworks, however, asserts it has
13 strong, good-faith defenses to Plaintiff's underlying claims, and thus, even if Plaintiff were able
14 to recover on his underlying claims, he would not be able to recover waiting time penalties, which
15 require an employee to prove a "willful" violation. Fenceworks further contends Plaintiff's meal
16 and rest period claims cannot support a claim for waiting time penalties, as multiple courts have
17 held. Moreover, because the waiting time claim is derivative of Plaintiff's underlying wage
18 claims, Plaintiff would need to overcome Fenceworks' defenses, both on class certification and
19 the merits, to his underlying claims. Based on these defenses, Plaintiff discounted Fenceworks'
20 maximum exposure by 55% for risk of non-certification and by an additional 60% for risk of
21 being unsuccessful on the merits, to arrive at an estimated total of \$173,230.

22 24. Plaintiff also asserts that Fenceworks failed to comply with its wage statement
23 obligations as a result of its underlying Labor Code violations. Plaintiff's analysis reflected that
24 there were approximately 20,000 pay periods worked during the liability period applicable to
25 Plaintiff's wage statement claim. In calculating Fenceworks' exposure, Plaintiff gave Fenceworks
26 the benefit of assuming Plaintiff could only obtain Labor Code § 226(e)'s "initial" wage statement
27 violation rate of \$50 per pay period, for a total of \$1,000,000 in potential penalties ($20,000 \text{ pay}$
28 $\text{periods} \times \$50$). However, in addition to its arguments regarding Plaintiff's underlying claims –

1 which Plaintiff would need to overcome in order to assert derivative wage statement liability –
2 Fenceworks argues that employees have suffered no “injury” as a result of any alleged wage
3 statement violations (particularly since wage statements included the accurate hours worked and
4 accurate amounts actually *paid* to employees), and that any alleged violations were not “knowing
5 and intentional,” both of which are required to recover penalties under Section 226(e).
6 Fenceworks also argues that meal and rest period claims cannot support wage statement penalties,
7 as multiple courts have held. Based on these defenses, Plaintiff discounted the maximum exposure
8 on this claim by 55% for risk of non-certification, and by an additional 80% for risk of being
9 unsuccessful on the merits, for an estimated realistic exposure of \$90,000.

10 25. Plaintiff alleges Fenceworks is liable for civil penalties under the PAGA as a result
11 of its Labor Code violations. Plaintiff estimated a total of 11,100 pay periods worked during the
12 PAGA period, and thus a maximum PAGA exposure of \$1,110,000 (11,100 pay periods at \$100
13 “initial” violation rate). Fenceworks, however, contends the PAGA claim fails because the
14 underlying claims fail, due to Fenceworks numerous defenses to Plaintiff’s underlying claims
15 described above. Fenceworks further maintains that given its good-faith defenses, the Court
16 would drastically reduce any PAGA civil penalties, as the Court is expressly authorized to do
17 under the PAGA, and as courts have done in many other cases. Based on these defenses, Plaintiff
18 discounted the maximum figure by 60% for risk of losing on the merits, and by an additional 75%
19 for risk of the Court reducing penalties, to arrive at estimated exposure of \$111,000.

20 26. Using these estimated figures, Plaintiff estimated a realistic total recovery for the
21 Settlement Class of approximately \$1,160,468. The proposed settlement of \$895,000 therefore
22 represents over 77% of Plaintiff’s reasonably forecasted recovery.

23 27. Class Counsel will apply for attorneys’ fees of one-third of the GSA (currently
24 estimated at \$298,333.33), and up to \$20,000 in litigation costs. Plaintiff submits the requested
25 fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation
26 on a purely contingent fee basis. My office has incurred substantial attorneys’ fees in, among
27 other things, conducting pre-filing investigation; conducting legal research; engaging in formal
28 written discovery; reviewing documents and data produced by Fenceworks; analyzing employee

1 timekeeping, payroll, and other data to create a comprehensive damages model; preparing for and
2 attending mediation; negotiating and preparing the Settlement Agreement; preparing this Motion;
3 and otherwise prosecuting this case. I anticipate that my office will incur significant future
4 attorneys' fees in overseeing the Notice process, fielding phone calls from Settlement Class
5 members, preparing the Final Approval Motion, and appearing at the Final Approval Hearing.

6 28. As will be fully briefed at final approval, Plaintiff's requested enhancement
7 payment is intended to recognize the time and effort he expended on behalf of the Settlement
8 Class, including providing information and documents to counsel, identifying potential witnesses,
9 attending in-person and telephonic meetings with counsel, and otherwise actively participating in
10 the prosecution of this case; and the risks Plaintiff took in bringing a class action against a former
11 employer.

12 29. Although the parties engaged in both formal discovery and informal discovery in
13 advance of mediation, they had not yet completed all formal written and deposition discovery,
14 which would have required expenditure of substantial time and resources by all parties. Plaintiff
15 also still had to file for class certification, and faced the prospect of appeals in the wake of a
16 disputed class certification ruling and/or summary judgment ruling. Even if Plaintiff obtained
17 class certification, the parties would incur considerable attorneys' fees and costs through a
18 possible decertification motion, trial, and potential appeal. This settlement avoids those risks and
19 expenses.

20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct. Executed on May 18, 2020, at El Segundo, California.

22 

23 _____
24 Paul K. Haines
25
26
27
28

EXHIBIT 1

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiff Jose Jimenez, individually and on behalf of all members of the Settlement Class (defined below), on one hand, and Defendant Fenceworks, Inc. (hereinafter “Defendant”), on the other hand. Plaintiff and Defendant are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by Paul K. Haines, Sean M. Blakely, and Diana M. Martinez of Haines Law Group, APC (“Class Counsel”). Defendant is represented by Boris Sorsher and Bret Martin of Fisher & Phillips LLP.

On November 26, 2018, Plaintiff filed a Class Action Complaint against Defendant in Orange County Superior Court, in the matter entitled *Jose Jimenez v. Fenceworks, Inc.*, Case No. 30-2018-01034150-CU-OE-CXC (the “Action”). As part of this Settlement, the Parties agree for Plaintiff to serve a Private Attorneys General Act of 2004 (“PAGA”) letter to the Labor & Workforce Development Agency (“LWDA”), and have further agreed to stipulate to the filing of a First Amended Class and Representative Action Complaint (“FAC”), which will include a claim for failure to furnish accurate and itemized wage statements, and a claim for civil penalties under the PAGA.

The FAC alleges that Defendant: (i) failed to provide all meal periods in accordance with California law; (ii) failed to authorize and permit all rest periods in accordance with California law; (iii) failed to pay all overtime wages; (iv) failed to pay all minimum wages; (v) failed to pay all wages due upon separation of employment; and (vi) failed to furnish accurate and itemized wage statements. As a result of the foregoing violations, Plaintiff contends that Defendant is further liable to Plaintiff and the Settlement Class because it engaged in unlawful business practices. Plaintiff also alleges that Defendant is liable for civil penalties under the PAGA, California Labor Code § 2698 *et seq.*, as a result of the aforementioned alleged violations of the California Labor Code.

Given the uncertainty of litigation, Plaintiff and Defendant wish to settle both individually and on behalf of the Settlement Class. Accordingly, Plaintiff and Defendant agree as follows:

1. **Settlement Class.** For the purposes of this Settlement Agreement only, Plaintiff and Defendant stipulate to the certification of the following Settlement Class:

All current and former non-exempt field employees who are or were employed by Fenceworks, Inc. in the State of California during the time period of November 26, 2014 to March 16, 2020 (“Class Period”).

The Parties agree that certification for purposes of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

2. **Release by Settlement Class Members and Plaintiff.** Plaintiff and every member of the Settlement Class (except those who opt out) will fully release and discharge Defendant, and all of its present and former officers, directors, employees, shareholders, agents, trustees, representatives, attorneys, insurers, reinsurers, parent companies, subsidiaries, divisions, affiliates, predecessors, successors, as well as any individual or entity that could be jointly liable with Defendant (collectively the “Released Parties”), as follows:

- A. Settlement Class members will release all claims, causes of action, and legal theories alleged or which could have been alleged based on the facts in the operative First Amended Class and Representative Action Complaint (“FAC”), including: (a) failure to provide all meal periods, or premium pay for non-compliant meal periods; (b) failure to authorize and permit all rest periods, or premium pay for non-compliant rest periods; (c) failure to pay all overtime wages (including, but not limited to, any claims for wages owed based on “rounding” theories and separate pay owed for rest periods or other “non-productive” time; (d) failure to pay all minimum wages (including any wages owed due to piece rate pay, failure to pay for rest periods, or failure to pay for rest periods at the correct rate under Labor Code Section 226.2); (e) failure to timely pay all wages due or final wages due; (f) failure to furnish accurate and complete itemized wage statements; (g) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories of relief pled in the FAC; (h) all claims for civil penalties under the PAGA that were or could have been alleged based on the claims, causes of action or legal theories described above or on any of the claims, causes of action, or legal theories of relief pleaded in the FAC; and (i) all damages, penalties, interest, costs (including attorney’s fees), and other amounts recoverable under said claims or causes of action as to the facts and/or legal theories alleged or which could have been alleged in the FAC (collectively, the “Released Claims”). The period of the Release shall extend to the limits of the Class Period. The *res judicata* effect of the judgment will be the same as that of the Release.
- B. In light of his Class Representative Enhancement Payment, Plaintiff has agreed to release, in addition to the Released Claims described above, all claims, whether known or unknown, under federal law or state law against the Released Parties. Plaintiff understands that this release includes unknown claims and that he is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

However, to the extent that Plaintiff has claims that cannot be released as a matter of law (i.e., workers’ compensation claims), then those claims will not be released.

3. **Gross Settlement Amount.** As consideration, Defendant agrees to pay a “Gross Settlement Amount” of Eight Hundred Ninety-Five Thousand Dollars and Zero Cents (\$895,000.00) in full and complete settlement of the Action, as follows:
- A. The Parties have agreed to engage Phoenix Settlement Administrators as the “Settlement Administrator” to administer this Settlement.
 - B. The Gross Settlement Amount shall be deposited with the Settlement Administrator within fifteen (15) calendar days of the Court entering an order granting final approval, or, solely in the event that there are any objections to the settlement (the filing of an objection being a prerequisite to the filing of an appeal), the later of: (i) the last date on which any appeal might be filed; or (ii) the successful resolution of any appeal(s) – including expiration of any time to seek reconsideration or further review.
 - C. This is a non-reversionary settlement. The Gross Settlement Amount includes:
 - (1) All payments (including interest) to the Settlement Class;
 - (2) All costs of the Settlement Administrator and settlement administration, which are anticipated to be no greater than Fifteen Thousand Dollars and Zero Cents (\$15,000.00);
 - (3) Up to Five Thousand Dollars and Zero Cents (\$5,000.00) for Plaintiff’s Class Representative Enhancement Payment in recognition of his contributions to the Action and his service to the Settlement Class. If Plaintiff’s request for his enhancement payment is not approved and/or reduced by the Court, any amount not approved and/or reduced by the Court will revert to the participating Settlement Class members;
 - (4) Up to one-third of the Gross Settlement Amount in Class Counsel’s attorneys’ fees, plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than Twenty Thousand Dollars and Zero Cents (\$20,000.00). If Class Counsel’s request for attorneys’ fees and/or reimbursement of litigation costs is not approved and reduced by the Court, any amount not approved and/or reduced by the Court will revert to the participating Settlement Class members; and
 - (5) Thirty Thousand Dollars (\$30,000.00) of the Gross Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or Twenty-Two Thousand Five Hundred Dollars (\$22,500.00) will be payable to the Labor & Workforce Development Agency (“LWDA”), and the remaining twenty-five percent (25%), or Seven Thousand Five Hundred Dollars (\$7,500.00) will be payable to the Settlement Class as the “PAGA Amount.”

- D. Defendant's share of payroll taxes shall be paid by Defendant separately from, and in addition to, the Gross Settlement Amount.
 - E. **Escalator Clause.** Defendant represents that there are approximately 55,086 workweeks worked by Settlement Class members during the Class Period. If the number of workweeks worked by Settlement Class members during the Class Period is more than 10% greater than this figure (i.e., if there are 60,595 or more workweeks worked by Settlement Class members), Defendant agrees to increase the Gross Settlement Amount on a proportional basis over the 10% increase (i.e., if there was a 12% increase in the number of workweeks worked by Settlement Class members, Defendant would agree to increase the Gross Settlement Amount by 2%).
4. **Payments to the Settlement Class.** Settlement Class members are not required to submit a claim form to receive a payment ("Settlement Award") from the Settlement. Settlement Awards will be determined and paid as follows:
- A. The Settlement Administrator shall first deduct from the Gross Settlement Amount the amounts approved by the Court for Class Counsel's attorneys' fees, Class Counsel's costs and expenses, Plaintiff's Class Representative enhancement payment, the LWDA's share of the PAGA payment, and the Settlement Administrator's fees and expenses for administration. The remaining amount shall be known as the "Net Settlement Amount."
 - B. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class member's Settlement Award based on the following formula:
 - i. Payments to all participating Settlement Class members: Eighty-Five percent (85%) of the Net Settlement Amount will be distributed to all participating Settlement Class members based on each participating Settlement Class member's proportionate Workweeks worked during the Class Period, and will be calculated by multiplying 85% of the Net Settlement Amount by a fraction, the numerator of which is the participating Settlement Class member's number of Workweeks worked during the Class Period, and the denominator of which is the total Workweeks worked by all participating Settlement Class members during the Class Period.
 - ii. Waiting Time Amount: Ten Percent (10%) of the Net Settlement Amount shall be designated as the "Waiting Time Amount." Each participating Settlement Class member whose employment with Defendant ended at any time from November 26, 2015 to March 16, 2020, shall receive an equal, pro-rata share of the Waiting Time Amount. In other words, the Waiting Time Amount will be divided equally among all participating Settlement Class members whose employment with Defendant ended at any time from November 26, 2015 to March 16, 2020.
 - iii. Wage Statement Amount: Five percent (5%) of the Net Settlement Amount shall be designated as the "Wage Statement Amount." Each participating

Settlement Class member who was employed by Defendant at any time from November 26, 2017 to March 16, 2020 shall receive a portion of the Wage Statement Amount proportionate to the number of Workweeks that he or she worked during the period from November 26, 2017 to March 16, 2020, and which will be calculated by multiplying 5% of the Net Settlement Amount by a fraction, the numerator of which is the participating Settlement Class member's number of Workweeks worked from November 26, 2017 to March 16, 2020, and the denominator of which is the total number of Workweeks worked by all participating Settlement Class members during the time period from November 26, 2017 to March 16, 2020.

- iv. PAGA Amount: Each participating Settlement Class member who was employed by Defendant at any time from February 19, 2019 to March 16, 2020 shall receive a portion of the Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) of the Gross Settlement Amount that has been designated as the "PAGA Amount" proportionate to the number of Workweeks that he or she worked during the period from February 19, 2019 to March 16, 2020, and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the participating Settlement Class member's number of Workweeks worked from February 19, 2019 to March 16, 2020, and the denominator of which is the total number of Workweeks worked by all participating Settlement Class members from February 19, 2019 to March 16, 2020.

- C. Within ten (10) calendar days following Defendant's deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate Settlement Award amounts and provide the same to counsel for review and approval. Within seven (7) calendar days of approval by counsel, the Settlement Administrator will prepare and mail Settlement Awards, less applicable taxes and withholdings, to participating Settlement Class members. The Settlement Administrator shall simultaneously pay the withholdings to the applicable authorities with the necessary reports, submitting copies to Defendant's counsel.
- D. For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: 80% as penalties and interest; and 20% as wages. The Settlement Administrator will be responsible for issuing to participating Settlement Class members IRS Forms W-2 for amounts deemed "wages" and IRS Forms 1099 for the amounts allocated as penalties and interest. Notwithstanding the treatment of the payments to each Settlement Class member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans.
- E. CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE

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

- F. Each Settlement Class member who receives a Settlement Award must cash that check within 180 days from the date the Settlement Administrator mails it. Any funds payable to Settlement Class members whose checks were not cashed within 180 days after mailing will escheat to the State Controller to be deposited in the Unclaimed Property Fund for the benefit of the Settlement Class member whose check was not cashed.
- G. Neither Plaintiff nor Defendant shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.
- H. The amounts paid under this Agreement do not represent a modification of any previously credited hours of service under any employee benefit plan, policy or bonus program sponsored by Defendant. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under, benefit plans (self-insured or not) sponsored by Defendant, policies or bonus programs. Any payments made under the terms of this Agreement shall not be applied retroactively, currently or on a going forward basis as salary, earnings, wages, or any other form of compensation for the purposes of Defendant's benefit plan, policy or bonus program. Defendant retains the right to modify the language

of its benefit plans, policies and bonus programs to effect this intent and to make clear that any amounts paid pursuant to this Agreement are not for “hours worked,” “hours paid,” “hours of service,” or any similar measuring term as defined by applicable plans, policies and bonus programs for purpose of eligibility, vesting, benefit accrual or any other purpose, and that additional contributions or benefits are not required by this Agreement.

5. **Attorneys’ Fees and Costs.** Defendant will not object to Class Counsel’s request for a total award of attorneys’ fees of one-third of the Gross Settlement Amount, which is currently estimated to be Two Hundred Ninety-Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$298,333.33). Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00), from the Gross Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court’s approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when the Settlement Administrator pays the fee award allowed by the Court.

6. **Class Representative Enhancement Payment.** Defendant will not object to a request for a Class Representative Enhancement Payment of up to Five Thousand Dollars and Zero Cents (\$5,000.00) to Plaintiff for his time and risk in prosecuting this case, and his service to the Settlement Class. This payment will be in addition to Plaintiff’s Settlement Award as a Settlement Class member and shall be reported on an IRS Form 1099 issued by the Settlement Administrator.

7. **Settlement Administrator.** Defendant will not object to the appointment of Phoenix Settlement Administrators as Settlement Administrator. Defendant will not object to Plaintiff seeking permission to pay up to Fifteen Thousand Dollars and Zero Cents (\$15,000.00) for its services from the Gross Settlement Amount. The Settlement Administrator shall be responsible for sending notices and for calculating Settlement Awards and preparing all checks and mailings, calculating Defendant’s share of taxes payable on the wages, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Gross Settlement Amount by Class Counsel only after Settlement Awards have been mailed to all participating Settlement Class members.

8. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiff shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;
- B. Appointing Paul K. Haines, Sean M. Blakely, and Diana M. Martinez of Haines Law Group, APC as Class Counsel;
- C. Appointing Jose Jimenez as Class Representative for the Settlement Class;
- D. Approving Phoenix Settlement Administrators, as Settlement Administrator;

- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
 - F. Approving the form and content of the Notice Packet (which is comprised of the Class Notice, Request for Exclusion Form, and Notice of Estimated Settlement Award), and directing the mailing of same; and
 - G. Scheduling a Final Approval hearing.
9. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class shall be notified as follows:
- A. Within twenty (20) business days after entry of an order preliminarily approving this Agreement, Defendant will provide the Settlement Administrator with the names, last known addresses, phone numbers, social security numbers, the dates of employment and the number of Workweeks worked by each Settlement Class member while employed during the Class Period (the "Class Data"). The Class Data shall be provided to the Settlement Administrator in an electronic format satisfactory to the Settlement Administrator.
 - B. Within ten (10) business days from receipt of this information, the Settlement Administrator shall (i) run the names of all Settlement Class members through the National Change of Address ("NCOA") database to determine any updated addresses for Settlement Class members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Settlement Award for each Settlement Class member; and (iv) mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
 - C. Requests for Exclusion. Any Settlement Class member who wishes to opt-out of the settlement must complete and mail a Request for Exclusion Form (defined below) to the Settlement Administrator within sixty (60) calendar days of the date of the initial mailing of the Notice Packets (the "Response Deadline").
 - i. The Notice Packet shall state that a Settlement Class member who wishes to exclude themselves from the Settlement must submit a Request for Exclusion Form by the Response Deadline. The Request for Exclusion Form must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion Form does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement, except a Request for Exclusion Form not containing a Class Member's telephone number and/or last four digits of the

Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion Form shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon.

- D. Objections. Settlement Class members who do not request exclusion may object to this Settlement Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendant's counsel, as well as file all such objections with the Court). Defendant's counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval, unless the objections are filed within ten (10) days of the Motion for Final Approval filing deadline, in which case Defendant's counsel and Class Counsel shall have ten (10) days to file a response to the objections. To be valid, any objection must: (1) contain the objecting Settlement Class member's full name and current address, as well as contact information for any attorney representing the objecting Settlement Class member for purposes of the objection; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) be postmarked no later than the Response Deadline.
- E. Notice of Estimated Settlement Award / Disputes. Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Settlement Class member's estimated Settlement Award as well as all of the information that was used from Defendant's records in order to calculate the Settlement Award, including the Settlement Class member's number of Workweeks worked during the Class Period, whether the Settlement Class member's employment with Defendant ended during the time period of November 26, 2015 to March 16, 2020, the number of workweeks worked from November 26, 2017 to March 16, 2020, and the number of Workweeks worked during the time period of February 19, 2019 and March 16, 2020. Settlement Class members will have the opportunity, should they disagree with Defendant's records regarding the information stated in the Notice of Estimated Settlement Award, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Settlement Awards under the terms of this Settlement Agreement. The Settlement Administrator's determination of the eligibility for and amount of any Settlement Award shall be binding upon the Settlement Class member and the Parties.

- F. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a “skip trace,” to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within three (3) business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. It will be conclusively presumed that, if an envelope so mailed has not been returned within thirty (30) days of the mailing, the Settlement Class member received the Notice Packet. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to submit a Request for Exclusion, Objection, or dispute. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline. If a Settlement Class member’s Notice Packet is returned to the Settlement Administrator more than once as non-deliverable, then an additional Notice Packet shall not be mailed. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Defendant’s Counsel to provide notice of the proposed settlement.
- G. Right to Revoke: If 10% or more of the Settlement Class members exercise their rights to exclude themselves and opt-out of the Settlement, Defendant may, in its sole discretion, unilaterally withdraw from and terminate the Settlement by providing written notice to Class Counsel no later than five (5) court days prior to the date of the Final Approval hearing. In the event of Defendant’s withdrawal, then Defendant shall be solely responsible for all costs of the Settlement Administrator accrued to that point, and no party may use the fact that the Parties agreed to the Settlement for any reason.

10. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiff’s and Class Counsel’s application for attorneys’ fees and costs, Class Representative enhancement payment, LWDA payment, and settlement administration costs; and
- C. Entering judgment pursuant to California Rule of Court 3.769.

11. Non-Admission of Liability.

A. Defendant denies liability to Named Plaintiff and to the Class upon any claim or cause of action. This Agreement does not constitute, and is not intended to constitute, an admission by Defendant as to the merits, validity, or accuracy of any of the allegations or claims made against it in the Action.

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

C. None of the documents produced or created by Named Plaintiff or the Class in connection with the claims procedures or claims resolution procedures constitute, and they are not intended to constitute, an admission by Defendant of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.

D. Nothing in this Agreement will be construed as an admission or acknowledgement of any kind that any group should or would be given collective treatment in the Action or in any other action or proceeding. Further, neither this Agreement nor the Court's actions with regard to this Agreement will be admissible in any court or other tribunal regarding the propriety of collective treatment. In the event that this Agreement is not approved by the Judge or any appellate court, is terminated, or otherwise fails to be enforceable, Named Plaintiff will not be deemed to have waived, limited or affected in any way any claims, rights or remedies in the Action, and Defendant will not be deemed to have waived, limited, or affected in any way any of their objections or defenses in the Action.

12. Non-disclosure and Non-publication. Plaintiff and Class Counsel agree that they have not and will not publish the Settlement Agreement, except to Settlement Class members and as shall be contractually required to effectuate the terms of the Settlement Agreement as set forth herein. In response to any inquiries Plaintiff will state that "the case was resolved and it was resolved confidentially." Class Counsel shall not report the Settlement Agreement in any medium or in any publication, shall not post or report anything regarding the claims of Plaintiff, the Settlement Class, or the Settlement on their website, and shall not contact any reporters or media regarding the Settlement. However, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions, Class Counsel may disclose the names of the Parties in

this Action, the venue/case number of this Action, and a general description of the Action, to a court in a declaration by Class Counsel.

13. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

14. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Defendant: Boris Sorsher, Fisher & Phillips LLP, 2050 Main St., Suite 1000,
Irvine, CA 92614; bsorsher@laborlawyers.com.

if to Plaintiff: Paul K. Haines, Haines Law Group, APC, 222 N. Sepulveda Blvd.,
Suite 1550, El Segundo, California 90245;
phaines@haineslawgroup.com.

15. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

16. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

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

DATED: March 13, 2020

Fenceworks, Inc.

By: Mel J. Kay

DATED: 03/03/2020

Jose Jimenez

By: Jose Jimenez
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED: MAR. 13, 2020

FISHER & PHILLIPS LLP

By: 
Boris Sorsher
Bret Martin
Attorneys for Defendant

DATED: March 5, 2020

HAINES LAW GROUP, APC

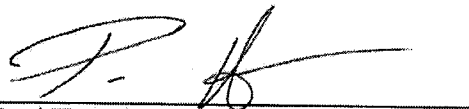
By: 
Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff

EXHIBIT 2

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

JOSE JIMENEZ, as an individual and on behalf of all
others similarly situated,

Plaintiff,

vs.

FENCEWORKS, INC., A California Corporation; and
DOES 1 through 100,

Defendants.

Case No. 30-2018-01034150-CU-OE-CXC

**NOTICE OF PENDENCY OF CLASS
ACTION AND PROPOSED SETTLEMENT**

To: All current and former non-exempt field employees who are or were employed by Fenceworks, Inc. in the State of California during the time period of November 26, 2014 to March 16, 2020 ("Class Period").

**PLEASE READ CAREFULLY
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

Why should you read this Notice?

The Court has granted preliminary approval of a proposed settlement (the "Settlement") in the matter of *Jose Jimenez v. Fenceworks, Inc.*, Orange County Superior Court Case No. 30-2018-01034150-CU-OE-CXC (the "Action"). Because your rights may be affected by the Settlement, it is important that you read this Notice carefully.

You may be entitled to money from this Settlement. Fenceworks, Inc.'s ("Fenceworks") records show that you were employed at Fenceworks as a non-exempt field employee in California between November 26, 2014 and March 16, 2020 (the "Class Period"). The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this Notice is to provide you with a brief description of the Action, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound to the terms of the Settlement and any final judgment.

What is this case about?

Plaintiff Jose Jimenez ("Plaintiff") brought this Action against Fenceworks on a class and representative action basis on behalf of a class of non-exempt field employees within the State of California who are or were employed by Fenceworks in the State of California from November 26, 2014, through March 16, 2020. Plaintiff is known as the "Class Representative," and his attorneys, who also represent the interests of all Settlement Class members, are known as "Class Counsel."

Plaintiff alleges that Fenceworks failed to provide Settlement Class members with all legally-compliant meal periods, failed to authorize and permit all legally-compliant rest periods, failed to pay Settlement Class members all overtime wages, failed to compensate at the minimum wage for all hours worked, failed to timely pay all wages owed upon separation of employment, failed to furnish accurate and itemized wage statements to Settlement Class members, and as a result of the foregoing alleged violations, is liable for civil penalties under the Labor Code Private Attorneys General Act ("PAGA"). Specifically, Plaintiff alleges that Settlement Class members were occasionally paid on a piece-rate basis whereby Settlement Class members were paid a piece-rate for each hole, foot, post or gate installed and/or completed. Plaintiff alleges that Fenceworks piece-rate compensation system failed to separately compensate Settlement Class members for all rest periods and failed to pay all "non-productive time," or underpaid Settlement Class members for such time.

Fenceworks denies that it has done anything wrong. Fenceworks also denies that it owes Settlement Class members any wages, restitution, penalties, damages, or other amounts. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Fenceworks, by whom all liability is expressly denied.

The Court has not ruled on the merits of Plaintiff's claims. However, to avoid additional expense, inconvenience, and interference with its business operations, Fenceworks has concluded that it is in its best interests to settle the Action on the terms summarized in this Notice. After Fenceworks provided relevant information to Class Counsel, the Settlement was reached after mediation and arm's length negotiations between the parties.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Fenceworks, the risk of denial of class certification, the inherent risk of trial on the merits, and the delays and uncertainties associated with ongoing litigation.

If you are still employed by Fenceworks, your decision about whether to participate in the Settlement will not affect your employment. California law and Fenceworks' policy strictly prohibit unlawful retaliation. Fenceworks will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class member because of his/her decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for Plaintiff/Settlement Class: HAINES LAW GROUP, APC Paul K. Haines phaines@haineslawgroup.com Sean M. Blakely sblakely@haineslawgroup.com Diana M. Martinez dmartinez@haineslawgroup.com 222 N. Sepulveda Blvd., Suite 1550 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 haineslawgroup.com	Attorneys for Fenceworks: FISHER & PHILLIPS LLP Boris Sorsher bsorsher@laborlawyers.com Bret Martin bmartin@fisherphillips.com 2050 Main St., Suite 1000 Irvine, California 92614 Tel: (949) 851-2424 Fax: (949) 851-0152 www.fisherphillips.com
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What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court preliminarily certified a class, for settlement purposes only, of all current and former non-exempt field employees who are or were employed by Fenceworks in the State of California from November 26, 2014, through March 16, 2020. Settlement Class members who do not opt out of the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Fenceworks as described below.

Fenceworks has agreed to pay \$895,000.00 (the "Gross Settlement Amount") to fully resolve all claims in the Action, including payments to Settlement Class members, Class Counsel's attorneys' fees and expenses, settlement administration costs, payment to the Labor & Workforce Development Agency ("LWDA"), and the Class Representative enhancement payment.

The following deductions from the Gross Settlement Amount will be requested by the parties:

Attorneys' Fees and Expenses. Class Counsel have been prosecuting the Action on behalf of Settlement Class members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys'

fees, which will be paid from the Gross Settlement Amount. Settlement Class members are not personally responsible for any of Class Counsel's attorneys' fees or expenses. Class Counsel will ask for up to one-third of the Gross Settlement Amount, which is currently estimated at \$298,333.33, as reasonable compensation for the work Class Counsel performed and will continue to perform in this Action through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$20,000.00 in verified costs incurred in connection with the Action.

Settlement Administration Costs. The Court has approved Phoenix Settlement Administrators to act as the "Settlement Administrator," who is sending this Notice to you and will perform many other duties relating to the Settlement. The Parties request setting aside up to \$15,000.00 from the Gross Settlement Amount to pay the settlement administration costs.

Class Representative Enhancement Payment. Class Counsel will ask the Court to award the Class Representative an enhancement payment in the amount of \$5,000.00 to compensate him for his service and extra work provided on behalf of the Settlement Class.

PAGA Payment to State of California. The parties have agreed to allocate \$30,000.00 towards the Settlement of the PAGA claims in the Action. \$22,500.00 will be paid to the State of California Labor & Workforce Development Agency, representing its 75% share of the civil penalties. The remaining \$7,500.00 will be allocated to Settlement Class members as described below.

Calculation of Individual Settlement Class Members' Settlement Awards. After deducting the Court-approved amounts above, the balance of the Gross Settlement Amount will form the Net Settlement Amount, which will be distributed to all Settlement Class members who do not submit a valid and timely Request for Exclusion from the Settlement. The Net Settlement Amount is estimated at approximately \$526,666.67, and will be divided as follows:

- (i) 85% of the Net Settlement Amount will be allocated to all participating Settlement Class members in proportion to the number of workweeks that he or she worked during the Class Period.
- (ii) 10% of the Net Settlement Amount shall be designated as the "Waiting Time Amount" and will be allocated in equal amounts to all participating Settlement Class members whose employment with Fenceworks ended at any time between November 26, 2015 through March 16, 2020.
- (iii) 5% of the Net Settlement Amount shall be designated as the "Wage Statement Amount." Each participating Settlement Class member who was employed by Fenceworks at any time from November 26, 2017 to March 16, 2020 shall receive a portion of the Wage Statement Amount proportionate to the number of workweeks that he or she worked during the time period of November 26, 2017 to March 16, 2020.
- (iv) \$7,500.00 of the Gross Settlement Amount has been designated as the "PAGA Amount." Each participating Settlement Class member who was employed by Fenceworks at any time from February 19, 2019 to March 16, 2020 shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked during the time period of February 19, 2019 to March 16, 2020.

Payments to Settlement Class members. If the Court grants final approval of the Settlement, individual Settlement Awards will be mailed to all Settlement Class members who did not submit a valid and timely Request for Exclusion from the Settlement. Settlement checks will be valid for 180 days. Any checks that were not cashed within 180 days will escheat to the California State Controller Unclaimed Property Fund in the name of the Settlement Class member.

Allocation and Taxes. For tax purposes, each Settlement Award shall be treated as follows: 20% as "wages," for which an IRS Form W-2 will be issued; and 80% as "penalties" and "interest" for which an IRS Form 1099 will be issued. Settlement Class members are responsible for the proper income tax treatment of the individual Settlement Awards. The Settlement Administrator, Fenceworks and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court approves the Settlement, Plaintiff and every member of the Settlement Class (except those who opt out) will fully release and discharge Defendant, and all of its present and former officers, directors, employees, shareholders, agents, trustees, representatives, attorneys, insurers, reinsurers, parent companies, subsidiaries, divisions, affiliates, predecessors, successors, as well as any individual or entity that could be jointly liable with Fenceworks from all claims, causes of action, and legal theories alleged or which could have been alleged based on the facts in the operative First Amended Class and Representative Action Complaint (“FAC”), including:: (a) failure to provide all meal periods, or premium pay for non-compliant meal periods; (b) failure to authorize and permit all rest periods, or premium pay for non-compliant rest periods; (c) failure to pay all overtime wages (including, but not limited to, any claims for wages owed based on “rounding” theories and separate pay owed for rest periods or other “non-productive” time; (d) failure to pay all minimum wages (including any wages owed due to piece rate pay, failure to pay for rest periods, or failure to pay for rest periods at the correct rate under Labor Code Section 226.2); (e) failure to timely pay all wages due or final wages due; (f) failure to furnish accurate and complete itemized wage statements; (g) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories of relief pled in the FAC; (h) all claims for civil penalties under the PAGA that were or could have been alleged based on the claims, causes of action or legal theories described above or on any of the claims, causes of action, or legal theories of relief pleaded in the FAC; and (i) all damages, penalties, interest, costs (including attorney’s fees), and other amounts recoverable under said claims or causes of action as to the facts and/or legal theories alleged or which could have been alleged in the FAC (collectively, the “Released Claims”). The period of the Release shall extend to the limits of the Class Period. The *res judicata* effect of the judgment will be the same as that of the Release.

Conditions of Settlement. The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate, and in the best interests of the Settlement Class, and the entry of a Judgment.

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your share of the Settlement based on the proportionate number of workweeks you worked during the Class Period, whether you have separated employment from Fenceworks between November 26, 2015 and March 16, 2020, the proportionate number of workweeks you worked between November 26, 2017 and March 16, 2020, and the proportionate number of workweeks you worked between February 19, 2019 and March 16, 2020, as stated in the accompanying Notice of Estimated Settlement Award. You also will be bound by the Settlement, including the release of claims stated above.

What other options do I have?

Dispute Information in Notice of Estimated Settlement Award. Your award is based on the proportionate number of workweeks you worked during the Class Period, whether you have separated employment from Fenceworks between November 26, 2015 and March 16, 2020, the proportionate number of workweeks you worked between November 26, 2017 and March 16, 2020, and the proportionate number of workweeks you worked between February 19, 2019 and March 16, 2020. The information contained in Fenceworks’ records regarding each of these factors, along with your estimated Settlement Award, is listed on the accompanying Notice of Estimated Settlement Award. If you disagree with the information in your Notice of Estimated Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Estimated Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than **<<RESPONSE DEADLINE>>**. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class members. The Settlement Administrator’s decision regarding any dispute will be final.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator an executed Request for Exclusion Form no later than **<<RESPONSE**

DEADLINE>>, with your name, address, telephone number, last four digits of your social security number, and your signature. A Request for Exclusion Form is included with this Notice.

Send the Request for Exclusion Form directly to the Settlement Administrator at **<<INSERT ADMINISTRATOR CONTACT INFO>>**. Any person who submits a timely Request for Exclusion Form shall, upon receipt by the Settlement Administrator, no longer be a Settlement Class member, shall be barred from participating in any portion of the Settlement, and shall receive no benefits from the Settlement. **Do not submit both a Dispute and a Request for Exclusion.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you may mail a written objection to the Settlement Administrator at **<<INSERT ADMINISTRATOR CONTACT INFO>>**. All objections and correspondence must be sent directly to the Settlement Administrator, please do not send objections or correspondence to the Court. Any objections will be provided to the Court by Plaintiff in connection with the Final Approval Hearing. Your written objection must include your name, address, as well as contact information for any attorney representing you regarding your objection, the case name and number, each specific reason in support of your objection, and any legal or factual support for each objection together with any evidence in support of your objection. Objections must be in writing and must be postmarked on or before **<<RESPONSE DEADLINE>>**.

You may also appear at the Final Approval Hearing scheduled for **<<FINAL APPROVAL HEARING DATE/TIME>>** in Department CX104 of the Orange County Superior Court, located at 751 West Santa Ana Boulevard, Santa Ana, California 92701. You have the right to appear either in person or through your own attorney at this hearing. All objections or other correspondence must state the name and number of the case, which is *Jose Jimenez v. Fenceworks, Inc.*, Orange County Superior Court Case No. 30-2018-01034150-CU-OE-CXC.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class members who do not object.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on **<<FINAL APPROVAL HEARING DATE/TIME>>**, in Department CX104 of the Orange County Superior Court, located at 751 West Santa Ana Boulevard, Santa Ana, California 92701. The Court will also be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses, and the Class Representative enhancement payment. The Final Approval Hearing may be postponed without further notice to Settlement Class members. **You are not required to attend the Final Approval Hearing, although any Settlement Class member is welcome to attend the hearing.**

How can I get additional information?

This Notice is only a summary of the Action and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the Orange County Superior Court, located at 751 West Santa Ana Boulevard, Santa Ana, California 92701, during regular court hours. You may also visit the Orange County Superior Court website at www.occourts.org to inspect the Court's files by going to the "Online Case Access" tab, selecting "Civil Case & Document Access," and entering the case number information. You may also contact Class Counsel using the contact information listed above for more information.

PLEASE DO NOT CALL OR WRITE TO THE COURT, FENCEWORKS, OR ITS ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is **<<RESPONSE DEADLINE>>**. These deadlines will be strictly enforced.

EXHIBIT 3

REQUEST FOR EXCLUSION FORM

Jose Jimenez v. Fenceworks, Inc.
Orange County Superior Court
Case No.: 30-2018-01034150-CU-OE-CXC

IF YOU **DO NOT** WISH TO BE PART OF THE CLASS ACTION SETTLEMENT, YOU MUST **COMPLETE**, **SIGN** AND **MAIL** THIS FORM, POSTMARKED ON OR BEFORE **[INSERT DATE]**, ADDRESSED AS FOLLOWS:

PHOENIX SETTLEMENT ADMINISTRATORS
JOSE JIMENEZ V. FENCEWORKS, INC.
SETTLEMENT ADMINISTRATOR

ADDRESS
ADDRESS
PHONE
FAX

DO NOT SUBMIT THIS FORM IF YOU WISH TO RECEIVE A PAYMENT UNDER THE SETTLEMENT.

By signing, filling out, and returning this form, I confirm that I **do not** want to be included in the Settlement of the lawsuit entitled *Jose Jimenez v. Fenceworks, Inc.*, Orange County Superior Court Case No. 30-2018-01034150-CU-OE-CXC.

I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *JOSE JIMENEZ V. FENCEWORKS, INC.* LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.

Name

Telephone Number

Address

Date

Signature

Last Four Digits of Social Security Number: ____ ____ ____ ____

EXHIBIT 4

NOTICE OF ESTIMATED SETTLEMENT AWARD

JOSE JIMENEZ V. FENCEWORKS, INC.
ORANGE COUNTY SUPERIOR COURT CASE NO. 30-2018-01034150-CU-OE-CXC

Please complete and return this Form to <<ADMINISTRATOR CONTACT INFO>> **ONLY IF** (1) your personal contact information has changed, and/or (2) you wish to dispute any of the items listed in Section (III), below. It is your responsibility to keep a current address on file with the Settlement Administrator.

(I) Please type or print your name:

(First, Middle, Last)

(II) Please type or print the following identifying information if your contact information has changed:

Former Names (if any)

New Street Address

City

State

Zip Code

(III) Information Used to Calculate Your Settlement Award:

According to Fenceworks, Inc.'s ("Fenceworks") records:

- (a) you worked for Fenceworks in California from _____ to _____;
- (b) you worked _____ Workweeks between November 26, 2014, and March 16, 2020 for Fenceworks;
- (c) you worked _____ Workweeks between November 26, 2017 and March 16, 2020 for Fenceworks;
- (d) you worked _____ Workweeks between February 19, 2019 and March 16, 2020 for Fenceworks, and
- (e) your employment with Fenceworks <<DID/DID NOT>> end between November 26, 2015 and March 16, 2020.

Based on the above, your Settlement Award is estimated at \$ _____.

(IV) If you disagree with items (a), (b), (c), (d), and/or (e) in Section (III) above, please explain why in the space provided below and include copies of any supporting evidence or documentation with this Form:

If you dispute the above information from Fenceworks' records, Fenceworks' records will control unless you are able to provide documentation that establishes otherwise and that Fenceworks' records are mistaken. If there is a dispute about whether Fenceworks' information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved by the Parties and the Settlement Administrator as described in the "Notice of Pendency of Class Action and Proposed Settlement" that accompanies this Form.

**ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE POSTMARKED
NO LATER THAN <<RESPONSE DEADLINE>>.**

EXHIBIT 5

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
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Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

JOSE JIMENEZ, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

FENCEWORKS, INC., a California corporation;
and DOES 1 through 100,

Defendants.

Case No.: 30-2018-01034150-CU-OE-CXC

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

- (1) **MEAL PERIOD VIOLATIONS**
(LABOR CODE §§ 226.7, 512, 558);
- (2) **REST PERIOD VIOLATIONS**
(LABOR CODE §§ 226.7, 516, 558);
- (3) **FAILURE TO PAY ALL OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, 1198);**
- (4) **MINIMUM WAGE VIOLATIONS**
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197);
- (5) **WAITING TIME PENALTIES**
(LABOR CODE §§ 201-203);
- (6) **UNPAID OR UNDERPAID REST
PERIOD TIME (LABOR CODE
§ 226.2)**
- (7) **WAGE STATEMENT VIOLATIONS**
(LABOR CODE § 226)
- (8) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); and**
- (9) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE §§ 2698, *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Jose Jimenez (“Plaintiff”) on behalf of himself and all others similarly situated,
2 hereby brings this First Amended Class and Representative Action Complaint (“Complaint”)
3 against Fenceworks, Inc., a California corporation, and DOES 1 to 100, inclusive (collectively
4 “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 Complaint for recovery of unpaid wages and penalties under California Business and Professions
8 Code § 17200 *et. seq.*, Labor Code §§ 201-203, 204, 210, 226, 226.2, 226.7, 510, 512, 516, 558,
9 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.*, and Industrial Welfare Commission Wage Order
10 16 (“Wage Order 16”), in addition to seeking declaratory relief and restitution. This Complaint
11 is brought pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over
12 Defendants’ violations of the California Labor Code because the amount in controversy exceeds
13 this Court’s jurisdictional minimum.

14 **VENUE**

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

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was and currently is, a California resident. During the four years immediately preceding
23 the filing of the Complaint in this action and within the statute of limitations periods applicable
24 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
25 employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of
26 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
27 §§ 201-203, 204, 210, 226, 226.2, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198,
28 2698 *et seq.*, California Business and Professions Code § 17200 *et seq.* (“Unfair Competition

1 Law”), and Wage Order 16, which sets employment standards for the construction industry.

2 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
3 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
4 continue to do) business by selling and installing fencing with eight locations in California,
5 including Riverside, Anaheim, Palmdale, Santa Paula, Bakersfield, Sacramento, Fresno and
6 Manteca. Defendants employed Plaintiff and other similarly-situated non-exempt employees
7 within the County of Orange and State of California and, therefore, were (and are) doing business
8 in the County of Orange and the State of California. At all relevant times, Plaintiff worked out
9 of Defendants’ Anaheim, California facility.

10 5. Plaintiff does not know the true names or capacities, whether individual, partner,
11 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
12 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
13 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
14 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
15 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
16 and proximately caused Plaintiff and the Classes (as defined in Paragraph 17) to be subject to the
17 unlawful employment practices, wrongs, injuries and damages complained of herein.

18 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
19 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

20 7. At all times herein mentioned, each of said Defendants participated in the doing
21 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
22 Defendants, and each of them, were the agents, servants, and employees of each and every one of
23 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
24 were acting within the course and scope of said agency and employment. Defendants, and each
25 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
26 omissions complained of herein.

27 8. At all times mentioned herein, Defendants, and each of them, were members of
28 and engaged in a joint venture, partnership, and common enterprise, and acting within the course

1 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
2 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
3 members of the Classes.

4 **GENERAL FACTUAL ALLEGATIONS**

5 9. Plaintiff was hired by Defendants as a non-exempt employee on or about August
6 13, 2013 and continued to work for Defendants until April 5, 2016, when he took an approved
7 medical leave of absence. Plaintiff worked as a “Fence Installer” out of Defendants’ Anaheim,
8 California location. Plaintiff’s job duties primarily consisted of driving to and from work sites
9 and installing/removing fencing. Upon information and belief, Plaintiff’s employment with
10 Defendants was terminated during Plaintiff’s medical leave.

11 10. During Plaintiff’s employment with Defendants, Plaintiff was regularly scheduled
12 to work from 6:00 a.m. to 2:00 p.m. or later, and Plaintiff also occasionally also worked on
13 weekends. Plaintiff clocked in and out at the beginning and end of his work shifts at Defendants’
14 Anaheim location, however, Plaintiff was not required to clock in and out for meal periods, which
15 were scheduled by his supervisor. As a result of Defendants’ unlawful meal period
16 policies/practices, Plaintiff was not often provided a timely 30-minute meal period commencing
17 before the conclusion of the fifth hour of work. Furthermore, when Plaintiff worked shifts over
18 10.0 hours, Plaintiff was not provided a second uninterrupted 30-minute meal period due to
19 Defendants’ unlawful meal period policies/practices which failed to provide a second meal period
20 during shifts in excess of 10.0 hours. On those occasions when Plaintiff was not provided with
21 all legally-compliant meal periods to which he was entitled, Defendants failed to compensate
22 Plaintiff with the required meal period premium(s) for each workday there was a meal period
23 violation as mandated by Labor Code § 226.7. Upon information and belief, at least during a
24 portion of the class period, Defendants maintained no mechanism for the payment of meal period
25 premium payments as required by Labor Code § 226.7, in the event that a legally compliant meal
26 period was not provided to their non-exempt employees.

27 11. Plaintiff was not authorized and permitted to take all required rest periods due to
28 Defendants’ rest period policies/practices, which upon information and belief, failed to authorize

1 and permit Plaintiff to take all legally required rest periods. Specifically, Plaintiff regularly
2 worked shifts in excess of 6.0 hours, but was often not authorized and permitted to take a first or
3 second rest period. Additionally, when Plaintiff worked shifts in excess of 10.0 hours, he was
4 not authorized and permitted to take a third rest period, due to Defendants' rest period
5 policies/practices which fail to authorize and permit third rest periods for shifts in excess of 10.0
6 hours. On those occasions when Plaintiff was not provided with all legally-compliant rest periods
7 to which he was entitled, Defendants failed to compensate Plaintiff with the required rest period
8 premium(s) for each workday there was a rest period violation as mandated by Labor Code §
9 226.7. Upon information and belief, at least during a portion of the putative class period,
10 Defendants maintained no mechanism for the payment of rest period premium payments as
11 required by Labor Code § 226.7, in the event that Defendants failed to authorize and permit all
12 lawful rest periods to be taken.

13 12. During Plaintiff's employment with Defendants, Defendants did, and upon
14 information and belief, still utilize a timekeeping system that resulted in Plaintiff and other non-
15 exempt employees not being compensated for all hours actually worked. Specifically, Defendants
16 rounded Plaintiff and non-exempt employee's timekeeping entries in an uneven manner to a
17 quarter of an hour increment so that, over a period time, they were deprived of all earned minimum
18 and overtime wages. Upon information and belief, Defendants' timekeeping and payroll systems
19 regularly, systematically, and impermissibly rounded the hours worked by Plaintiff and other non-
20 exempt employees in Defendants' favor resulting, over a period of time, in the failure to properly
21 compensate Plaintiff and other non-exempt employees for all hours worked. As a result, Plaintiff
22 and other non-exempt employees were not compensated for all required minimum and overtime
23 wages.

24 13. During Plaintiff's employment with Defendants, Plaintiff often worked in excess
25 of eight (8) hours per workday and/or more than forty (40) hours per workweek, but did not
26 receive overtime compensation equal to one and one-half times his regular rate of pay for working
27 overtime hours. Specifically, Defendants paid Plaintiff non-discretionary incentive pay,
28 including "Incentive Reg," and other bonuses and forms of non-discretionary pay based on an

1 employee's performance, including the amount of fencing installed (hereinafter the
2 aforementioned forms of pay are collectively referred to as "Incentive Pay"). As a result of
3 receiving Incentive Pay, Defendants failed to accurately calculate Plaintiff's and other non-
4 exempt employee's regular rate of pay, thereby causing Plaintiff and other non-exempt employees
5 to be underpaid all required overtime wages.

6 14. Furthermore, upon information and belief, during Plaintiff's employment with
7 Defendants, Plaintiff was occasionally paid on a piece-rate basis, whereby Plaintiff was paid a
8 certain rate per fencing installation or work completed. While paid on a piece-rate basis, Plaintiff
9 was not separately compensated for time spent working on tasks which were not compensated on
10 a piece-rate basis, including for example, hours spent cleaning up at a worksite (i.e., non-
11 productive time). Because Defendants did not compensate for this non-productive time, they also
12 miscalculated the regular rate of pay, which is required to include the value of non-productive
13 time as a matter of law.

14 15. On the occasions when Plaintiff worked on a piece-rate basis, Plaintiff worked
15 shifts in excess of 3.5 hours, and was not provided with a paid rest period for every 4-hour period
16 worked, or major fraction thereof, because Defendants' piece-rate compensation plan failed to
17 separately compensate Plaintiff for required rest periods. *See Bluford v. Safeway Inc.*, 216 Cal.
18 App. 4th 864 (2013) ("There is no dispute that Safeway's activity-based compensation system did
19 not separately compensate drivers for their rest periods."). As a result, Plaintiff was not paid
20 wages for all hours worked, and was deprived of all rest period premium payments. Furthermore,
21 if Defendants separately compensated Plaintiff for rest periods, Defendants failed to accurately
22 calculate the rate at which Plaintiff was entitled to be compensated for such time pursuant to
23 Labor Code § 226.2. As a result, Plaintiff was underpaid wages owed for all hours worked, and
24 was deprived of all rest period premium payments.

25 16. As a result of Defendants' failure to pay all meal and rest period premiums, and
26 minimum and overtime wages, Defendants failed to pay Plaintiff all wages owed at the time of
27 separation from employment with Defendants, and failed to issue Plaintiff accurate and complete
28 itemized wage statements.

CLASS ACTION ALLEGATIONS

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

- a. The Meal Period Class consists of all Defendants' current and former non-exempt employees in California who: (i) worked at least one shift in excess of 5.0 hours; and/or (ii) worked at least one shift in excess of 10.0 hours, during the four years immediately preceding the filing of the Complaint through the present.
- b. The Rest Period Class consists of all Defendants' current and former non-exempt employees in California who: (i) worked at least one shift in excess of 3.5 hours; and/or (ii) performed work that was compensated on a piece-rate basis, and worked at least one shift in excess of 3.5 hours, during the four years immediately preceding the filing of the Complaint through the present.
- c. The Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California who: (i) were subject to Defendants' timekeeping policies/practices, and/or (ii) performed work that was compensated on a piece-rate basis, during the four years immediately preceding the filing of the Complaint through the present.
- d. The Overtime Class consists of all Defendants' current and former non-exempt employees in California who worked more than eight (8) hours per day and/or forty (40) hours per week and: (i) were subject to Defendants' timekeeping policies/practices; and/or (ii) received Incentive Pay during a corresponding time period, and/or (iii) performed work that was compensated on a piece-rate basis during a corresponding time period, during the four years immediately preceding the filing of the Complaint through the present.
- e. The Waiting Time Class consists of all Defendants' formerly employed members of the Meal Period Class, Rest Period Class, Minimum Wage Class, and Overtime Class, who separated their employment from Defendants in the three years immediately preceding the filing of the Complaint through the present.

1 f. The Wage Statement Class consists of all members of the Meal Period Class, Rest
2 Period Class, Minimum Wage Class, and/or Overtime Class who received a wage
3 statement from Defendants, during the one year immediately preceding the filing
4 of the Complaint through the present.

5 18. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
6 joinder of all members would be unfeasible and not practicable. The membership of the Classes
7 is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes
8 number greater than one hundred (100) individuals. The identity of such membership is readily
9 ascertainable via inspection of Defendants' employment records.

10 19. **Common Questions of Law and Fact Predominate/Well Defined Community**
11 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly
12 situated non-exempt employees, which predominate over questions affecting only individual
13 members including, without limitation to:

- 14 i. Whether Defendants provided all legally compliant meal periods to members of
15 the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- 16 ii. Whether Defendants authorized and permitted all legally compliant rest periods to
17 members of the Rest Period Class pursuant to Labor Code §§ 226.2, 226.7 and
18 516;
- 19 iii. Whether Defendants provided meal or rest period premium payments for non-
20 compliant meal and/or rest periods pursuant to Labor Code § 226.7;
- 21 iv. Whether Defendants lawfully paid premium wages for all overtime hours worked
22 to members of the Overtime Class pursuant to Labor Code §§ 204, 510, 558, 1194
23 and 1198;
- 24 v. Whether the piece-rate policies/procedures utilized by Defendants complied with
25 California law;
- 26 vi. Whether Defendants failed to properly include all forms of Incentive Pay when
27 calculating the respective regular rates for members of Overtime Class;

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vii. Whether Defendants lawfully paid all minimum wages for all hours worked to members of the Minimum Wage Class pursuant to Labor Code §§ 226.2, 1182.12, 1194, 1194.2 and 1197;

viii. Whether Defendants paid all wages/compensation due upon separation of employment to members of the Waiting Time Penalty Class pursuant to Labor Code §§ 201-203; and

ix. Whether Defendants furnished legally-compliant wage statements to Plaintiff and members of the Wage Statement Class pursuant to Labor Code § 226.

20. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform meal and rest period policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

21. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged herein, Plaintiff, like the members of the Classes, was not provided all required meal periods, was not authorized and permitted to take all required rest periods, did not receive meal and rest period premium wages for missed or non-compliant meal and rest periods, did not receive all minimum wages for all hours worked, did not receive all premium pay for all overtime hours worked, was not provided with all wages/compensation due upon separation of employment with Defendants pursuant to Labor Code §§ 201-203, and did not receive accurate and complete wage statements.

22. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of

1 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-
2 and-hour class actions in state and federal courts in the past and are committed to vigorously
3 prosecuting this action on behalf of the members of the Classes.

4 23. **Superiority:** The California Labor Code is broadly remedial in nature and serves
5 an important public interest in establishing minimum working conditions and standards in
6 California. These laws and labor standards protect the average working employee from
7 exploitation by employers who have the responsibility to follow the laws and who may seek to
8 take advantage of superior economic and bargaining power in setting onerous terms and
9 conditions of employment. The nature of this action and the format of laws available to Plaintiff
10 and members of the Classes make the class action format a particularly efficient and appropriate
11 procedure to redress the violations alleged herein. If each employee were required to file an
12 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
13 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
14 their vastly superior financial and legal resources. Moreover, requiring each member of the
15 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
16 employees who would be disinclined to file an action against their former and/or current employer
17 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
18 employment. Further, the prosecution of separate actions by the individual class members, even
19 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
20 with respect to the individual class members against Defendants herein; and which would
21 establish potentially incompatible standards of conduct for Defendants; and/or legal
22 determinations with respect to individual class members which would, as a practical matter, be
23 dispositive of the interest of the other class members not parties to adjudications or which would
24 substantially impair or impede the ability of the class members to protect their interests. Further,
25 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
26 individual prosecution considering all of the concomitant costs and expenses attending thereto.
27 As such, the Classes identified in Paragraph 19 are maintainable as a Class under § 382 of the
28 Code of Civil Procedure.

1 **FIRST CAUSE OF ACTION**

2 **MEAL PERIOD VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

4 24. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 25. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 failed in their affirmative obligation to provide all of their non-exempt employees in California,
7 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
8 in accordance with the mandates of the California Labor Code and Wage Order 16, § 10. Despite
9 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members
10 of the Meal Period Class at their respective regular rates of pay, in accordance with California
11 Labor Code §§ 204, 210, 226.7, and 512.

12 26. As a result, Defendants are responsible for paying premium compensation for meal
13 period violations pursuant to Labor Code §§ 226.7, 512, and 558, and Wage Order 16, including
14 interest thereon, statutory penalties, civil penalties, and costs of suit.

15 **SECOND CAUSE OF ACTION**

16 **REST PERIOD VIOLATIONS**

17 **(AGAINST ALL DEFENDANTS)**

18 27. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

19 28. Wage Order 16, § 11 and Labor Code §§ 226.7 and 516 establish the right of
20 employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour
21 period worked, or major fraction thereof.

22 29. Due to Defendants' unlawful rest period policy and practices, Defendants did not
23 authorize and permit members of the Rest Period Class to take all rest periods to which they were
24 legally entitled. Despite Defendants' violations, Defendants have not paid an additional hour of
25 pay to Plaintiff and the Rest Period Class at their respective regular rates of pay for each violation,
26 in accordance with California Labor Code § 226.7.

27 30. The foregoing violations create an entitlement to recovery by Plaintiff and
28 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums

owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according to Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

THIRD CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

31. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

32. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours worked and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

33. At all times relevant herein, Defendants were required to properly pay Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 16. Wage Order 16, § 3 requires an employer to pay an employee “one and one-half (1½) times the employee’s regular rate of pay” for work in excess of eight (8) hours per work day and/or in excess of forty (40) hours of work in the workweek. Wage Order 16, § 3 also requires an employer to pay an employee double the employee’s regular rate of pay for work in excess of twelve hours each work day and/or for work in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff and other non-exempt employees to work overtime hours but did not compensate Plaintiff or members of the Overtime Class at one and one-half times their regular rate of pay for such hours.

34. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime premiums owing, including interest thereon, statutory penalties, attorney’s fees, and costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order 16, and Code of Civil Procedure § 1021.5.

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FOURTH CAUSE OF ACTION
MINIMUM WAGE VIOLATIONS
(AGAINST ALL DEFENDANTS)

35. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

36. Wage Order 16, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon.

37. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes but is not limited to Defendants' uniform and unlawful practice of rounding the time entries of Plaintiff and other non-exempt employees to the nearest quarter-hour increment. This resulted in these individuals not being paid for all hours actually worked. Further, this unlawful conduct also includes Defendants' uniform piece-rate compensation structure, which resulted in Plaintiff and members of the Minimum Wage Class only being paid on Defendants' piece-rate system, as opposed to being paid for all hours worked. Accordingly, Plaintiff and members of the Minimum Wage Class were not compensated for all hours worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 16.

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

39. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but

1 not limited to unpaid wages and lost interest, in an amount to be established at trial, and they are
2 entitled to recover economic and statutory damages and penalties and other appropriate relief as
3 a result of Defendants' violations of the California Labor Code and Wage Order 16.

4 40. Defendants' practice and uniform administration of corporate policy regarding
5 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
6 members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages,
7 liquidated damages, including interest thereon, statutory penalties, attorney's fees, and costs of
8 suit according to California Labor Code §§ 204, 558, 226.2, 1194 *et seq.*, 1197, 1198, and Code
9 of Civil Procedure § 1021.5.

10 **FIFTH CAUSE OF ACTION**

11 **WAITING TIME PENALTIES**

12 **(AGAINST ALL DEFENDANTS)**

13 41. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

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

20 43. Plaintiff is informed and believes, and based thereon alleges, that Defendants
21 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
22 at the time of their separation which includes, among other things, underpaid overtime and
23 minimum wages, and meal and rest period premium wages. Further, Plaintiff is informed and
24 believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants
25 continue to fail to pay members of the Waiting Time Class all earned wages at the end of
26 employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203.
27 Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

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1 44. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
2 Time Class their earned wages upon separation from employment results in a continued payment
3 of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and
4 members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203,
5 plus reasonable attorneys' fees and costs of suit.

6 **SIXTH CAUSE OF ACTION**

7 **UNPAID MINIMUM WAGE LINKED TO UNPAID OR UNDERPAID REST PERIODS**

8 **(AGAINST ALL DEFENDANTS)**

9 45. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

10 46. This cause of action is brought pursuant to Labor Code § 226.2, which effective
11 January 1, 2016, establishes compensation requirements for rest periods for piece-rate employees.
12 Specifically, Labor Code § 226.2(3)(A) requires piece rate employees be compensated for rest
13 periods at a regular hourly rate that is no less than the higher of: (i) An average hourly rate
14 determined by dividing the total compensation for the workweek, exclusive of compensation for
15 rest and recovery periods and any premium compensation for overtime, by the total hours worked
16 during the workweek, exclusive of rest and recovery periods; or (ii) The applicable minimum
17 wage.

18 47. At all relevant times herein, Defendants failed to conform their pay practices to
19 the requirements of the law. This unlawful conduct includes but is not limited to Defendants'
20 failure to pay Plaintiff and the Rest Period Class separately for rest periods, thereby causing
21 Plaintiff and the Rest Period Class to not be paid all required wages. Further, if Defendants
22 separately compensated Plaintiff and the Rest Period Class for rest periods, Defendants failed to
23 accurately calculate the rate at which Plaintiff and the Rest Period Class were entitled to be
24 compensated for such time pursuant to Labor Code § 226.2, thereby causing Plaintiff and the Rest
25 Period Class to be underpaid all required wages.

26 48. As a direct and proximate result of Defendants' unlawful conduct as alleged
27 herein, Plaintiff and the Rest Period Class have sustained economic damages, including but not
28 limited to unpaid or underpaid wages and lost interest, in an amount to be established at trial, and

1 they are entitled to recover economic and statutory damages and penalties and other appropriate
2 relief as a result of Defendants' violations of the California Labor Code.

3 **SEVENTH CAUSE OF ACTION**

4 **WAGE STATEMENT VIOLATIONS**

5 **(AGAINST ALL DEFENDANTS)**

6 49. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

7 50. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
9 and the Wage Statement Class with accurate and itemized wage statements that included, among
10 other requirements, all overtime and minimum wages as well as all meal and rest period premium
11 wages earned in violation of Labor Code § 226.

12 51. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class
13 with accurate and itemized wage statements resulted in actual injury, as said failures led to, among
14 other things, the non-payment of all their overtime and minimum wages, as well as their meal and
15 rest period premium wages, and deprived them of the information necessary to identify the
16 discrepancies in Defendants' reported data.

17 52. Defendants' failures create an entitlement to recovery by Plaintiff and members of
18 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
19 Code §§ 226, including statutory penalties, civil penalties, and reasonable attorneys' fees and
20 costs of suit according to Labor Code §§ 226 and 226.3.

21 **EIGHTH CAUSE OF ACTION**

22 **UNFAIR COMPETITION**

23 **(AGAINST ALL DEFENDANTS)**

24 53. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

25 54. Defendants have engaged and continue to engage in unfair and/or unlawful
26 business practices in California in violation of California Business and Professions Code § 17200
27 *et seq.* by, amongst other things: failing to provide Plaintiff and members of the Meal Period and
28 Rest Period Classes all required meal and rest periods or pay premium payments for non-

compliant meal and rest periods in violation of Labor Code §§ 226.7, 512 and 516; failing to pay Plaintiff and the members of the Overtime Class and Minimum Wage Classes all overtime and minimum wages for all hours worked in violation of Labor Code §§ 204, 510, 558, 1182.12, 1194, 1194.2 and 1198; failing to pay Plaintiff and members of the Waiting Time Class all earned wages at the time of their separation in violation of Labor Code §§ 201-203; and failing to issue accurate and complete wage statements to Plaintiff and members of the Wage Statement Class in violation of Labor Code § 226.

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

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

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

58. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' former and current non-exempt employees, and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which he is entitled to recover under Code of Civil Procedure § 1021.5.

NINTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

59. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

60. Defendants have committed several Labor Code violations against Plaintiff,

members of the Classes, and other aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.* (“PAGA”), acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof, pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation of Lab. Code § 226 pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- b. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum Wage Class, and other aggrieved employees in violation of Labor Code §§ 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- c. Failing to authorize and permit all legally required rest periods, and failure to pay rest period premium wages, to Plaintiff, the Rest Period Class, and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- d. Failing to provide all legally required meal periods, and failure to pay meal period premium wages, to Plaintiff, the Meal Period Class, and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.7,

512, 558 and 1198;

- e. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- f. Failing to timely pay all final wages to Plaintiff, the Waiting Time Penalty Class, and other aggrieved employee in violation of Labor Code §§ 201, 202, and 203;
- g. Failing to pay aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204;
- h. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code § 1174; and
- i. Failing to separately pay, or underpaying, Plaintiff and other aggrieved employees all wages due for rest periods in violation of Labor Code § 226.2.

61. On February 19, 2020, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified in Paragraph 56 (a)-(h). Now that sixty-five days have passed from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

62. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which he is entitled to receive under California Labor Code § 2699(g).

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1 **PRAYER**

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

- 4 1. For an order certifying the proposed Classes;
- 5 2. For an order appointing Plaintiff as representative of the Classes;
- 6 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 7 4. Upon the First Cause of Action, for compensatory, consequential, general and
8 special damages according to proof pursuant to Labor Code §§ 226.7, 512 and 558;
- 9 5. Upon the Second Cause of Action, for compensatory, consequential, general and
10 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
- 11 6. Upon the Third Cause of Action, for compensatory, consequential, general and
12 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 13 7. Upon the Fourth Cause of Action, for payment of minimum wages, liquidated
14 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2 and
15 1197;
- 16 8. Upon the Fifth Cause of Action, for statutory waiting time penalties pursuant to
17 Labor Code §§ 201-203;
- 18 9. Upon the Sixth Cause of Action, for payment of wages, liquidated damages, and
19 penalties according to proof pursuant to Labor Code § 226.2;
- 20 10. Upon the Seventh Cause of Action, for statutory penalties pursuant to Labor Code
21 § 226;
- 22 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
23 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
24 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et*
25 *seq.*;
- 26 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other
27 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
28 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for

each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code violations identified in Paragraph 56 (a)-(h);

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

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

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

Dated: May 15, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

By:



Paul K. Haines
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

Dated: May 15, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

By:



Paul K. Haines
Attorneys for Plaintiff

EXHIBIT 1

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiff Jose Jimenez, individually and on behalf of all members of the Settlement Class (defined below), on one hand, and Defendant Fenceworks, Inc. (hereinafter “Defendant”), on the other hand. Plaintiff and Defendant are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by Paul K. Haines, Sean M. Blakely, and Diana M. Martinez of Haines Law Group, APC (“Class Counsel”). Defendant is represented by Boris Sorsher and Bret Martin of Fisher & Phillips LLP.

On November 26, 2018, Plaintiff filed a Class Action Complaint against Defendant in Orange County Superior Court, in the matter entitled *Jose Jimenez v. Fenceworks, Inc.*, Case No. 30-2018-01034150-CU-OE-CXC (the “Action”). As part of this Settlement, the Parties agree for Plaintiff to serve a Private Attorneys General Act of 2004 (“PAGA”) letter to the Labor & Workforce Development Agency (“LWDA”), and have further agreed to stipulate to the filing of a First Amended Class and Representative Action Complaint (“FAC”), which will include a claim for failure to furnish accurate and itemized wage statements, and a claim for civil penalties under the PAGA.

The FAC alleges that Defendant: (i) failed to provide all meal periods in accordance with California law; (ii) failed to authorize and permit all rest periods in accordance with California law; (iii) failed to pay all overtime wages; (iv) failed to pay all minimum wages; (v) failed to pay all wages due upon separation of employment; and (vi) failed to furnish accurate and itemized wage statements. As a result of the foregoing violations, Plaintiff contends that Defendant is further liable to Plaintiff and the Settlement Class because it engaged in unlawful business practices. Plaintiff also alleges that Defendant is liable for civil penalties under the PAGA, California Labor Code § 2698 *et seq.*, as a result of the aforementioned alleged violations of the California Labor Code.

Given the uncertainty of litigation, Plaintiff and Defendant wish to settle both individually and on behalf of the Settlement Class. Accordingly, Plaintiff and Defendant agree as follows:

1. **Settlement Class.** For the purposes of this Settlement Agreement only, Plaintiff and Defendant stipulate to the certification of the following Settlement Class:

All current and former non-exempt field employees who are or were employed by Fenceworks, Inc. in the State of California during the time period of November 26, 2014 to March 16, 2020 (“Class Period”).

The Parties agree that certification for purposes of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

2. **Release by Settlement Class Members and Plaintiff.** Plaintiff and every member of the Settlement Class (except those who opt out) will fully release and discharge Defendant, and all of its present and former officers, directors, employees, shareholders, agents, trustees, representatives, attorneys, insurers, reinsurers, parent companies, subsidiaries, divisions, affiliates, predecessors, successors, as well as any individual or entity that could be jointly liable with Defendant (collectively the “Released Parties”), as follows:

- A. Settlement Class members will release all claims, causes of action, and legal theories alleged or which could have been alleged based on the facts in the operative First Amended Class and Representative Action Complaint (“FAC”), including: (a) failure to provide all meal periods, or premium pay for non-compliant meal periods; (b) failure to authorize and permit all rest periods, or premium pay for non-compliant rest periods; (c) failure to pay all overtime wages (including, but not limited to, any claims for wages owed based on “rounding” theories and separate pay owed for rest periods or other “non-productive” time; (d) failure to pay all minimum wages (including any wages owed due to piece rate pay, failure to pay for rest periods, or failure to pay for rest periods at the correct rate under Labor Code Section 226.2); (e) failure to timely pay all wages due or final wages due; (f) failure to furnish accurate and complete itemized wage statements; (g) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories of relief pled in the FAC; (h) all claims for civil penalties under the PAGA that were or could have been alleged based on the claims, causes of action or legal theories described above or on any of the claims, causes of action, or legal theories of relief pleaded in the FAC; and (i) all damages, penalties, interest, costs (including attorney’s fees), and other amounts recoverable under said claims or causes of action as to the facts and/or legal theories alleged or which could have been alleged in the FAC (collectively, the “Released Claims”). The period of the Release shall extend to the limits of the Class Period. The *res judicata* effect of the judgment will be the same as that of the Release.
- B. In light of his Class Representative Enhancement Payment, Plaintiff has agreed to release, in addition to the Released Claims described above, all claims, whether known or unknown, under federal law or state law against the Released Parties. Plaintiff understands that this release includes unknown claims and that he is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

However, to the extent that Plaintiff has claims that cannot be released as a matter of law (i.e., workers’ compensation claims), then those claims will not be released.

3. **Gross Settlement Amount.** As consideration, Defendant agrees to pay a “Gross Settlement Amount” of Eight Hundred Ninety-Five Thousand Dollars and Zero Cents (\$895,000.00) in full and complete settlement of the Action, as follows:
- A. The Parties have agreed to engage Phoenix Settlement Administrators as the “Settlement Administrator” to administer this Settlement.
 - B. The Gross Settlement Amount shall be deposited with the Settlement Administrator within fifteen (15) calendar days of the Court entering an order granting final approval, or, solely in the event that there are any objections to the settlement (the filing of an objection being a prerequisite to the filing of an appeal), the later of: (i) the last date on which any appeal might be filed; or (ii) the successful resolution of any appeal(s) – including expiration of any time to seek reconsideration or further review.
 - C. This is a non-reversionary settlement. The Gross Settlement Amount includes:
 - (1) All payments (including interest) to the Settlement Class;
 - (2) All costs of the Settlement Administrator and settlement administration, which are anticipated to be no greater than Fifteen Thousand Dollars and Zero Cents (\$15,000.00);
 - (3) Up to Five Thousand Dollars and Zero Cents (\$5,000.00) for Plaintiff’s Class Representative Enhancement Payment in recognition of his contributions to the Action and his service to the Settlement Class. If Plaintiff’s request for his enhancement payment is not approved and/or reduced by the Court, any amount not approved and/or reduced by the Court will revert to the participating Settlement Class members;
 - (4) Up to one-third of the Gross Settlement Amount in Class Counsel’s attorneys’ fees, plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than Twenty Thousand Dollars and Zero Cents (\$20,000.00). If Class Counsel’s request for attorneys’ fees and/or reimbursement of litigation costs is not approved and reduced by the Court, any amount not approved and/or reduced by the Court will revert to the participating Settlement Class members; and
 - (5) Thirty Thousand Dollars (\$30,000.00) of the Gross Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or Twenty-Two Thousand Five Hundred Dollars (\$22,500.00) will be payable to the Labor & Workforce Development Agency (“LWDA”), and the remaining twenty-five percent (25%), or Seven Thousand Five Hundred Dollars (\$7,500.00) will be payable to the Settlement Class as the “PAGA Amount.”

- D. Defendant's share of payroll taxes shall be paid by Defendant separately from, and in addition to, the Gross Settlement Amount.
 - E. **Escalator Clause.** Defendant represents that there are approximately 55,086 workweeks worked by Settlement Class members during the Class Period. If the number of workweeks worked by Settlement Class members during the Class Period is more than 10% greater than this figure (i.e., if there are 60,595 or more workweeks worked by Settlement Class members), Defendant agrees to increase the Gross Settlement Amount on a proportional basis over the 10% increase (i.e., if there was a 12% increase in the number of workweeks worked by Settlement Class members, Defendant would agree to increase the Gross Settlement Amount by 2%).
4. **Payments to the Settlement Class.** Settlement Class members are not required to submit a claim form to receive a payment ("Settlement Award") from the Settlement. Settlement Awards will be determined and paid as follows:
- A. The Settlement Administrator shall first deduct from the Gross Settlement Amount the amounts approved by the Court for Class Counsel's attorneys' fees, Class Counsel's costs and expenses, Plaintiff's Class Representative enhancement payment, the LWDA's share of the PAGA payment, and the Settlement Administrator's fees and expenses for administration. The remaining amount shall be known as the "Net Settlement Amount."
 - B. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class member's Settlement Award based on the following formula:
 - i. Payments to all participating Settlement Class members: Eighty-Five percent (85%) of the Net Settlement Amount will be distributed to all participating Settlement Class members based on each participating Settlement Class member's proportionate Workweeks worked during the Class Period, and will be calculated by multiplying 85% of the Net Settlement Amount by a fraction, the numerator of which is the participating Settlement Class member's number of Workweeks worked during the Class Period, and the denominator of which is the total Workweeks worked by all participating Settlement Class members during the Class Period.
 - ii. Waiting Time Amount: Ten Percent (10%) of the Net Settlement Amount shall be designated as the "Waiting Time Amount." Each participating Settlement Class member whose employment with Defendant ended at any time from November 26, 2015 to March 16, 2020, shall receive an equal, pro-rata share of the Waiting Time Amount. In other words, the Waiting Time Amount will be divided equally among all participating Settlement Class members whose employment with Defendant ended at any time from November 26, 2015 to March 16, 2020.
 - iii. Wage Statement Amount: Five percent (5%) of the Net Settlement Amount shall be designated as the "Wage Statement Amount." Each participating

Settlement Class member who was employed by Defendant at any time from November 26, 2017 to March 16, 2020 shall receive a portion of the Wage Statement Amount proportionate to the number of Workweeks that he or she worked during the period from November 26, 2017 to March 16, 2020, and which will be calculated by multiplying 5% of the Net Settlement Amount by a fraction, the numerator of which is the participating Settlement Class member's number of Workweeks worked from November 26, 2017 to March 16, 2020, and the denominator of which is the total number of Workweeks worked by all participating Settlement Class members during the time period from November 26, 2017 to March 16, 2020.

- iv. PAGA Amount: Each participating Settlement Class member who was employed by Defendant at any time from February 19, 2019 to March 16, 2020 shall receive a portion of the Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) of the Gross Settlement Amount that has been designated as the "PAGA Amount" proportionate to the number of Workweeks that he or she worked during the period from February 19, 2019 to March 16, 2020, and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the participating Settlement Class member's number of Workweeks worked from February 19, 2019 to March 16, 2020, and the denominator of which is the total number of Workweeks worked by all participating Settlement Class members from February 19, 2019 to March 16, 2020.

- C. Within ten (10) calendar days following Defendant's deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate Settlement Award amounts and provide the same to counsel for review and approval. Within seven (7) calendar days of approval by counsel, the Settlement Administrator will prepare and mail Settlement Awards, less applicable taxes and withholdings, to participating Settlement Class members. The Settlement Administrator shall simultaneously pay the withholdings to the applicable authorities with the necessary reports, submitting copies to Defendant's counsel.
- D. For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: 80% as penalties and interest; and 20% as wages. The Settlement Administrator will be responsible for issuing to participating Settlement Class members IRS Forms W-2 for amounts deemed "wages" and IRS Forms 1099 for the amounts allocated as penalties and interest. Notwithstanding the treatment of the payments to each Settlement Class member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans.
- E. CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE

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

- F. Each Settlement Class member who receives a Settlement Award must cash that check within 180 days from the date the Settlement Administrator mails it. Any funds payable to Settlement Class members whose checks were not cashed within 180 days after mailing will escheat to the State Controller to be deposited in the Unclaimed Property Fund for the benefit of the Settlement Class member whose check was not cashed.
- G. Neither Plaintiff nor Defendant shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.
- H. The amounts paid under this Agreement do not represent a modification of any previously credited hours of service under any employee benefit plan, policy or bonus program sponsored by Defendant. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under, benefit plans (self-insured or not) sponsored by Defendant, policies or bonus programs. Any payments made under the terms of this Agreement shall not be applied retroactively, currently or on a going forward basis as salary, earnings, wages, or any other form of compensation for the purposes of Defendant's benefit plan, policy or bonus program. Defendant retains the right to modify the language

of its benefit plans, policies and bonus programs to effect this intent and to make clear that any amounts paid pursuant to this Agreement are not for “hours worked,” “hours paid,” “hours of service,” or any similar measuring term as defined by applicable plans, policies and bonus programs for purpose of eligibility, vesting, benefit accrual or any other purpose, and that additional contributions or benefits are not required by this Agreement.

5. **Attorneys’ Fees and Costs.** Defendant will not object to Class Counsel’s request for a total award of attorneys’ fees of one-third of the Gross Settlement Amount, which is currently estimated to be Two Hundred Ninety-Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$298,333.33). Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00), from the Gross Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court’s approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when the Settlement Administrator pays the fee award allowed by the Court.

6. **Class Representative Enhancement Payment.** Defendant will not object to a request for a Class Representative Enhancement Payment of up to Five Thousand Dollars and Zero Cents (\$5,000.00) to Plaintiff for his time and risk in prosecuting this case, and his service to the Settlement Class. This payment will be in addition to Plaintiff’s Settlement Award as a Settlement Class member and shall be reported on an IRS Form 1099 issued by the Settlement Administrator.

7. **Settlement Administrator.** Defendant will not object to the appointment of Phoenix Settlement Administrators as Settlement Administrator. Defendant will not object to Plaintiff seeking permission to pay up to Fifteen Thousand Dollars and Zero Cents (\$15,000.00) for its services from the Gross Settlement Amount. The Settlement Administrator shall be responsible for sending notices and for calculating Settlement Awards and preparing all checks and mailings, calculating Defendant’s share of taxes payable on the wages, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Gross Settlement Amount by Class Counsel only after Settlement Awards have been mailed to all participating Settlement Class members.

8. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiff shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;
- B. Appointing Paul K. Haines, Sean M. Blakely, and Diana M. Martinez of Haines Law Group, APC as Class Counsel;
- C. Appointing Jose Jimenez as Class Representative for the Settlement Class;
- D. Approving Phoenix Settlement Administrators, as Settlement Administrator;

- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
 - F. Approving the form and content of the Notice Packet (which is comprised of the Class Notice, Request for Exclusion Form, and Notice of Estimated Settlement Award), and directing the mailing of same; and
 - G. Scheduling a Final Approval hearing.
9. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class shall be notified as follows:
- A. Within twenty (20) business days after entry of an order preliminarily approving this Agreement, Defendant will provide the Settlement Administrator with the names, last known addresses, phone numbers, social security numbers, the dates of employment and the number of Workweeks worked by each Settlement Class member while employed during the Class Period (the “Class Data”). The Class Data shall be provided to the Settlement Administrator in an electronic format satisfactory to the Settlement Administrator.
 - B. Within ten (10) business days from receipt of this information, the Settlement Administrator shall (i) run the names of all Settlement Class members through the National Change of Address (“NCOA”) database to determine any updated addresses for Settlement Class members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Settlement Award for each Settlement Class member; and (iv) mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
 - C. Requests for Exclusion. Any Settlement Class member who wishes to opt-out of the settlement must complete and mail a Request for Exclusion Form (defined below) to the Settlement Administrator within sixty (60) calendar days of the date of the initial mailing of the Notice Packets (the “Response Deadline”).
 - i. The Notice Packet shall state that a Settlement Class member who wishes to exclude themselves from the Settlement must submit a Request for Exclusion Form by the Response Deadline. The Request for Exclusion Form must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion Form does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement, except a Request for Exclusion Form not containing a Class Member’s telephone number and/or last four digits of the

Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion Form shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon.

- D. Objections. Settlement Class members who do not request exclusion may object to this Settlement Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendant's counsel, as well as file all such objections with the Court). Defendant's counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval, unless the objections are filed within ten (10) days of the Motion for Final Approval filing deadline, in which case Defendant's counsel and Class Counsel shall have ten (10) days to file a response to the objections. To be valid, any objection must: (1) contain the objecting Settlement Class member's full name and current address, as well as contact information for any attorney representing the objecting Settlement Class member for purposes of the objection; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) be postmarked no later than the Response Deadline.
- E. Notice of Estimated Settlement Award / Disputes. Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Settlement Class member's estimated Settlement Award as well as all of the information that was used from Defendant's records in order to calculate the Settlement Award, including the Settlement Class member's number of Workweeks worked during the Class Period, whether the Settlement Class member's employment with Defendant ended during the time period of November 26, 2015 to March 16, 2020, the number of workweeks worked from November 26, 2017 to March 16, 2020, and the number of Workweeks worked during the time period of February 19, 2019 and March 16, 2020. Settlement Class members will have the opportunity, should they disagree with Defendant's records regarding the information stated in the Notice of Estimated Settlement Award, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Settlement Awards under the terms of this Settlement Agreement. The Settlement Administrator's determination of the eligibility for and amount of any Settlement Award shall be binding upon the Settlement Class member and the Parties.

- F. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a “skip trace,” to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within three (3) business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. It will be conclusively presumed that, if an envelope so mailed has not been returned within thirty (30) days of the mailing, the Settlement Class member received the Notice Packet. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to submit a Request for Exclusion, Objection, or dispute. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline. If a Settlement Class member’s Notice Packet is returned to the Settlement Administrator more than once as non-deliverable, then an additional Notice Packet shall not be mailed. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Defendant’s Counsel to provide notice of the proposed settlement.
- G. Right to Revoke: If 10% or more of the Settlement Class members exercise their rights to exclude themselves and opt-out of the Settlement, Defendant may, in its sole discretion, unilaterally withdraw from and terminate the Settlement by providing written notice to Class Counsel no later than five (5) court days prior to the date of the Final Approval hearing. In the event of Defendant’s withdrawal, then Defendant shall be solely responsible for all costs of the Settlement Administrator accrued to that point, and no party may use the fact that the Parties agreed to the Settlement for any reason.

10. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiff’s and Class Counsel’s application for attorneys’ fees and costs, Class Representative enhancement payment, LWDA payment, and settlement administration costs; and
- C. Entering judgment pursuant to California Rule of Court 3.769.

11. Non-Admission of Liability.

A. Defendant denies liability to Named Plaintiff and to the Class upon any claim or cause of action. This Agreement does not constitute, and is not intended to constitute, an admission by Defendant as to the merits, validity, or accuracy of any of the allegations or claims made against it in the Action.

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

C. None of the documents produced or created by Named Plaintiff or the Class in connection with the claims procedures or claims resolution procedures constitute, and they are not intended to constitute, an admission by Defendant of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.

D. Nothing in this Agreement will be construed as an admission or acknowledgement of any kind that any group should or would be given collective treatment in the Action or in any other action or proceeding. Further, neither this Agreement nor the Court's actions with regard to this Agreement will be admissible in any court or other tribunal regarding the propriety of collective treatment. In the event that this Agreement is not approved by the Judge or any appellate court, is terminated, or otherwise fails to be enforceable, Named Plaintiff will not be deemed to have waived, limited or affected in any way any claims, rights or remedies in the Action, and Defendant will not be deemed to have waived, limited, or affected in any way any of their objections or defenses in the Action.

12. Non-disclosure and Non-publication. Plaintiff and Class Counsel agree that they have not and will not publish the Settlement Agreement, except to Settlement Class members and as shall be contractually required to effectuate the terms of the Settlement Agreement as set forth herein. In response to any inquiries Plaintiff will state that "the case was resolved and it was resolved confidentially." Class Counsel shall not report the Settlement Agreement in any medium or in any publication, shall not post or report anything regarding the claims of Plaintiff, the Settlement Class, or the Settlement on their website, and shall not contact any reporters or media regarding the Settlement. However, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions, Class Counsel may disclose the names of the Parties in

this Action, the venue/case number of this Action, and a general description of the Action, to a court in a declaration by Class Counsel.

13. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

14. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Defendant: Boris Sorsher, Fisher & Phillips LLP, 2050 Main St., Suite 1000,
Irvine, CA 92614; bsorsher@laborlawyers.com.

if to Plaintiff: Paul K. Haines, Haines Law Group, APC, 222 N. Sepulveda Blvd.,
Suite 1550, El Segundo, California 90245;
phaines@haineslawgroup.com.

15. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

16. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

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

DATED: March 13, 2020

Fenceworks, Inc.

By: Mel J. Kay

DATED: 03/03/2020

Jose Jimenez

By: Jose Jimenez
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED: MAR. 13, 2020

FISHER & PHILLIPS LLP

By: 
Boris Sorsher
Bret Martin
Attorneys for Defendant

DATED: March 5, 2020

HAINES LAW GROUP, APC

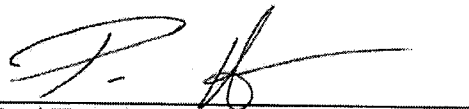
By: 
Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff

EXHIBIT 2

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

JOSE JIMENEZ, as an individual and on behalf of all
others similarly situated,

Plaintiff,

vs.

FENCEWORKS, INC., A California Corporation; and
DOES 1 through 100,

Defendants.

Case No. 30-2018-01034150-CU-OE-CXC

**NOTICE OF PENDENCY OF CLASS
ACTION AND PROPOSED SETTLEMENT**

To: All current and former non-exempt field employees who are or were employed by Fenceworks, Inc. in the State of California during the time period of November 26, 2014 to March 16, 2020 ("Class Period").

**PLEASE READ CAREFULLY
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

Why should you read this Notice?

The Court has granted preliminary approval of a proposed settlement (the "Settlement") in the matter of *Jose Jimenez v. Fenceworks, Inc.*, Orange County Superior Court Case No. 30-2018-01034150-CU-OE-CXC (the "Action"). Because your rights may be affected by the Settlement, it is important that you read this Notice carefully.

You may be entitled to money from this Settlement. Fenceworks, Inc.'s ("Fenceworks") records show that you were employed at Fenceworks as a non-exempt field employee in California between November 26, 2014 and March 16, 2020 (the "Class Period"). The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this Notice is to provide you with a brief description of the Action, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound to the terms of the Settlement and any final judgment.

What is this case about?

Plaintiff Jose Jimenez ("Plaintiff") brought this Action against Fenceworks on a class and representative action basis on behalf of a class of non-exempt field employees within the State of California who are or were employed by Fenceworks in the State of California from November 26, 2014, through March 16, 2020. Plaintiff is known as the "Class Representative," and his attorneys, who also represent the interests of all Settlement Class members, are known as "Class Counsel."

Plaintiff alleges that Fenceworks failed to provide Settlement Class members with all legally-compliant meal periods, failed to authorize and permit all legally-compliant rest periods, failed to pay Settlement Class members all overtime wages, failed to compensate at the minimum wage for all hours worked, failed to timely pay all wages owed upon separation of employment, failed to furnish accurate and itemized wage statements to Settlement Class members, and as a result of the foregoing alleged violations, is liable for civil penalties under the Labor Code Private Attorneys General Act ("PAGA"). Specifically, Plaintiff alleges that Settlement Class members were occasionally paid on a piece-rate basis whereby Settlement Class members were paid a piece-rate for each hole, foot, post or gate installed and/or completed. Plaintiff alleges that Fenceworks piece-rate compensation system failed to separately compensate Settlement Class members for all rest periods and failed to pay all "non-productive time," or underpaid Settlement Class members for such time.

Fenceworks denies that it has done anything wrong. Fenceworks also denies that it owes Settlement Class members any wages, restitution, penalties, damages, or other amounts. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Fenceworks, by whom all liability is expressly denied.

The Court has not ruled on the merits of Plaintiff's claims. However, to avoid additional expense, inconvenience, and interference with its business operations, Fenceworks has concluded that it is in its best interests to settle the Action on the terms summarized in this Notice. After Fenceworks provided relevant information to Class Counsel, the Settlement was reached after mediation and arm's length negotiations between the parties.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Fenceworks, the risk of denial of class certification, the inherent risk of trial on the merits, and the delays and uncertainties associated with ongoing litigation.

If you are still employed by Fenceworks, your decision about whether to participate in the Settlement will not affect your employment. California law and Fenceworks' policy strictly prohibit unlawful retaliation. Fenceworks will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class member because of his/her decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for Plaintiff/Settlement Class: HAINES LAW GROUP, APC Paul K. Haines phaines@haineslawgroup.com Sean M. Blakely sblakely@haineslawgroup.com Diana M. Martinez dmartinez@haineslawgroup.com 222 N. Sepulveda Blvd., Suite 1550 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 haineslawgroup.com	Attorneys for Fenceworks: FISHER & PHILLIPS LLP Boris Sorsher bsorsher@laborlawyers.com Bret Martin bmartin@fisherphillips.com 2050 Main St., Suite 1000 Irvine, California 92614 Tel: (949) 851-2424 Fax: (949) 851-0152 www.fisherphillips.com
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What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court preliminarily certified a class, for settlement purposes only, of all current and former non-exempt field employees who are or were employed by Fenceworks in the State of California from November 26, 2014, through March 16, 2020. Settlement Class members who do not opt out of the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Fenceworks as described below.

Fenceworks has agreed to pay \$895,000.00 (the "Gross Settlement Amount") to fully resolve all claims in the Action, including payments to Settlement Class members, Class Counsel's attorneys' fees and expenses, settlement administration costs, payment to the Labor & Workforce Development Agency ("LWDA"), and the Class Representative enhancement payment.

The following deductions from the Gross Settlement Amount will be requested by the parties:

Attorneys' Fees and Expenses. Class Counsel have been prosecuting the Action on behalf of Settlement Class members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys'

fees, which will be paid from the Gross Settlement Amount. Settlement Class members are not personally responsible for any of Class Counsel's attorneys' fees or expenses. Class Counsel will ask for up to one-third of the Gross Settlement Amount, which is currently estimated at \$298,333.33, as reasonable compensation for the work Class Counsel performed and will continue to perform in this Action through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$20,000.00 in verified costs incurred in connection with the Action.

Settlement Administration Costs. The Court has approved Phoenix Settlement Administrators to act as the "Settlement Administrator," who is sending this Notice to you and will perform many other duties relating to the Settlement. The Parties request setting aside up to \$15,000.00 from the Gross Settlement Amount to pay the settlement administration costs.

Class Representative Enhancement Payment. Class Counsel will ask the Court to award the Class Representative an enhancement payment in the amount of \$5,000.00 to compensate him for his service and extra work provided on behalf of the Settlement Class.

PAGA Payment to State of California. The parties have agreed to allocate \$30,000.00 towards the Settlement of the PAGA claims in the Action. \$22,500.00 will be paid to the State of California Labor & Workforce Development Agency, representing its 75% share of the civil penalties. The remaining \$7,500.00 will be allocated to Settlement Class members as described below.

Calculation of Individual Settlement Class Members' Settlement Awards. After deducting the Court-approved amounts above, the balance of the Gross Settlement Amount will form the Net Settlement Amount, which will be distributed to all Settlement Class members who do not submit a valid and timely Request for Exclusion from the Settlement. The Net Settlement Amount is estimated at approximately \$526,666.67, and will be divided as follows:

- (i) 85% of the Net Settlement Amount will be allocated to all participating Settlement Class members in proportion to the number of workweeks that he or she worked during the Class Period.
- (ii) 10% of the Net Settlement Amount shall be designated as the "Waiting Time Amount" and will be allocated in equal amounts to all participating Settlement Class members whose employment with Fenceworks ended at any time between November 26, 2015 through March 16, 2020.
- (iii) 5% of the Net Settlement Amount shall be designated as the "Wage Statement Amount." Each participating Settlement Class member who was employed by Fenceworks at any time from November 26, 2017 to March 16, 2020 shall receive a portion of the Wage Statement Amount proportionate to the number of workweeks that he or she worked during the time period of November 26, 2017 to March 16, 2020.
- (iv) \$7,500.00 of the Gross Settlement Amount has been designated as the "PAGA Amount." Each participating Settlement Class member who was employed by Fenceworks at any time from February 19, 2019 to March 16, 2020 shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked during the time period of February 19, 2019 to March 16, 2020.

Payments to Settlement Class members. If the Court grants final approval of the Settlement, individual Settlement Awards will be mailed to all Settlement Class members who did not submit a valid and timely Request for Exclusion from the Settlement. Settlement checks will be valid for 180 days. Any checks that were not cashed within 180 days will escheat to the California State Controller Unclaimed Property Fund in the name of the Settlement Class member.

Allocation and Taxes. For tax purposes, each Settlement Award shall be treated as follows: 20% as "wages," for which an IRS Form W-2 will be issued; and 80% as "penalties" and "interest" for which an IRS Form 1099 will be issued. Settlement Class members are responsible for the proper income tax treatment of the individual Settlement Awards. The Settlement Administrator, Fenceworks and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court approves the Settlement, Plaintiff and every member of the Settlement Class (except those who opt out) will fully release and discharge Defendant, and all of its present and former officers, directors, employees, shareholders, agents, trustees, representatives, attorneys, insurers, reinsurers, parent companies, subsidiaries, divisions, affiliates, predecessors, successors, as well as any individual or entity that could be jointly liable with Fenceworks from all claims, causes of action, and legal theories alleged or which could have been alleged based on the facts in the operative First Amended Class and Representative Action Complaint (“FAC”), including:: (a) failure to provide all meal periods, or premium pay for non-compliant meal periods; (b) failure to authorize and permit all rest periods, or premium pay for non-compliant rest periods; (c) failure to pay all overtime wages (including, but not limited to, any claims for wages owed based on “rounding” theories and separate pay owed for rest periods or other “non-productive” time; (d) failure to pay all minimum wages (including any wages owed due to piece rate pay, failure to pay for rest periods, or failure to pay for rest periods at the correct rate under Labor Code Section 226.2); (e) failure to timely pay all wages due or final wages due; (f) failure to furnish accurate and complete itemized wage statements; (g) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories of relief pled in the FAC; (h) all claims for civil penalties under the PAGA that were or could have been alleged based on the claims, causes of action or legal theories described above or on any of the claims, causes of action, or legal theories of relief pleaded in the FAC; and (i) all damages, penalties, interest, costs (including attorney’s fees), and other amounts recoverable under said claims or causes of action as to the facts and/or legal theories alleged or which could have been alleged in the FAC (collectively, the “Released Claims”). The period of the Release shall extend to the limits of the Class Period. The *res judicata* effect of the judgment will be the same as that of the Release.

Conditions of Settlement. The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate, and in the best interests of the Settlement Class, and the entry of a Judgment.

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your share of the Settlement based on the proportionate number of workweeks you worked during the Class Period, whether you have separated employment from Fenceworks between November 26, 2015 and March 16, 2020, the proportionate number of workweeks you worked between November 26, 2017 and March 16, 2020, and the proportionate number of workweeks you worked between February 19, 2019 and March 16, 2020, as stated in the accompanying Notice of Estimated Settlement Award. You also will be bound by the Settlement, including the release of claims stated above.

What other options do I have?

Dispute Information in Notice of Estimated Settlement Award. Your award is based on the proportionate number of workweeks you worked during the Class Period, whether you have separated employment from Fenceworks between November 26, 2015 and March 16, 2020, the proportionate number of workweeks you worked between November 26, 2017 and March 16, 2020, and the proportionate number of workweeks you worked between February 19, 2019 and March 16, 2020. The information contained in Fenceworks’ records regarding each of these factors, along with your estimated Settlement Award, is listed on the accompanying Notice of Estimated Settlement Award. If you disagree with the information in your Notice of Estimated Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Estimated Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than **<<RESPONSE DEADLINE>>**. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class members. The Settlement Administrator’s decision regarding any dispute will be final.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator an executed Request for Exclusion Form no later than **<<RESPONSE**

DEADLINE>>, with your name, address, telephone number, last four digits of your social security number, and your signature. A Request for Exclusion Form is included with this Notice.

Send the Request for Exclusion Form directly to the Settlement Administrator at **<<INSERT ADMINISTRATOR CONTACT INFO>>**. Any person who submits a timely Request for Exclusion Form shall, upon receipt by the Settlement Administrator, no longer be a Settlement Class member, shall be barred from participating in any portion of the Settlement, and shall receive no benefits from the Settlement. **Do not submit both a Dispute and a Request for Exclusion.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you may mail a written objection to the Settlement Administrator at **<<INSERT ADMINISTRATOR CONTACT INFO>>**. All objections and correspondence must be sent directly to the Settlement Administrator, please do not send objections or correspondence to the Court. Any objections will be provided to the Court by Plaintiff in connection with the Final Approval Hearing. Your written objection must include your name, address, as well as contact information for any attorney representing you regarding your objection, the case name and number, each specific reason in support of your objection, and any legal or factual support for each objection together with any evidence in support of your objection. Objections must be in writing and must be postmarked on or before **<<RESPONSE DEADLINE>>**.

You may also appear at the Final Approval Hearing scheduled for **<<FINAL APPROVAL HEARING DATE/TIME>>** in Department CX104 of the Orange County Superior Court, located at 751 West Santa Ana Boulevard, Santa Ana, California 92701. You have the right to appear either in person or through your own attorney at this hearing. All objections or other correspondence must state the name and number of the case, which is *Jose Jimenez v. Fenceworks, Inc.*, Orange County Superior Court Case No. 30-2018-01034150-CU-OE-CXC.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class members who do not object.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on **<<FINAL APPROVAL HEARING DATE/TIME>>**, in Department CX104 of the Orange County Superior Court, located at 751 West Santa Ana Boulevard, Santa Ana, California 92701. The Court will also be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses, and the Class Representative enhancement payment. The Final Approval Hearing may be postponed without further notice to Settlement Class members. **You are not required to attend the Final Approval Hearing, although any Settlement Class member is welcome to attend the hearing.**

How can I get additional information?

This Notice is only a summary of the Action and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the Orange County Superior Court, located at 751 West Santa Ana Boulevard, Santa Ana, California 92701, during regular court hours. You may also visit the Orange County Superior Court website at www.occourts.org to inspect the Court's files by going to the "Online Case Access" tab, selecting "Civil Case & Document Access," and entering the case number information. You may also contact Class Counsel using the contact information listed above for more information.

PLEASE DO NOT CALL OR WRITE TO THE COURT, FENCEWORKS, OR ITS ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is **<<RESPONSE DEADLINE>>**. These deadlines will be strictly enforced.

EXHIBIT 3

REQUEST FOR EXCLUSION FORM

Jose Jimenez v. Fenceworks, Inc.
Orange County Superior Court
Case No.: 30-2018-01034150-CU-OE-CXC

IF YOU **DO NOT** WISH TO BE PART OF THE CLASS ACTION SETTLEMENT, YOU MUST **COMPLETE**, **SIGN** AND **MAIL** THIS FORM, POSTMARKED ON OR BEFORE **[INSERT DATE]**, ADDRESSED AS FOLLOWS:

PHOENIX SETTLEMENT ADMINISTRATORS
JOSE JIMENEZ V. FENCEWORKS, INC.
SETTLEMENT ADMINISTRATOR

ADDRESS
ADDRESS
PHONE
FAX

DO NOT SUBMIT THIS FORM IF YOU WISH TO RECEIVE A PAYMENT UNDER THE SETTLEMENT.

By signing, filling out, and returning this form, I confirm that I **do not** want to be included in the Settlement of the lawsuit entitled *Jose Jimenez v. Fenceworks, Inc.*, Orange County Superior Court Case No. 30-2018-01034150-CU-OE-CXC.

I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *JOSE JIMENEZ V. FENCEWORKS, INC.* LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.

Name

Telephone Number

Address

Date

Signature

Last Four Digits of Social Security Number: ____ ____ ____ ____

EXHIBIT 4

NOTICE OF ESTIMATED SETTLEMENT AWARD

JOSE JIMENEZ V. FENCEWORKS, INC.
ORANGE COUNTY SUPERIOR COURT CASE NO. 30-2018-01034150-CU-OE-CXC

Please complete and return this Form to **<<ADMINISTRATOR CONTACT INFO>>** **ONLY IF** (1) your personal contact information has changed, and/or (2) you wish to dispute any of the items listed in Section (III), below. It is your responsibility to keep a current address on file with the Settlement Administrator.

(I) Please type or print your name:

(First, Middle, Last)

(II) Please type or print the following identifying information if your contact information has changed:

Former Names (if any)

New Street Address

City

State

Zip Code

(III) Information Used to Calculate Your Settlement Award:

According to Fenceworks, Inc.'s ("Fenceworks") records:

- (a) you worked for Fenceworks in California from _____ to _____;
- (b) you worked _____ Workweeks between November 26, 2014, and March 16, 2020 for Fenceworks;
- (c) you worked _____ Workweeks between November 26, 2017 and March 16, 2020 for Fenceworks;
- (d) you worked _____ Workweeks between February 19, 2019 and March 16, 2020 for Fenceworks, and
- (e) your employment with Fenceworks **<<DID/DID NOT>>** end between November 26, 2015 and March 16, 2020.

Based on the above, your Settlement Award is estimated at \$ _____.

(IV) If you disagree with items (a), (b), (c), (d), and/or (e) in Section (III) above, please explain why in the space provided below and include copies of any supporting evidence or documentation with this Form:

If you dispute the above information from Fenceworks' records, Fenceworks' records will control unless you are able to provide documentation that establishes otherwise and that Fenceworks' records are mistaken. If there is a dispute about whether Fenceworks' information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved by the Parties and the Settlement Administrator as described in the "Notice of Pendency of Class Action and Proposed Settlement" that accompanies this Form.

**ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE POSTMARKED
NO LATER THAN **<<RESPONSE DEADLINE>>**.**

EXHIBIT 5

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Sean M. Blakely (SBN 264384)
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El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

JOSE JIMENEZ, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

FENCEWORKS, INC., a California corporation;
and DOES 1 through 100,

Defendants.

Case No.: 30-2018-01034150-CU-OE-CXC

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

- (1) **MEAL PERIOD VIOLATIONS**
(LABOR CODE §§ 226.7, 512, 558);
- (2) **REST PERIOD VIOLATIONS**
(LABOR CODE §§ 226.7, 516, 558);
- (3) **FAILURE TO PAY ALL OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, 1198);**
- (4) **MINIMUM WAGE VIOLATIONS**
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197);
- (5) **WAITING TIME PENALTIES**
(LABOR CODE §§ 201-203);
- (6) **UNPAID OR UNDERPAID REST
PERIOD TIME (LABOR CODE
§ 226.2)**
- (7) **WAGE STATEMENT VIOLATIONS**
(LABOR CODE § 226)
- (8) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); and**
- (9) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE §§ 2698, *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Jose Jimenez (“Plaintiff”) on behalf of himself and all others similarly situated,
2 hereby brings this First Amended Class and Representative Action Complaint (“Complaint”)
3 against Fenceworks, Inc., a California corporation, and DOES 1 to 100, inclusive (collectively
4 “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 Complaint for recovery of unpaid wages and penalties under California Business and Professions
8 Code § 17200 *et. seq.*, Labor Code §§ 201-203, 204, 210, 226, 226.2, 226.7, 510, 512, 516, 558,
9 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.*, and Industrial Welfare Commission Wage Order
10 16 (“Wage Order 16”), in addition to seeking declaratory relief and restitution. This Complaint
11 is brought pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over
12 Defendants’ violations of the California Labor Code because the amount in controversy exceeds
13 this Court’s jurisdictional minimum.

14 **VENUE**

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

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was and currently is, a California resident. During the four years immediately preceding
23 the filing of the Complaint in this action and within the statute of limitations periods applicable
24 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
25 employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of
26 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
27 §§ 201-203, 204, 210, 226, 226.2, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198,
28 2698 *et seq.*, California Business and Professions Code § 17200 *et seq.* (“Unfair Competition

Law”), and Wage Order 16, which sets employment standards for the construction industry.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to do) business by selling and installing fencing with eight locations in California, including Riverside, Anaheim, Palmdale, Santa Paula, Bakersfield, Sacramento, Fresno and Manteca. Defendants employed Plaintiff and other similarly-situated non-exempt employees within the County of Orange and State of California and, therefore, were (and are) doing business in the County of Orange and the State of California. At all relevant times, Plaintiff worked out of Defendants’ Anaheim, California facility.

5. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and based thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Classes (as defined in Paragraph 17) to be subject to the unlawful employment practices, wrongs, injuries and damages complained of herein.

6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

7. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

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

1 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
2 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
3 members of the Classes.

4 **GENERAL FACTUAL ALLEGATIONS**

5 9. Plaintiff was hired by Defendants as a non-exempt employee on or about August
6 13, 2013 and continued to work for Defendants until April 5, 2016, when he took an approved
7 medical leave of absence. Plaintiff worked as a “Fence Installer” out of Defendants’ Anaheim,
8 California location. Plaintiff’s job duties primarily consisted of driving to and from work sites
9 and installing/removing fencing. Upon information and belief, Plaintiff’s employment with
10 Defendants was terminated during Plaintiff’s medical leave.

11 10. During Plaintiff’s employment with Defendants, Plaintiff was regularly scheduled
12 to work from 6:00 a.m. to 2:00 p.m. or later, and Plaintiff also occasionally also worked on
13 weekends. Plaintiff clocked in and out at the beginning and end of his work shifts at Defendants’
14 Anaheim location, however, Plaintiff was not required to clock in and out for meal periods, which
15 were scheduled by his supervisor. As a result of Defendants’ unlawful meal period
16 policies/practices, Plaintiff was not often provided a timely 30-minute meal period commencing
17 before the conclusion of the fifth hour of work. Furthermore, when Plaintiff worked shifts over
18 10.0 hours, Plaintiff was not provided a second uninterrupted 30-minute meal period due to
19 Defendants’ unlawful meal period policies/practices which failed to provide a second meal period
20 during shifts in excess of 10.0 hours. On those occasions when Plaintiff was not provided with
21 all legally-compliant meal periods to which he was entitled, Defendants failed to compensate
22 Plaintiff with the required meal period premium(s) for each workday there was a meal period
23 violation as mandated by Labor Code § 226.7. Upon information and belief, at least during a
24 portion of the class period, Defendants maintained no mechanism for the payment of meal period
25 premium payments as required by Labor Code § 226.7, in the event that a legally compliant meal
26 period was not provided to their non-exempt employees.

27 11. Plaintiff was not authorized and permitted to take all required rest periods due to
28 Defendants’ rest period policies/practices, which upon information and belief, failed to authorize

1 and permit Plaintiff to take all legally required rest periods. Specifically, Plaintiff regularly
2 worked shifts in excess of 6.0 hours, but was often not authorized and permitted to take a first or
3 second rest period. Additionally, when Plaintiff worked shifts in excess of 10.0 hours, he was
4 not authorized and permitted to take a third rest period, due to Defendants' rest period
5 policies/practices which fail to authorize and permit third rest periods for shifts in excess of 10.0
6 hours. On those occasions when Plaintiff was not provided with all legally-compliant rest periods
7 to which he was entitled, Defendants failed to compensate Plaintiff with the required rest period
8 premium(s) for each workday there was a rest period violation as mandated by Labor Code §
9 226.7. Upon information and belief, at least during a portion of the putative class period,
10 Defendants maintained no mechanism for the payment of rest period premium payments as
11 required by Labor Code § 226.7, in the event that Defendants failed to authorize and permit all
12 lawful rest periods to be taken.

13 12. During Plaintiff's employment with Defendants, Defendants did, and upon
14 information and belief, still utilize a timekeeping system that resulted in Plaintiff and other non-
15 exempt employees not being compensated for all hours actually worked. Specifically, Defendants
16 rounded Plaintiff and non-exempt employee's timekeeping entries in an uneven manner to a
17 quarter of an hour increment so that, over a period time, they were deprived of all earned minimum
18 and overtime wages. Upon information and belief, Defendants' timekeeping and payroll systems
19 regularly, systematically, and impermissibly rounded the hours worked by Plaintiff and other non-
20 exempt employees in Defendants' favor resulting, over a period of time, in the failure to properly
21 compensate Plaintiff and other non-exempt employees for all hours worked. As a result, Plaintiff
22 and other non-exempt employees were not compensated for all required minimum and overtime
23 wages.

24 13. During Plaintiff's employment with Defendants, Plaintiff often worked in excess
25 of eight (8) hours per workday and/or more than forty (40) hours per workweek, but did not
26 receive overtime compensation equal to one and one-half times his regular rate of pay for working
27 overtime hours. Specifically, Defendants paid Plaintiff non-discretionary incentive pay,
28 including "Incentive Reg," and other bonuses and forms of non-discretionary pay based on an

1 employee's performance, including the amount of fencing installed (hereinafter the
2 aforementioned forms of pay are collectively referred to as "Incentive Pay"). As a result of
3 receiving Incentive Pay, Defendants failed to accurately calculate Plaintiff's and other non-
4 exempt employee's regular rate of pay, thereby causing Plaintiff and other non-exempt employees
5 to be underpaid all required overtime wages.

6 14. Furthermore, upon information and belief, during Plaintiff's employment with
7 Defendants, Plaintiff was occasionally paid on a piece-rate basis, whereby Plaintiff was paid a
8 certain rate per fencing installation or work completed. While paid on a piece-rate basis, Plaintiff
9 was not separately compensated for time spent working on tasks which were not compensated on
10 a piece-rate basis, including for example, hours spent cleaning up at a worksite (i.e., non-
11 productive time). Because Defendants did not compensate for this non-productive time, they also
12 miscalculated the regular rate of pay, which is required to include the value of non-productive
13 time as a matter of law.

14 15. On the occasions when Plaintiff worked on a piece-rate basis, Plaintiff worked
15 shifts in excess of 3.5 hours, and was not provided with a paid rest period for every 4-hour period
16 worked, or major fraction thereof, because Defendants' piece-rate compensation plan failed to
17 separately compensate Plaintiff for required rest periods. *See Bluford v. Safeway Inc.*, 216 Cal.
18 App. 4th 864 (2013) ("There is no dispute that Safeway's activity-based compensation system did
19 not separately compensate drivers for their rest periods."). As a result, Plaintiff was not paid
20 wages for all hours worked, and was deprived of all rest period premium payments. Furthermore,
21 if Defendants separately compensated Plaintiff for rest periods, Defendants failed to accurately
22 calculate the rate at which Plaintiff was entitled to be compensated for such time pursuant to
23 Labor Code § 226.2. As a result, Plaintiff was underpaid wages owed for all hours worked, and
24 was deprived of all rest period premium payments.

25 16. As a result of Defendants' failure to pay all meal and rest period premiums, and
26 minimum and overtime wages, Defendants failed to pay Plaintiff all wages owed at the time of
27 separation from employment with Defendants, and failed to issue Plaintiff accurate and complete
28 itemized wage statements.

CLASS ACTION ALLEGATIONS

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

- a. The Meal Period Class consists of all Defendants' current and former non-exempt employees in California who: (i) worked at least one shift in excess of 5.0 hours; and/or (ii) worked at least one shift in excess of 10.0 hours, during the four years immediately preceding the filing of the Complaint through the present.
- b. The Rest Period Class consists of all Defendants' current and former non-exempt employees in California who: (i) worked at least one shift in excess of 3.5 hours; and/or (ii) performed work that was compensated on a piece-rate basis, and worked at least one shift in excess of 3.5 hours, during the four years immediately preceding the filing of the Complaint through the present.
- c. The Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California who: (i) were subject to Defendants' timekeeping policies/practices, and/or (ii) performed work that was compensated on a piece-rate basis, during the four years immediately preceding the filing of the Complaint through the present.
- d. The Overtime Class consists of all Defendants' current and former non-exempt employees in California who worked more than eight (8) hours per day and/or forty (40) hours per week and: (i) were subject to Defendants' timekeeping policies/practices; and/or (ii) received Incentive Pay during a corresponding time period, and/or (iii) performed work that was compensated on a piece-rate basis during a corresponding time period, during the four years immediately preceding the filing of the Complaint through the present.
- e. The Waiting Time Class consists of all Defendants' formerly employed members of the Meal Period Class, Rest Period Class, Minimum Wage Class, and Overtime Class, who separated their employment from Defendants in the three years immediately preceding the filing of the Complaint through the present.

1 f. The Wage Statement Class consists of all members of the Meal Period Class, Rest
2 Period Class, Minimum Wage Class, and/or Overtime Class who received a wage
3 statement from Defendants, during the one year immediately preceding the filing
4 of the Complaint through the present.

5 18. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
6 joinder of all members would be unfeasible and not practicable. The membership of the Classes
7 is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes
8 number greater than one hundred (100) individuals. The identity of such membership is readily
9 ascertainable via inspection of Defendants' employment records.

10 19. **Common Questions of Law and Fact Predominate/Well Defined Community**
11 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly
12 situated non-exempt employees, which predominate over questions affecting only individual
13 members including, without limitation to:

- 14 i. Whether Defendants provided all legally compliant meal periods to members of
15 the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- 16 ii. Whether Defendants authorized and permitted all legally compliant rest periods to
17 members of the Rest Period Class pursuant to Labor Code §§ 226.2, 226.7 and
18 516;
- 19 iii. Whether Defendants provided meal or rest period premium payments for non-
20 compliant meal and/or rest periods pursuant to Labor Code § 226.7;
- 21 iv. Whether Defendants lawfully paid premium wages for all overtime hours worked
22 to members of the Overtime Class pursuant to Labor Code §§ 204, 510, 558, 1194
23 and 1198;
- 24 v. Whether the piece-rate policies/procedures utilized by Defendants complied with
25 California law;
- 26 vi. Whether Defendants failed to properly include all forms of Incentive Pay when
27 calculating the respective regular rates for members of Overtime Class;

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vii. Whether Defendants lawfully paid all minimum wages for all hours worked to members of the Minimum Wage Class pursuant to Labor Code §§ 226.2, 1182.12, 1194, 1194.2 and 1197;

viii. Whether Defendants paid all wages/compensation due upon separation of employment to members of the Waiting Time Penalty Class pursuant to Labor Code §§ 201-203; and

ix. Whether Defendants furnished legally-compliant wage statements to Plaintiff and members of the Wage Statement Class pursuant to Labor Code § 226.

20. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform meal and rest period policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

21. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged herein, Plaintiff, like the members of the Classes, was not provided all required meal periods, was not authorized and permitted to take all required rest periods, did not receive meal and rest period premium wages for missed or non-compliant meal and rest periods, did not receive all minimum wages for all hours worked, did not receive all premium pay for all overtime hours worked, was not provided with all wages/compensation due upon separation of employment with Defendants pursuant to Labor Code §§ 201-203, and did not receive accurate and complete wage statements.

22. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of

1 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-
2 and-hour class actions in state and federal courts in the past and are committed to vigorously
3 prosecuting this action on behalf of the members of the Classes.

4 23. **Superiority:** The California Labor Code is broadly remedial in nature and serves
5 an important public interest in establishing minimum working conditions and standards in
6 California. These laws and labor standards protect the average working employee from
7 exploitation by employers who have the responsibility to follow the laws and who may seek to
8 take advantage of superior economic and bargaining power in setting onerous terms and
9 conditions of employment. The nature of this action and the format of laws available to Plaintiff
10 and members of the Classes make the class action format a particularly efficient and appropriate
11 procedure to redress the violations alleged herein. If each employee were required to file an
12 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
13 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
14 their vastly superior financial and legal resources. Moreover, requiring each member of the
15 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
16 employees who would be disinclined to file an action against their former and/or current employer
17 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
18 employment. Further, the prosecution of separate actions by the individual class members, even
19 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
20 with respect to the individual class members against Defendants herein; and which would
21 establish potentially incompatible standards of conduct for Defendants; and/or legal
22 determinations with respect to individual class members which would, as a practical matter, be
23 dispositive of the interest of the other class members not parties to adjudications or which would
24 substantially impair or impede the ability of the class members to protect their interests. Further,
25 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
26 individual prosecution considering all of the concomitant costs and expenses attending thereto.
27 As such, the Classes identified in Paragraph 19 are maintainable as a Class under § 382 of the
28 Code of Civil Procedure.

1 **FIRST CAUSE OF ACTION**

2 **MEAL PERIOD VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

4 24. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 25. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 failed in their affirmative obligation to provide all of their non-exempt employees in California,
7 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
8 in accordance with the mandates of the California Labor Code and Wage Order 16, § 10. Despite
9 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members
10 of the Meal Period Class at their respective regular rates of pay, in accordance with California
11 Labor Code §§ 204, 210, 226.7, and 512.

12 26. As a result, Defendants are responsible for paying premium compensation for meal
13 period violations pursuant to Labor Code §§ 226.7, 512, and 558, and Wage Order 16, including
14 interest thereon, statutory penalties, civil penalties, and costs of suit.

15 **SECOND CAUSE OF ACTION**

16 **REST PERIOD VIOLATIONS**

17 **(AGAINST ALL DEFENDANTS)**

18 27. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

19 28. Wage Order 16, § 11 and Labor Code §§ 226.7 and 516 establish the right of
20 employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour
21 period worked, or major fraction thereof.

22 29. Due to Defendants' unlawful rest period policy and practices, Defendants did not
23 authorize and permit members of the Rest Period Class to take all rest periods to which they were
24 legally entitled. Despite Defendants' violations, Defendants have not paid an additional hour of
25 pay to Plaintiff and the Rest Period Class at their respective regular rates of pay for each violation,
26 in accordance with California Labor Code § 226.7.

27 30. The foregoing violations create an entitlement to recovery by Plaintiff and
28 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums

owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according to Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

THIRD CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

31. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

32. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours worked and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

33. At all times relevant herein, Defendants were required to properly pay Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 16. Wage Order 16, § 3 requires an employer to pay an employee “one and one-half (1½) times the employee’s regular rate of pay” for work in excess of eight (8) hours per work day and/or in excess of forty (40) hours of work in the workweek. Wage Order 16, § 3 also requires an employer to pay an employee double the employee’s regular rate of pay for work in excess of twelve hours each work day and/or for work in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff and other non-exempt employees to work overtime hours but did not compensate Plaintiff or members of the Overtime Class at one and one-half times their regular rate of pay for such hours.

34. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime premiums owing, including interest thereon, statutory penalties, attorney’s fees, and costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order 16, and Code of Civil Procedure § 1021.5.

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FOURTH CAUSE OF ACTION
MINIMUM WAGE VIOLATIONS
(AGAINST ALL DEFENDANTS)

35. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

36. Wage Order 16, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon.

37. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes but is not limited to Defendants' uniform and unlawful practice of rounding the time entries of Plaintiff and other non-exempt employees to the nearest quarter-hour increment. This resulted in these individuals not being paid for all hours actually worked. Further, this unlawful conduct also includes Defendants' uniform piece-rate compensation structure, which resulted in Plaintiff and members of the Minimum Wage Class only being paid on Defendants' piece-rate system, as opposed to being paid for all hours worked. Accordingly, Plaintiff and members of the Minimum Wage Class were not compensated for all hours worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 16.

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

39. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but

1 not limited to unpaid wages and lost interest, in an amount to be established at trial, and they are
2 entitled to recover economic and statutory damages and penalties and other appropriate relief as
3 a result of Defendants' violations of the California Labor Code and Wage Order 16.

4 40. Defendants' practice and uniform administration of corporate policy regarding
5 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
6 members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages,
7 liquidated damages, including interest thereon, statutory penalties, attorney's fees, and costs of
8 suit according to California Labor Code §§ 204, 558, 226.2, 1194 *et seq.*, 1197, 1198, and Code
9 of Civil Procedure § 1021.5.

10 **FIFTH CAUSE OF ACTION**

11 **WAITING TIME PENALTIES**

12 **(AGAINST ALL DEFENDANTS)**

13 41. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

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

20 43. Plaintiff is informed and believes, and based thereon alleges, that Defendants
21 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
22 at the time of their separation which includes, among other things, underpaid overtime and
23 minimum wages, and meal and rest period premium wages. Further, Plaintiff is informed and
24 believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants
25 continue to fail to pay members of the Waiting Time Class all earned wages at the end of
26 employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203.
27 Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

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1 44. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
2 Time Class their earned wages upon separation from employment results in a continued payment
3 of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and
4 members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203,
5 plus reasonable attorneys' fees and costs of suit.

6 **SIXTH CAUSE OF ACTION**

7 **UNPAID MINIMUM WAGE LINKED TO UNPAID OR UNDERPAID REST PERIODS**

8 **(AGAINST ALL DEFENDANTS)**

9 45. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

10 46. This cause of action is brought pursuant to Labor Code § 226.2, which effective
11 January 1, 2016, establishes compensation requirements for rest periods for piece-rate employees.
12 Specifically, Labor Code § 226.2(3)(A) requires piece rate employees be compensated for rest
13 periods at a regular hourly rate that is no less than the higher of: (i) An average hourly rate
14 determined by dividing the total compensation for the workweek, exclusive of compensation for
15 rest and recovery periods and any premium compensation for overtime, by the total hours worked
16 during the workweek, exclusive of rest and recovery periods; or (ii) The applicable minimum
17 wage.

18 47. At all relevant times herein, Defendants failed to conform their pay practices to
19 the requirements of the law. This unlawful conduct includes but is not limited to Defendants'
20 failure to pay Plaintiff and the Rest Period Class separately for rest periods, thereby causing
21 Plaintiff and the Rest Period Class to not be paid all required wages. Further, if Defendants
22 separately compensated Plaintiff and the Rest Period Class for rest periods, Defendants failed to
23 accurately calculate the rate at which Plaintiff and the Rest Period Class were entitled to be
24 compensated for such time pursuant to Labor Code § 226.2, thereby causing Plaintiff and the Rest
25 Period Class to be underpaid all required wages.

26 48. As a direct and proximate result of Defendants' unlawful conduct as alleged
27 herein, Plaintiff and the Rest Period Class have sustained economic damages, including but not
28 limited to unpaid or underpaid wages and lost interest, in an amount to be established at trial, and

1 they are entitled to recover economic and statutory damages and penalties and other appropriate
2 relief as a result of Defendants' violations of the California Labor Code.

3 **SEVENTH CAUSE OF ACTION**

4 **WAGE STATEMENT VIOLATIONS**

5 **(AGAINST ALL DEFENDANTS)**

6 49. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

7 50. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
9 and the Wage Statement Class with accurate and itemized wage statements that included, among
10 other requirements, all overtime and minimum wages as well as all meal and rest period premium
11 wages earned in violation of Labor Code § 226.

12 51. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class
13 with accurate and itemized wage statements resulted in actual injury, as said failures led to, among
14 other things, the non-payment of all their overtime and minimum wages, as well as their meal and
15 rest period premium wages, and deprived them of the information necessary to identify the
16 discrepancies in Defendants' reported data.

17 52. Defendants' failures create an entitlement to recovery by Plaintiff and members of
18 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
19 Code §§ 226, including statutory penalties, civil penalties, and reasonable attorneys' fees and
20 costs of suit according to Labor Code §§ 226 and 226.3.

21 **EIGHTH CAUSE OF ACTION**

22 **UNFAIR COMPETITION**

23 **(AGAINST ALL DEFENDANTS)**

24 53. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

25 54. Defendants have engaged and continue to engage in unfair and/or unlawful
26 business practices in California in violation of California Business and Professions Code § 17200
27 *et seq.* by, amongst other things: failing to provide Plaintiff and members of the Meal Period and
28 Rest Period Classes all required meal and rest periods or pay premium payments for non-

compliant meal and rest periods in violation of Labor Code §§ 226.7, 512 and 516; failing to pay Plaintiff and the members of the Overtime Class and Minimum Wage Classes all overtime and minimum wages for all hours worked in violation of Labor Code §§ 204, 510, 558, 1182.12, 1194, 1194.2 and 1198; failing to pay Plaintiff and members of the Waiting Time Class all earned wages at the time of their separation in violation of Labor Code §§ 201-203; and failing to issue accurate and complete wage statements to Plaintiff and members of the Wage Statement Class in violation of Labor Code § 226.

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

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

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

58. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' former and current non-exempt employees, and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which he is entitled to recover under Code of Civil Procedure § 1021.5.

NINTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

59. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

60. Defendants have committed several Labor Code violations against Plaintiff,

members of the Classes, and other aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.* (“PAGA”), acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof, pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation of Lab. Code § 226 pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- b. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum Wage Class, and other aggrieved employees in violation of Labor Code §§ 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- c. Failing to authorize and permit all legally required rest periods, and failure to pay rest period premium wages, to Plaintiff, the Rest Period Class, and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- d. Failing to provide all legally required meal periods, and failure to pay meal period premium wages, to Plaintiff, the Meal Period Class, and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.7,

512, 558 and 1198;

- e. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- f. Failing to timely pay all final wages to Plaintiff, the Waiting Time Penalty Class, and other aggrieved employee in violation of Labor Code §§ 201, 202, and 203;
- g. Failing to pay aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204;
- h. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code § 1174; and
- i. Failing to separately pay, or underpaying, Plaintiff and other aggrieved employees all wages due for rest periods in violation of Labor Code § 226.2.

61. On February 19, 2020, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified in Paragraph 56 (a)-(h). Now that sixty-five days have passed from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

62. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which he is entitled to receive under California Labor Code § 2699(g).

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1 **PRAYER**

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

- 4 1. For an order certifying the proposed Classes;
- 5 2. For an order appointing Plaintiff as representative of the Classes;
- 6 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 7 4. Upon the First Cause of Action, for compensatory, consequential, general and
8 special damages according to proof pursuant to Labor Code §§ 226.7, 512 and 558;
- 9 5. Upon the Second Cause of Action, for compensatory, consequential, general and
10 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
- 11 6. Upon the Third Cause of Action, for compensatory, consequential, general and
12 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 13 7. Upon the Fourth Cause of Action, for payment of minimum wages, liquidated
14 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2 and
15 1197;
- 16 8. Upon the Fifth Cause of Action, for statutory waiting time penalties pursuant to
17 Labor Code §§ 201-203;
- 18 9. Upon the Sixth Cause of Action, for payment of wages, liquidated damages, and
19 penalties according to proof pursuant to Labor Code § 226.2;
- 20 10. Upon the Seventh Cause of Action, for statutory penalties pursuant to Labor Code
21 § 226;
- 22 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
23 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
24 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et*
25 *seq.*;
- 26 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other
27 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
28 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for

each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code violations identified in Paragraph 56 (a)-(h);

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

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

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

Dated: May 15, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

By:



Paul K. Haines
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

Dated: May 15, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

By:



Paul K. Haines
Attorneys for Plaintiff