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16 ARIZONA TILE, LLC

17 **UNITED STATES DISTRICT COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA**  
19

20 EDGAR MARISCAL, individually,  
21 and on behalf of other members of the  
general public similarly situated,

22 Plaintiffs,

23 v.

24 ARIZONA TILE, LLC, an unknown  
25 business entity; and DOES 1 through  
100, inclusive,

26 Defendants.  
27  
28

Case No. 8:20-CV-02071-JLS-KES

**AMENDED JOINT STIPULATION  
OF CLASS ACTION AND PAGA  
SETTLEMENT AND RELEASE OF  
CLAIMS**

Complaint Filed: September 15, 2020  
SAC Filed: February 1, 2022  
Trial Date: N/A  
District Judge: Hon. Josephine L.  
Staton  
Magistrate Judge: Hon. Karen E. Scott

1 This Amended Joint Stipulation of Class Action and PAGA Settlement and Release of  
2 Claims ("Settlement Agreement") is entered into by and between Plaintiff EDGAR MARISCAL  
3 ("Plaintiff"), individually and on behalf of the Class (as defined below) and on behalf of the State  
4 of California (as a private attorney general pursuant to the Private Attorneys General Act, Cal.  
5 Lab. Code § 2698, *et seq.*), on the one hand, and Defendant ARIZONA TILE, LLC ("Defendant"),  
6 on the other hand.

7 Plaintiff, on behalf of himself and the Class Members, and Defendant agree as follows:

8 **I. DEFINITIONS**

9 **1. Action**

10 "Action" means the civil action filed in the Superior Court of the State of California for the  
11 County of Orange, entitled *Edgar Mariscal, et al., v. Arizona Tile, LLC, et al.*, Case No. 30-2020-  
12 01160477-CU-OE-CXC, removed to the United States District Court for the Central District of  
13 California, Case No. 8:20-cv-02071-JLS-KES.

14 **2. Class Counsel**

15 "Class Counsel" means Edwin Aiwazian, Arby Aiwazian, and Joanna Ghosh of Lawyers  
16 for Justice, PC.

17 **3. Attorneys' Fees and Costs**

18 "Attorneys' Fees and Costs" means attorneys' fees agreed upon by the Parties and  
19 approved by the Court for Class Counsel's litigation and resolution of the Action, and all out-of-  
20 pocket costs incurred and to be incurred by Class Counsel in the Action, including but not limited  
21 to fees and expenses of experts, investigation expenses, postage, telephone, and photocopying  
22 charges, costs associated with documenting the Settlement, providing any notices required as part  
23 of the Settlement or Court order, securing the Court's approval of the Settlement, administering  
24 the Settlement, and obtaining entry of a judgment terminating the Action.

25 **4. Class Data**

26 "Class Data" means information regarding Class members that Defendant will in good faith  
27 compile from their records and provide to the Settlement Administrator. It shall be formatted as a  
28 Microsoft Excel spreadsheet and shall include: each Class Member's full name; last known

1 address; last known home telephone number; social security number; Compensable Workweeks;  
2 and the total weekly average hours worked by each Class Member that performed work for  
3 Defendant on a part-time basis during the Class Period.

4 **5. Class or Class Members**

5 “Class” or “Class Members” means all persons who are employed or have been employed  
6 by Arizona Tile, LLC as non-exempt, hourly employee in the State of California during the Class  
7 Period.

8 **6. Class Period**

9 “Class Period” means the period from September 15, 2016 to October 21, 2021.

10 **7. Class Representative**

11 “Class Representative” means Plaintiff Edgar Mariscal.

12 **8. Class Representative Service Award**

13 “Class Representative Service Award” means the amount that the Court authorizes to be  
14 paid to the Plaintiff, in addition to Plaintiff’s Individual Settlement Payment, in recognition of  
15 Plaintiff’s efforts and risks in assisting with the prosecution of the Action.

16 **9. Compensable Workweeks**

17 “Compensable Workweeks” means the number of weeks in which Class Member(s)  
18 performed work for Defendant in the State of California during the Class Period based on  
19 Defendant’s records.

20 **10. Complaint**

21 “Complaint” means the Class Action Complaint for Damages filed on September 15, 2020,  
22 in the Action.

23 **11. Operative Complaint**

24 “Operative Complaint” means the Second Amended Class Action Complaint for Damages  
25 and Enforcement Under the Private Attorneys General Act, Cal. Labor Code § 2698, et seq. filed  
26 on February 1, 2022 in the Action.

27 **12. Court**

28 “Court” means the United States District Court for the Central District of California.

1           **13.     Defendant**

2           “Defendant” means ARIZONA TILE, LLC.

3           **14.     Effective Date**

4           “Effective Date” of the Settlement means the date on which the Court’s order granting  
5 Final Approval of this Settlement Agreement becomes final. Such order becomes final upon the  
6 following events: (i) upon the Court issuing the Final Approval Order granting approval of this  
7 Settlement Agreement if no objections to the settlement are filed, or if an objection is filed but is  
8 withdrawn prior to the Court’s Final Approval Hearing; or (ii) in the event there are written  
9 objections filed prior to the Final Approval Hearing which are not thereafter withdrawn prior to  
10 the hearing, the later of the following events: (a) the day after the last day by which a notice of  
11 appeal of the order may be timely filed with the United States Court of Appeals for the Ninth  
12 Circuit, and none is filed; (b) if an appeal is filed and is finally disposed of by ruling, dismissal,  
13 denial, or otherwise, the day after the last date for filing a request for further review of the Court  
14 of Appeal’s decision passes and no further review is requested; (c) if an appeal is filed and there  
15 is a final disposition by ruling, dismissal, denial, or otherwise by the Court of Appeal, and further  
16 review of the Court of Appeal’s decision is requested, the day after the request for review is denied  
17 with prejudice and/or no further review of the order can be requested; or (d) if review is accepted,  
18 the day the Supreme Court of the United States of America affirms the Settlement.

19           **15.     Final Approval Hearing**

20           “Final Approval Hearing” means the final hearing held to ascertain the fairness,  
21 reasonableness, and adequacy of the Settlement.

22           **16.     Final Approval Order**

23           “Final Approval Order” means the order granting final approval of the Settlement, in a  
24 form to be jointly agreed upon by the Parties.

25           **17.     Final Judgment**

26           “Final Judgment” means a judgment issued by the Court approving this Settlement  
27 Agreement as binding upon the Parties.

28       ///



1           **18.    Gross Settlement Amount**

2           “Gross Settlement Amount” means the agreed upon settlement amount totaling  
3 \$2,500,000.00 (Two Million Five Hundred Thousand Dollars) to be paid by Defendant in full  
4 settlement of the Released Claims, and includes without limitation the Attorneys’ Fees and Costs,  
5 Class Representative Service Award, Individual Settlement Payments, LWDA Payment, and  
6 Settlement Administrator Costs. The employer’s share of payroll taxes due on the portion of the  
7 Individual Settlement Payments that is allocated to wages shall be paid by Defendant separately  
8 and in addition to the Gross Settlement Amount.

9           **19.    Individual Settlement Payment**

10          “Individual Settlement Payment” means the amount paid from the Net Settlement Amount  
11 to a Participating Class Member, based upon his/her Compensable Workweeks pursuant to the  
12 settlement formula set forth in Paragraph III.17 of this Settlement Agreement.

13          **20.    LWDA**

14          “LWDA” means the California Labor and Workforce Development Agency.

15          **21.    Net Settlement Amount**

16          “Net Settlement Amount” means the Gross Settlement Amount, less Court-approved  
17 Attorneys’ Fees and Costs, Class Representative Service Award, LWDA Payment, and Settlement  
18 Administration Costs.

19          **22.    Class Notice**

20          “Class Notice” means the Notice of Pendency of Class Action Settlement and Hearing Date  
21 for Court Approval substantially in the form attached hereto as Exhibit A, which shall include an  
22 approximation of each Class Member’s anticipated Individual Settlement Payment. It is the notice  
23 approved by the Parties and subject to Court approval explaining the terms of this Settlement  
24 Agreement and the settlement process, which the Settlement Administrator will mail to each Class  
25 Member.

26          **23.    PAGA**

27          “PAGA” refers to the Private Attorneys General Act of 2004, codified at California Labor  
28 Code § 2698, *et seq.*

1           **24.   PAGA Allocation**

2           “PAGA Allocation” means the amount of One Hundred and Fifty Thousand Dollars  
3 (\$150,000) allocated from the Gross Settlement Amount as civil penalties recovered pursuant to  
4 PAGA, of which seventy-five percent (75%), or \$112,500, shall be paid to the LWDA (“LWDA  
5 Payment”), and twenty-five percent (25%), or \$37,500 will become part of the Net Settlement  
6 Amount.

7           **25.   Participating Class Members**

8           “Participating Class Members” means those Class Members who do not submit a valid and  
9 timely Request for Exclusion pursuant to Paragraph III.11 of this Settlement Agreement.

10          **26.   Parties**

11          “Parties” means Plaintiff and Defendant, collectively, and “Party” shall mean either  
12 Plaintiff or Defendant, individually.

13          **27.   Plaintiff**

14          “Plaintiff” means Plaintiff EDGAR MARISCAL.

15          **28.   Preliminary Approval Date**

16          “Preliminary Approval Date” means the date on which the Court issues an order granting  
17 preliminary approval of the Settlement, in a form to be jointly agreed upon by the Parties.

18          **29.   Released Claims**

19          “Released Claims” means all causes of action and factual or legal theories that were alleged  
20 in the operative complaint or reasonably could have been alleged based on the facts and legal  
21 theories contained in the Operative Complaint, including all of the following claims for relief: (a)  
22 failure to pay all regular wages, minimum wages and overtime wages due; (b) failure to properly  
23 calculate the regular rate of pay for payment of overtime wages; (c) failure to provide proper meal  
24 periods, and to properly provide premium pay in lieu thereof; (d) failure to provide proper rest  
25 periods, and to properly provide premium pay in lieu thereof; (e) failure to pay all wages timely  
26 during employment; (f) failure to pay all wages timely at the time of termination; (g) failure to  
27 provide complete, accurate or properly formatted wage statements; (h) failure to keep required  
28 payroll records; (i) failure to reimburse business expenses; (j) unfair business practices that could

1 have been premised on the claims, causes of action or legal theories of relief described above or  
2 any of the claims, causes of action or legal theories of relief pleaded in the Operative Complaint;  
3 (k) all claims under the California Labor Code Private Attorneys General Act of 2004 that could  
4 have been premised on the claims, causes of action or legal theories described above or any of the  
5 claims, causes of action or legal theories of relief pleaded in the Operative Complaint; (l) any other  
6 claims or penalties under the wage and hour laws pleaded in the Operative Complaint; and (m) all  
7 damages, penalties, interest and other amounts recoverable based on the claims, causes of action,  
8 or legal theories of relief pleaded in the Operative Complaint (collectively, the “Released Claims”).

9 **30. Released Parties**

10 “Released Parties” means Defendant and any of its past, present and/or future, direct and/or  
11 indirect, officers, directors, members, managers, employees, agents, representatives, attorneys,  
12 insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries,  
13 affiliates, divisions, predecessors, successors, assigns, and joint venturers.

14 **31. Request for Exclusion**

15 “Request for Exclusion” means a letter setting forth, *inter alia*, a Class Member’s full  
16 name, present address, telephone number, and a simple statement electing to be excluded from the  
17 Settlement, in conformity with the requirements of Paragraph III.11.

18 **32. Response Deadline**

19 “Response Deadline” means the date forty-five (45) days after the Settlement  
20 Administrator mails the Class Notice to Class Members, which is the last date on which Class  
21 Members may: (a) submit a Request for Exclusion; (b) file and serve objections to the Settlement;  
22 or (c) dispute the Compensable Workweeks credited to them as referenced in the Class Notice.

23 **33. Settlement**

24 “Settlement” means the disposition of the Action pursuant to this Joint Stipulation of Class  
25 Action and PAGA Settlement and Release of Claims.

26 **34. Settlement Administrator**

27 “Settlement Administrator” means Phoenix Class Action Administration Solutions, or any  
28 other third-party class action settlement administrator agreed to by the Parties and approved by the

1 Court for the purposes of administering the Settlement.

2 **35. Settlement Administrator Costs**

3 “Settlement Administrator Costs” means the amount to be paid to the Settlement  
4 Administrator from the Gross Settlement Amount for administration of this Settlement.

5 **II. RECITALS**

6 **1. Class Certification.**

7 The Parties agree to certification of the Class for purposes of this Settlement only. If for  
8 any reason the Settlement does not become effective, Defendant reserves the right to contest  
9 certification of any class for any reason, and reserves all available defenses to the claims in the  
10 Action.

11 **2. Procedural History.**

12 On September 15, 2020, Plaintiff filed a Class Action Complaint for Damages  
13 (“Complaint”), thereby commencing a putative class action against Defendant in Orange County  
14 Superior Court.

15 On October 26, 2020, Defendant removed Plaintiff’s Complaint to the United States  
16 District Court for the Central District of California.

17 On April 14, 2021, the U.S. District Court denied Plaintiff’s Motion to Remand.

18 On May 28, 2021, Plaintiff filed a First Amended Class Action Complaint for Damages  
19 (“FAC”). The FAC alleges claims for: failure to properly pay overtime wages, failure to pay meal  
20 period premiums, failure to pay rest period premiums, failure to pay minimum wages, failure to  
21 timely pay wages upon termination of employment, failure to timely pay wages during  
22 employment, non-compliant wage statements, failure to keep requisite payroll records, failure to  
23 reimburse business expenses, and violation of California Business and Professions Code § 17200,  
24 *et seq.*

25 On June 11, 2021, Defendant filed an Answer to Plaintiff’s First Amended Class Action  
26 Complaint for Damages.

27 The Parties began to engage in informal and formal discovery to understand the nature of  
28 the allegations and the scope of potential liability. On March 18, 2021, Plaintiff served on

1 Defendant requests for production, two sets of special interrogatories, and a notice of rule 30(b)(6)  
2 deposition of Defendant's person most knowledgeable. On April 6, 2021, Defendant served a  
3 notice of deposition of Plaintiff and requests for production. On April 18, 2021, Defendant  
4 responded to Plaintiff's discovery requests.

5 The Parties began to discuss the possibility of mediation and Defendant provided Plaintiff's  
6 counsel with pertinent data for the Class Members so that the Parties could fully-investigate the  
7 claims at issue and understand their strengths and weaknesses.

8 On July 23, 2021, the Parties attended a full-day mediation with experienced mediator  
9 Jeffrey Krivis ("Mediator"). After a full-day mediation, the Parties reached a settlement, as  
10 provided herein, to settle Plaintiff's claims on a class-wide and representative basis.

11 Plaintiff served a letter dated September 8, 2021, on the California Labor & Workforce  
12 Development Agency and the Defendant, that provided notice of his intent to seek civil penalties  
13 for alleged violations of the California Labor Code, under PAGA (the "PAGA Letter").

14 On February 1, 2022, Plaintiff filed a Second Amended Class Action Complaint for  
15 Damages and Enforcement Under the Private Attorneys General Act, Cal. Labor Code § 2698, et  
16 seq. (the "Operative Complaint"). The Operative Complaint alleges claims for: failure to properly  
17 pay overtime wages, failure to pay meal period premiums, failure to pay rest period premiums,  
18 failure to pay minimum wages, failure to timely pay wages upon termination of employment,  
19 failure to timely pay wages during employment, non-compliant wage statements, failure to keep  
20 requisite payroll records, failure to reimburse business expenses, violation of California Business  
21 and Professions Code § 17200, et seq., and violation of California Labor Code § 2698, et seq.  
22 (California Labor Code Private Attorneys General Act of 2004).

23 Defendant denies any liability or wrongdoing of any kind associated with the claims  
24 asserted in Plaintiff's Operative Complaint, disputes the damages and penalties claimed by  
25 Plaintiff, and further contends that, for any purpose other than settlement, Plaintiff's claims are not  
26 appropriate for class or representative action treatment. This Settlement Agreement is a  
27 compromise of disputed claims. Nothing contained in this Settlement Agreement, no documents  
28 referred to herein, and no action taken to carry out this Settlement Agreement, shall be construed

1 or used as an admission by or against Defendant as to the merits or lack thereof of the claims  
2 asserted in the Action. Defendant contends, among other things, that, at all times, it has complied  
3 with all applicable state, federal and local laws related to the Class Members' employment.

4 The Class Representative is represented by Class Counsel. Class Counsel conducted an  
5 investigation into the facts relevant to the Action, including reviewing documents and information  
6 provided by Defendant. Based on their own independent investigation and evaluation, Class  
7 Counsel is of the opinion that the Settlement with Defendant is fair, reasonable and adequate, and  
8 in the best interest of the Class and State of California in light of all known facts and circumstances,  
9 including the risks of significant delay, defenses asserted by Defendant, uncertainties regarding a  
10 class and representative action trial on the merits, and numerous potential appellate issues.  
11 Although Defendant denies liability, Defendant is agreeing to this Settlement solely to avoid the  
12 cost of further litigation. Accordingly, the Parties and their counsel desire to fully, finally, and  
13 forever settle, compromise and discharge all disputes and claims arising from or relating to the  
14 Action on the terms set forth herein.

15 **3. Benefits of Settlement to Class Members and State of California.**

16 Plaintiff and Class Counsel recognize the expense and length of continued proceedings  
17 necessary to litigate their disputes through trial and through any possible appeals. Plaintiff has  
18 also taken into account the uncertainty and risk of the outcome of further litigation, and the  
19 difficulties and delays inherent in such litigation. Plaintiff and Class Counsel are also aware of  
20 the burdens of proof necessary to establish liability for the claims asserted in the Action, both  
21 generally and in response to Defendant's defenses thereto, and the difficulties in establishing  
22 damages, penalties, and entitlement to monetary recovery for the Class Members and State of  
23 California. Plaintiff and Class Counsel have also taken into account Defendant's agreement to  
24 enter into a settlement that confers substantial relief upon the Class Members and State of  
25 California. Based on the foregoing, Class Counsel have concluded that settlement for the  
26 consideration and on the terms set forth in this Settlement Agreement, is fair, reasonable, and  
27 adequate and is in the best interest of the putative class and State of California in light of all known  
28 facts and circumstances, including the risk of significant delay, defenses asserted by Defendant,

1 numerous potential appellate issues, and other risks inherent in litigation.

2 **4. Defendant's Reasons for Settlement.**

3 Defendant has concluded that any further defense of this litigation would be protracted and  
4 expensive for all Parties. Substantial amounts of Defendant's time, energy, and resources have  
5 been and, unless this Settlement is completed, will continue to be devoted to, the defense of the  
6 claims asserted by Plaintiff in the Action. Defendant has also taken into account the risks of further  
7 litigation in reaching its decision to enter into this Settlement. Even though Defendant continues  
8 to contend that it is not liable for any of the claims set forth by Plaintiff in the Action, Defendant  
9 has agreed, nonetheless, to settle in the manner and upon the terms set forth in this Settlement  
10 Agreement to put to rest the claims in the Action. Defendant contends that it has complied with  
11 all applicable state, federal, and local laws.

12 **5. Settlement of Disputed Claims.**

13 This Settlement Agreement is a compromise of disputed claims. Defendant contends that  
14 the Released Claims have no merit and do not give rise to liability. Plaintiff and Class Members  
15 have claimed and continue to claim that the Released Claims have merit and give rise to liability  
16 on the part of Defendant. This Settlement Agreement is a compromise of disputed claims. Nothing  
17 contained in this Settlement Agreement, no documents referred to herein, and no action taken to  
18 carry out this Settlement Agreement, may be construed or used as an admission by or against the  
19 Class Members or Class Counsel as to the merits or lack thereof of the claims asserted in the  
20 Action.

21 **III. TERMS OF AGREEMENT**

22 **1. Release as To All Participating Class Members.**

23 As of the Effective Date and full funding of the Gross Settlement Amount, the Participating  
24 Class Members, including Plaintiff, release the Released Parties from the Released Claims for the  
25 Class Period.

26 **2. Release of Claims by Plaintiff.**

27 As of the Effective Date and full funding of the Gross Settlement Amount, Plaintiff releases  
28 the Released Parties from all of the Released Claims during the Class Period. Plaintiff, for himself,



1 and his heirs, successors and assigns, further waives, releases, acquits and forever discharges the  
2 Released Parties from any and all claims, actions, charges, complaints, grievances and causes of  
3 action, of whatever nature, whether known or unknown, which exist or may exist on Plaintiff's  
4 behalf as of the date of this Settlement Agreement, including, but not limited to, any and all tort  
5 claims, contract claims, wage claims, wrongful termination claims, disability claims, benefit  
6 claims, public policy claims, retaliation claims, statutory claims, personal injury claims, emotional  
7 distress claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit  
8 claims, and any and all claims arising under any federal, state or other governmental statute, law,  
9 regulation or ordinance, including, but not limited to, claims for violation of the FLSA, the  
10 California Labor Code, the Wage Orders of California's Industrial Welfare Commission, other  
11 state wage and hour laws, the Americans with Disabilities Act, the Age Discrimination in  
12 Employment Act (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil  
13 Rights Act of 1964, the California Fair Employment and Housing Act, the California Family  
14 Rights Act, the Family Medical Leave Act, California's Whistleblower Protection Act, California  
15 Business & Professions Code §§17200 et seq., and any and all claims arising under any federal,  
16 state or other governmental statute, law, regulation or ordinance.

17 Plaintiff's releases set forth herein include a waiver of all rights under California Civil  
18 Code §1542, which provides:

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

25 Plaintiff may hereafter discover claims or facts in addition to, or different from, those  
26 which he now knows or believes to exist, but Plaintiff expressly agrees to fully, finally and forever  
27 settle and release any and all claims against the Released Parties, known or unknown, suspected  
28 or unsuspected, which exist or may exist on behalf of or against the other at the time of execution  
of this Settlement Agreement, including, but not limited to, any and all claims relating to or arising  
from Plaintiff's employment with Defendant.



1           **3. Tax Liability and Medicare.**

2           The Parties make no representations as to the tax treatment or legal effect of the payments  
3 called for hereunder, and Class Members are not relying on any statement or representation by the  
4 Parties in this regard. Participating Class Members understand and agree that they will be  
5 responsible for the payment of taxes and penalties assessed on the payments described herein and  
6 will hold the Parties free and harmless from and against any claims resulting from treatment of  
7 such payments as non-taxable damages, including the treatment of such payment as not subject to  
8 withholding or deduction for payroll and employment taxes. Moreover, this Settlement Agreement  
9 is based upon a good faith determination of the Parties to resolve a disputed claim. The Parties  
10 have not shifted responsibility of medical treatment to Medicare in contravention of 42 U.S.C. Sec.  
11 1395y(b), especially since this is strictly a wage and hour case. The Parties resolved this matter in  
12 compliance with both state and federal law. The Parties made every effort to adequately protect  
13 Medicare's interest and incorporate such into the settlement terms. Plaintiff warrants that he is not  
14 a Medicare beneficiary as of the date of this Settlement Agreement. As such, no conditional  
15 payments have been made by Medicare.

16           **4. Circular 230 Disclaimer.**

17           Each Party to this Settlement Agreement (for purposes of this section, the "acknowledging  
18 party" and each Party to this Settlement Agreement other than the acknowledging party, an "other  
19 party") acknowledges and agrees that (1) no provision of this Settlement Agreement, and no  
20 written communication or disclosure between or among the Parties or their attorneys and other  
21 advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be  
22 construed or be relied upon as, tax advice within the meaning of United States Treasury  
23 Department Circular 230 (31 CFR Part 10, as amended); (2) the acknowledging party (a) has relied  
24 exclusively upon his, her, or its own, independent legal and tax counsel for advice (including tax  
25 advice) in connection with this Settlement Agreement, (b) has not entered into this Settlement  
26 Agreement based upon the recommendation of any other party or any attorney or advisor to any  
27 other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney  
28 or adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging

1 party; and (3) no attorney or adviser to any other party has imposed any limitation that protects the  
2 confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such  
3 limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or  
4 tax structure of any transaction, including any transaction contemplated by this Settlement  
5 Agreement.

6 **5. Preliminary Approval of Settlement.**

7 Promptly upon execution of this Settlement Agreement, Plaintiff will move the Court to  
8 grant preliminary approval of this Settlement, certifying the Class for settlement purposes only  
9 and setting a date for a Final Approval Hearing. All Parties agree to work diligently and  
10 cooperatively to have this Settlement presented to the Court for preliminary approval. Should the  
11 Court decline to preliminarily approve material aspects of the Settlement (including but not limited  
12 to the scope of release to be granted or the binding effect of the Settlement on Participating Class  
13 Members), the Parties shall work together in good faith to address any concerns raised by the Court  
14 and propose a revised Settlement for the Court's approval. If the Parties are unable to reach  
15 agreement, this Settlement Agreement, and any documents generated to bring it into effect, will  
16 be null and void. Any order or judgment entered by the Court in furtherance of this Settlement  
17 Agreement will likewise be treated as void from the beginning. The proposed preliminary  
18 approval order shall provide for the Class Notice to be sent to Class Members as specified herein.

19 **6. Settlement Administrator.**

20 Upon the Court granting preliminary approval of this Settlement Agreement, Defendant  
21 shall provide the Settlement Administrator with the Class Data within fourteen (14) calendar days  
22 for purposes of mailing the Class Notice to the Class Members. No later than three (3) days after  
23 receipt of the Class Data, the Settlement Administrator shall notify counsel for the Parties that the  
24 list has been received and state the number of Class Members included in the Class Data.

25 **7. Notice by First Class U.S. Mail.**

26 Upon receipt of the Class Data, the Settlement Administrator will perform a search based  
27 on the National Change of Address Database to update and correct any known or identifiable  
28 address changes. Within fourteen (14) days of receipt of the Class Data, the Settlement

1 Administrator shall mail copies of the Class Notice to all Class Members via regular First-Class  
2 U.S. Mail. The Settlement Administrator shall exercise its best judgment to determine the current  
3 mailing address for each Class Member, including performing a skip-trace to identify any updated  
4 addresses. The address identified by the Settlement Administrator as the current mailing address  
5 shall be presumed to be the best mailing address for each Settlement Class Member.

6 **8. Undeliverable Notices.**

7 Any Class Notice returned to the Settlement Administrator as undeliverable on or before  
8 the Response Deadline shall be re-mailed once to the forwarding address affixed thereto. If no  
9 forwarding address is provided, the Settlement Administrator shall promptly attempt to determine  
10 a correct address by use of skip-tracing, or other search using the name, address and/or social  
11 security number of the Class Member whose notice was undeliverable, and shall then re-mail all  
12 returned, undelivered mail within ten (10) days of receiving notice that a notice was undeliverable.  
13 Class Members who receive a re-mailed Class Notice shall have their Response Deadline extended  
14 twenty (20) days from the original Response Deadline.

15 **9. Disputes Regarding Individual Settlement Payments.**

16 Class Members will have the opportunity, should they disagree with Defendant's records  
17 regarding the Compensable Workweeks stated on their Class Notice, to submit a written dispute  
18 letter that must: (1) contain the full name, address, and telephone number of the disputing Class  
19 Member; (2) contain a statement expressing that the Class Member disputes the number of  
20 Compensable Workweeks credited to him or her, and, if available, attach documentation and/or an  
21 explanation to show contrary information; (3) be signed by the Class Member; and (4) be  
22 postmarked or fax stamped by the Response Deadline and returned to the Settlement Administrator  
23 at the specified address or fax number. If there is a dispute, the Settlement Administrator will  
24 consult with the Parties to determine whether an adjustment is warranted. The Settlement  
25 Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement  
26 Payments under the terms of this Settlement Agreement. The Settlement Administrator's  
27 determination of the eligibility for and amount of any Individual Settlement Payment shall be  
28 binding upon the Class Members and the Parties. In the absence of circumstances indicating fraud,

manipulation or destruction, Defendant's records will be given a rebuttable presumption of accuracy.

**10. Disputes Regarding Administration of Settlement.**

Any disputes not resolved by the Settlement Administrator concerning the administration of the Settlement will be resolved by the Court, under the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties will confer in good faith to resolve the disputes without the necessity of involving the Court.

**11. Exclusions.**

The Class Notice shall state that Class Members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the full name, address, and telephone number of the Class Member requesting exclusion; (2) contain a statement expressing that the Class Member elects to be excluded from the Settlement; (3) be signed by the Class Member; and (4) be postmarked or fax stamped by the Response Deadline and returned to the Settlement Administrator at the specified address or fax number. The Request for Exclusion will be deemed invalid if it does not contain a Class Member's full name, address, signature, and a statement requesting exclusion. The date of the postmark on the return mailing envelope or fax stamp on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. If the Settlement Administration is unsure of the validity of a Request for Exclusion, it must provide a copy of the Request for Exclusion to the Parties to review and make a determination as to its validity. Any Class Member who requests to be excluded from the Class will not be entitled to any recovery under the Settlement and will not be bound by the terms of the Settlement or have any right to object, appeal, or comment thereon. Class Members who fail to submit a valid and timely Request for Exclusion on or before the Response Deadline shall be bound by all terms of the Settlement and any Final Judgment entered in the Action if the Settlement is approved by the Court. No later than seven (7) calendar days after the Response Deadline, the Settlement Administrator shall provide counsel for the Parties with a complete list of all Class Members who have timely submitted a Request for Exclusion.

1           **12.    Objections.**

2           The Class Notice shall state that Class Members who wish to object to the Settlement may  
3 do so in person at the Final Approval Hearing and/or in writing. Any written objection (“Notice of  
4 Objection”) must be mailed to the Settlement Administrator by the Response Deadline. The date  
5 of mailing on the envelope shall be deemed the exclusive means for determining that a Notice of  
6 Objection was timely received. The Notice of Objection must be signed by the Class Member and  
7 state: (1) the full name, present address, and telephone number of the Class Member; (2) the basis  
8 for the objection; and (3) if the Class Member intends to appear at the Final Approval Hearing.  
9 The Settlement Administration must provide a copy of written objections to the Parties within  
10 three (3) days of receipt. Counsel will ensure that any Notice of Objection received by the  
11 Settlement Administrator by the Response Deadline are filed with the Court along with the Motion  
12 for Final Approval. Either of the Parties may file a responsive document to any objection before  
13 the Final Approval Hearing. Any attorney who will represent an individual objecting to this  
14 Settlement who has not filed a written objection must file a notice of appearance with the Court  
15 and serve Class Counsel and counsel for Defendant no later than the Response Period Deadline.  
16 Class Counsel shall not represent any Class Members with respect to any such objections.

17           Any Class Member who fails to submit a timely written objection or to present an objection  
18 in person at the Final Approval Hearing shall be deemed to have waived any objections and shall  
19 be foreclosed from making any objection to the Settlement whether by appeal or otherwise.

20           An individual who submits a valid Request for Exclusion may not object to the Settlement.

21           **13.    No Solicitation of Settlement Objections or Exclusions.**

22           The Parties agree to use their best efforts to carry out the terms of this Settlement. At no  
23 time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members  
24 to submit either written objections to the Settlement or requests for exclusion from the Settlement,  
25 or to appeal from the Court’s Final Judgment.

26           **14.    Funding and Allocation of Gross Settlement Amount.**

27           No later than twenty (20) days after the Effective Date, Defendant shall provide the Gross  
28 Settlement Amount to the Settlement Administrator to fund the Settlement, as set forth in this

1 Settlement Agreement, and the employer's share of payroll taxes due on the portion of the  
2 Individual Settlement Payments that is allocated to wages. Defendant will not be obligated to  
3 make any payments contemplated by this Settlement Agreement unless and until the Court enters  
4 the Final Approval Order and Final Judgment, and after the Effective Date of the Agreement.

5 **15. Net Settlement Amount.**

6 The Net Settlement Amount will be determined by the Settlement Administrator by  
7 subtracting the Court-approved Attorneys' Fees and Costs, Class Representative Service Award,  
8 LWDA Payment, and Settlement Administrator Costs from the Gross Settlement Amount. The  
9 anticipated Net Settlement Amount is \$1,465,000. The Parties estimate the amount of the Net  
10 Settlement Amount as follows:

11	Gross Settlement Amount:	\$ 2,500,000
12	Class Representative Service Award:	\$ 7,500
13	Class Counsel Fees:	\$ 875,000
14	Class Counsel Costs:	\$ 25,000
15	LWDA Payment	\$ 112,500
16	Settlement Administrator Costs:	\$ 15,000
17	<b>Anticipated Net Settlement Amount</b>	<b>\$ 1,465,000</b>

18 This is a non-reversionary Settlement in which Defendant is required to pay the entire  
19 Gross Settlement Amount, which includes, the Attorneys' Fees and Costs, Class Representative  
20 Service Award, Individual Settlement Payments, LWDA Payment, and Settlement Administrator  
21 Costs. No portion of the Gross Settlement Amount will revert to Defendant.

22 Defendant's share of payroll taxes due on the portion of the Individual Settlement  
23 Payments allocated to wages, including but not limited to Defendant's FICA and FUTA  
24 contributions, shall be paid separately from, and in addition to, the Gross Settlement Amount.

25 **16. Individual Settlement Payments.**

26 Individual Settlement Payments will be paid from the Net Settlement Amount and shall be  
27 paid pursuant to the settlement formula set forth in Paragraph III.17 of this Settlement Agreement.  
28 Individual Settlement Payments shall be mailed by regular First-Class U.S. Mail to each

1 Participating Class Member's last known mailing address within seven calendar days after  
2 Defendant makes the final settlement payment. All Individual Settlement Payments will be  
3 allocated as follows: twenty percent (20%) as wages and eighty percent (80%) as interest,  
4 penalties, and non-wage damages.

5 **17. Participating Class Member's Individual Settlement Payments.**

6 Participating Class Members will be paid on a pro-rata basis. The Individual Settlement  
7 Payment of a Participating Class Member that performed work for Defendant on a full-time basis  
8 will be based on the number of Compensable Workweeks she or he worked in proportion to the  
9 aggregate number of Compensable Workweeks worked by all Participating Class Members. The  
10 Individual Settlement Payment of a Participating Class Member that performed work for  
11 Defendant on a part-time basis will be based on the number of Compensable Workweeks she or  
12 he worked, pro-rated by the percentage of hours out of 40 hours she or he averaged per week, in  
13 proportion to the aggregate number of Compensable Workweeks worked by all Participating Class  
14 Members. For example, if the average number of hours a Participating Class Member performed  
15 work for Defendant per week totals 25 hours, his/her Compensable Workweeks would be pro-  
16 rated by 70% (25 hours/40 hours = 70%). Thus, the Participating Class Member that performed  
17 work for Defendant on a part-time basis averaging 25 hours per week, s/he will be credited with  
18 70% of their Compensable Workweeks for purposes of calculating their Individual Settlement  
19 Payment.

20 **18. Payment to Class Member.**

21 Checks shall be made payable to each Participating Class Members for payment of each  
22 Participating Class Member's Individual Settlement Payment as set forth in Paragraph III.16 of  
23 this Settlement Agreement.

24 **19. Form of Payment to Class Member.**

25 The Individual Settlement Payment amount due to each Participating Class Member shall  
26 be paid in the form of a check to each Participating Class Member.

27 **20. Unclaimed Settlement Payment(s).**

28 After one hundred and sixty (160) days of the mailing of the Individual Settlement Payment



1 checks, funds attributable to unclaimed, undeliverable, or expired Individual Settlement Payment  
2 checks will be transmitted to the State of California Office of the Controller Unclaimed Property  
3 Fund in the name of the Participating Class Members who did not cash his/her Settlement check.  
4 The Parties agree to coordinate their efforts to seek Court approval for such an escheatment process  
5 of uncashed funds. If, for some reason, the Court does not approve the escheatment of uncashed  
6 funds, the Parties agree to proceed pursuant to California Code of Civil Procedure section 384,  
7 distribute uncashed funds as described therein, and agreed upon the non-profit Bet Tzedek Legal  
8 Services as the *cy pres* designee pursuant to Code of Civil Procedure section 384(b)(3)(C).

9 **21. Class Representative Service Award.**

10 Plaintiff will request that the Court approve a Class Representative Service Award of up to  
11 \$7,500. The Class Representative Service Award shall be paid to Plaintiff from the Gross  
12 Settlement Amount within ten (10) calendar days after Defendant provides the Gross Settlement  
13 Amount to the Settlement Administrator. The Settlement Administrator shall issue an IRS Form  
14 1099 – MISC to Plaintiff for his Class Representative Service Award. Plaintiff shall be solely and  
15 legally responsible to pay any and all applicable taxes on his Class Representative Service Award  
16 and shall hold harmless Defendant and Class Counsel from any claim or liability for taxes,  
17 penalties, or interest arising as a result of the Class Representative Service Award. The Class  
18 Representative Service Award shall be in addition to the Plaintiff's Individual Settlement Payment  
19 as a Settlement Class Member. Any amount requested by Plaintiff for the Class Representative  
20 Service Award and not granted by the Court shall return to the Net Settlement Amount and be  
21 distributed to Participating Class Members as provided in this Settlement Agreement.

22 **22. Attorneys' Fees and Costs.**

23 Class Counsel will request that the Court approve attorneys' fees in the amount of up to  
24 thirty-five percent (35%) of the Gross Settlement Amount ("Class Counsel Fees"). This amount  
25 is currently anticipated to be \$875,000.00. Class Counsel will request that the Court approve the  
26 reimbursement of any litigation costs or expenses associated with Class Counsel's prosecution of  
27 this matter from the Gross Settlement Amount not to exceed \$25,000 ("Class Counsel Costs," and  
28 together with Class Counsel Fees, "Attorneys' Fees and Costs"). Court-approved Attorneys' Fees



1 and Costs shall be payable to Class Counsel no later than ten (10) days after Defendant provides  
2 the Gross Settlement Amount to the Settlement Administrator. With respect to the Attorneys' Fees  
3 and Costs awarded to Class Counsel, the Settlement Administrator may purchase an annuity to  
4 utilize United States Treasuries and bonds or other attorney fee deferral vehicles on behalf of Class  
5 Counsel; any costs associated with the use of attorney fee deferral vehicles will be the  
6 responsibility of Class Counsel. Class Counsel shall be solely and legally responsible to pay all  
7 applicable taxes on the payment made pursuant to this paragraph. The Settlement Administrator  
8 shall issue an IRS Form 1099 – MISC to Class Counsel for the payments made pursuant to this  
9 paragraph. This Settlement is not contingent upon the Court awarding Class Counsel any  
10 particular amount in Attorneys' Fees and Costs. Any amount requested by Class Counsel for  
11 Attorneys' Fees and Costs and not granted by the Court shall return to the Net Settlement Amount  
12 and be distributed to Participating Class Members as provided in this Settlement Agreement.

13 **23. Settlement Administrator Costs.**

14 The Parties agree to allocate up to \$15,000 of the Gross Settlement Amount for Settlement  
15 Administrator Costs. The Settlement Administrator shall have the authority and obligation to make  
16 payments, credits and disbursements to Participating Class Members in the manner set forth herein,  
17 calculated in accordance with the methodology set out in this Settlement Agreement and orders of  
18 the Court. The Parties agree to cooperate in the Settlement administration process and to make all  
19 reasonable efforts to control and minimize the cost and expenses incurred in administration of the  
20 Settlement.

21 **24. Responsibilities of the Settlement Administrator.**

22 The Settlement Administrator shall be responsible for the following: processing and  
23 mailing payments to Plaintiff, Class Counsel, and Participating Class Members; printing, and  
24 mailing the Class Notice and tax forms to the Participating Class Members as directed by the  
25 Court; receiving and reporting the requests for exclusion and objections submitted by Class  
26 Members; providing declaration(s) as necessary in support of preliminary and/or final approval of  
27 this Settlement; and other tasks as the Parties mutually agree or the Court orders the Settlement  
28 Administrator to perform. The Settlement Administrator shall keep the Parties timely apprised of

the performance of all Settlement Administrator responsibilities.

**25. Settlement Administrator Fees.**

The Settlement Administrator shall be paid the Settlement Administrator Costs within ten (10) calendar days after Defendant provides the Gross Settlement Amount to the Settlement Administrator.

**26. Payment to the LWDA.**

A total payment of \$150,000 from the Gross Settlement Amount will be allocated as civil penalties recovered pursuant to PAGA, the PAGA Allocation. Seventy-five percent (75%) of the PAGA Allocation, or \$112,500, will be paid to the LWDA and the remaining twenty-five percent (25%), or \$37,500, shall be included in the Net Settlement Amount to be distributed to Participating Class Members.

**27. Final Approval Hearing and Entry of Final Judgment.**

Upon expiration of the Response Deadline, with the Court's permission, a Final Approval Hearing shall be conducted to determine final approval of the Settlement along with the amount properly payable for: (i) Attorneys' Fees and Costs; (ii) Class Representative Service Award; (iii) Individual Settlement Payments; (iv) the Settlement Administrator Costs; and (v) LWDA Payment.

**28. Final Approval Order.**

Plaintiff will request that the Court enter, after the Final Approval Hearing, a Final Approval Order in a form to be jointly agreed upon by the Parties. Plaintiff will request that the Final Approval Order certify the Class; find that this Settlement Agreement is fair, just, adequate, and in the best interests of the Class; and require the Parties to carry out the provisions of this Settlement Agreement.

**29. Nullification of Settlement Agreement.**

In the event: (i) the Court denies final approval of the Settlement; (ii) the Court refuses to enter a Final Judgment as provided herein; or (iii) the Settlement does not become final for any other reason, and the Parties are unable to reach agreement on a revised settlement that addresses the Court's concerns, this Settlement Agreement shall be null and void and any order or judgement

1 entered by the Court in furtherance of this Settlement shall be treated as void from the beginning.  
2 To the extent the total number of opt outs exceed 10%, Defendant has the option to nullify this  
3 Settlement within ten (10) court days of the last day of the response period via a written notice to  
4 Class Counsel. If one or more of such events occur causing the Settlement Agreement to become  
5 null and void, the Parties shall proceed in all respects as if this Settlement Agreement had not been  
6 executed, except that any fees already incurred by the Settlement Administrator shall be paid by  
7 the party terminating the Settlement or Defendant will be solely responsible for the costs incurred  
8 for the settlement administration should it exercise its option to nullify this Settlement Agreement.  
9 The return of any paid Settlement funds to Defendant shall occur no later than five (5) business  
10 days after one or more of the triggering events leading to nullification occurs. In the event an  
11 appeal is filed from the Court's Final Judgment, or any other appellate review is sought,  
12 administration of the Settlement shall be stayed pending final resolution of the appeal or other  
13 appellate review, but any fees incurred by the Settlement Administrator prior to it being notified  
14 of the filing of an appeal from the Court's Final Judgment, or any other appellate review, shall be  
15 paid to the Settlement Administrator by Defendant within thirty (30) days of said notification.

16 **30. Increase in Compensable Workweeks.**

17 It was represented to Class Counsel that the Class is estimated to consist of approximately  
18 415 persons and to include 50,649 Compensable Workweeks. Upon receipt of the Class Data, the  
19 Settlement Administrator shall confirm to Class Counsel that the Class Data is consistent with  
20 these representations. To the extent the number of Compensable Workweeks increases beyond  
21 50,649 by more than 10%, the Gross Settlement Amount shall increase 1% for each 1% increase  
22 over 10%. If the increase causes an increase of the cost of Settlement Administration beyond the  
23 amount that has been approved by the Court, Defendant shall separately bear the increased cost of  
24 Settlement Administration outside of the Gross Settlement Amount.

25 **31. No Effect on Employee Benefits.**

26 Amounts paid to Plaintiff or other Participating Class Members pursuant to this Settlement  
27 Agreement shall be deemed not to be pensionable earnings and shall not have any effect on the  
28 eligibility for, or calculation of, any of the employee benefits (e.g., vacations, holiday pay,

1 retirement plans, etc.) of Plaintiff or Participating Class Members.

2 **32. No Admission by Defendant.**

3 Defendant denies any and all claims alleged in the Action and deny all wrongdoing  
4 whatsoever. This Settlement Agreement is not a concession or admission, and shall not be used  
5 against Defendant as an admission or indication with respect to any claim of any fault, concession,  
6 or omission by Defendant.

7 **33. Exhibits and Headings.**

8 The terms of this Settlement Agreement include the terms set forth in any attached Exhibits,  
9 which are incorporated by this reference as though fully set forth herein. Any Exhibits to this  
10 Settlement Agreement are an integral part of the Settlement. The descriptive headings of any  
11 paragraphs or sections of this Settlement Agreement are inserted for convenience of reference only  
12 and do not constitute a part of this Settlement Agreement.

13 **34. Interim Stay of Proceedings.**

14 Upon full execution of this Settlement Agreement, the Parties agree that based upon Code  
15 of Civil Procedure § 583.310 ("the 5 year rule"), the Action shall be stayed in its entirety except  
16 for the proceedings necessary to implement and complete the Settlement.

17 **35. Amendment or Modification.**

18 This Settlement Agreement may be amended or modified only by a written instrument  
19 signed by counsel for all Parties or their successors-in-interest.

20 **36. Entire Agreement.**

21 This Settlement Agreement and any attached Exhibits constitute the entire Agreement  
22 among these Parties, and no oral or written representations, warranties, or inducements have been  
23 made to any Party concerning this Settlement Agreement or its Exhibits other than the  
24 representations, warranties, and covenants contained and memorialized in the Agreement and its  
25 Exhibits. The Parties are entering into this Settlement Agreement based solely on the  
26 representations and warranties herein and not based on any promises, representation, and/or  
27 warranties not found herein.

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1           **37. Authorization to Enter into Settlement Agreement.**

2           Counsel for all Parties warrant and represent they are expressly authorized by the Parties  
3 whom they represent to negotiate this Settlement Agreement and to take all appropriate actions  
4 required or permitted to be taken by such Parties pursuant to this Settlement Agreement to  
5 effectuate its terms, and to execute any other documents required to effectuate the terms of this  
6 Settlement Agreement. The Parties and their counsel will cooperate with each other and use their  
7 best efforts to effect the implementation of the Settlement. In the event the Parties are unable to  
8 reach agreement on the form or content of any document needed to implement the Settlement, or  
9 on any supplemental provisions that may become necessary to effectuate the terms of this  
10 Settlement, the Parties may seek the assistance of the Court or Mediator to resolve such  
11 disagreement. The persons signing this Settlement Agreement on behalf of Defendant represent  
12 and warrant that they are authorized to sign this Settlement Agreement on behalf of Defendant.  
13 Plaintiff represents and warrants that he is authorized to sign this Settlement Agreement and that  
14 he has not assigned any claim, or part of a claim, covered by this Settlement to a third-party.

15           **38. Binding on Successors and Assigns.**

16           This Settlement Agreement shall be binding upon, and inure to the benefit of, the  
17 successors or assigns of the Parties hereto, as previously defined.

18           **39. California Law Governs.**

19           All terms of this Settlement Agreement and the Exhibits hereto shall be governed by and  
20 interpreted according to the laws of the State of California.

21           **40. Counterparts.**

22           This Settlement Agreement may be executed in one or more counterparts. All executed  
23 counterparts and each of them shall be deemed to be one and the same instrument.

24           **41. Jurisdiction of the Court.**

25           The Court shall retain jurisdiction with respect to the interpretation, implementation, and  
26 enforcement of the terms of this Settlement Agreement and all orders and judgments entered in  
27 connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the  
28 Court for purposes of interpreting, implementing, and enforcing the settlement embodied in this

Settlement Agreement and all orders and judgments entered in connection therewith. All terms of this Settlement Agreement are subject to approval by the Court.

**42. Invalidity of Any Provision.**

Before declaring any provision of this Settlement Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

12/27/22  
Dated: January \_\_, 2022

EDGAR MARISCAL  
Plaintiff and Proposed Class Representative

Electronically Signed: [Signature: Edgar] 2022-12-28 01:02:29 UTC - 172.58.79.230  
Nitex AssureSign® 7045e4f6-79a5-4272-9532-a7201464b61

STF, 12/10/22  
Dated: ~~January~~, 2022

ARIZONA TILE, LLC  
Defendant

December 16, 2023

By: [Signature]

Sonya Cathey  
Senior Director of Human Resources

**APPROVED AS TO FORM:**

December 30, 2022  
Dated: January \_\_, 2022

**LAWYERS FOR JUSTICE PC**

By: [Signature]

Edwin Aiwarzian  
Attorneys for Plaintiff and the Proposed Class

APL 12/16/22  
Dated: January \_\_, 2022

**OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.**

By: [Signature]

Evan R. Moses  
Aaron H. Cole  
Andrew B. Levin  
Attorneys for Defendant ARIZONA TILE, LLC

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EXHIBIT "A"



[CLASS MEMBER NAME]

**EDGAR MARISCAL v. ARIZONA TILE, LLC**

**United States District Court for the Central District of California**

**Case No.: 8:20-cv-02071-JLS-KES**

If you are a current or former employee of ARIZONA TILE, LLC (“Defendant”), a class action lawsuit may affect your rights and you may be entitled to benefits under the proposed settlement.

You are not being sued. A court authorized this notice. This is not a solicitation from a lawyer.

**PLEASE READ THIS NOTICE CAREFULLY. IT CONTAINS IMPORTANT  
INFORMATION ABOUT YOUR RIGHTS.**

- This lawsuit involves a class defined as:

All persons who are employed or have been employed by Arizona Tile, LLC as non-exempt, hourly employees in the State of California during the Class Period.

These individuals are referred to as “Class Members”.

The “Class Period” means the time period from September 15, 2016 to October 21, 2021.

- You are receiving this Notice because the Defendant’s records reflect that you may be a Class Member.
- Plaintiff in this class action alleges claims against Arizona Tile, LLC for failure to properly pay regular, minimum, and overtime wages, failure to provide proper meal periods and to pay meal period premiums, failure to provide proper rest periods and pay rest period premiums, failure to timely pay wages upon termination of employment, failure to timely pay wages during employment, failure to provide compliant wage statements, failure to keep requisite payroll records, failure to reimburse business expenses, unfair business practices violation of California Business and Professions Code § 17200 *et seq.*, and civil penalties under the Labor Code Private Attorneys General Act of 2004 based on these alleged violations of the Labor Code and Wage Order.
- Arizona Tile, LLC denies these allegations and contends that it has complied with the requirements of California law.
- There has been a settlement that affects your rights. Although the Court has authorized the Parties to provide this notice of the proposed settlement, the Court has expressed no opinion on the merits of Plaintiff’s claims or Arizona Tile LLC’s defenses.
- You will not be penalized or retaliated against by Arizona Tile, LLC for participating in this class action settlement. If you are currently employed by Arizona Tile, LLC, your employment will not be affected in any way. Current employees of Arizona Tile, LLC who choose to participate in the settlement will not be required to resign and can continue to work for Arizona Tile, LLC.



- You have several options available to you:

<b>DO NOTHING</b>	By doing nothing, you <b>will</b> receive a share of the settlement proceeds, and you will give up any rights to sue for Released Claims (defined below).
<b>ASK TO BE EXCLUDED (OPT OUT)</b>	Exclude yourself from the settlement. Keep your rights to file a separate claim against Arizona Tile, LLC.  If you ask to be excluded, you <b>will not</b> receive a share of the settlement proceeds, but you keep any rights you may have to bring your own suit against Defendant.
<b>OBJECT</b>	Object to the terms of the proposed settlement.

**Your options are explained in this notice.  
To opt out or object, you must act by **XXXX**.**

### **1. Why did I get this notice?**

A proposed settlement has been reached in a class action lawsuit that was brought on behalf of Arizona Tile, LLC's employees. You have received this notice because Arizona Tile, LLC's records indicate that you are a Class Member. This means you are eligible to participate in and receive a payment from this settlement.

### **2. What is this lawsuit about?**

This lawsuit was filed September 15, 2020 on behalf of all persons who are employed or have been employed as an hourly employee by Arizona Tile, LLC in the State of California. The Second Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, Cal. Labor Code § 2698, et seq. ("Operative Complaint") asserts the following allegations on behalf of all proposed class members: failure to properly pay regular, minimum, and overtime wages, failure to provide proper meal periods and to pay meal period premiums, failure to provide proper rest periods and pay rest period premiums, failure to timely pay wages upon termination of employment, failure to timely pay wages during employment, failure to provide compliant wage statements, failure to keep requisite payroll records, failure to reimburse business expenses, unfair business practices violation of California Business and Professions Code § 17200 *et seq.*, and civil penalties under the Labor Code Private Attorneys General Act of 2004 based on these alleged violations of the Labor Code and Wage Order.

### **3. Has the Court decided who is right?**

No. The Court has made no decision regarding the merits of Plaintiff's allegations or Arizona Tile, LLC's defenses.

#### 4. Why did this case settle?

The Parties reached a settlement in order to avoid the risk and expense of further litigation. Plaintiff and his attorneys believe the proposed settlement is fair, adequate and in the best interest of all Class Members given the outcome of their investigation, the time and resources required in connection with further litigation, the risks as to the outcome, and the uncertainty in the law governing some of the claims presented. Although Arizona Tile, LLC disputes Plaintiff's claims and maintains that it has complied with all of its legal obligations toward its employees, Arizona Tile, LLC has also concluded that further litigation would be protracted and expensive and would also divert management and employee time.

#### 5. What are the terms of the settlement and how much will I receive?

The Gross Settlement Amount to be paid by Defendant under the proposed settlement is \$2,500,000. Under the proposed settlement, the following amounts will be deducted before any payments are made to Class Members, subject to final approval by the Court:

Class Representative Service Award:	\$7,500
Class Counsel Fees:	\$875,000
Class Counsel Costs:	\$25,000
LWDA Payment:	\$112,500
<u>Settlement Administrator Costs:</u>	<u>\$15,000</u>

Anticipated Net Settlement Amount                      \$1,465,000

After these deductions, it is anticipated that there will be \$1,465,000 available to be divided amongst the Class Members receiving this notice ("Net Settlement Amount"). Only those Class Members who do not submit a valid and timely Request for Exclusion ("Participating Class Members") will be entitled to payment of a *pro rata* rate of the Net Settlement Amount.

Participating Class Members will be paid on a pro-rata basis. The Individual Settlement Payment of a Participating Class Member that performed work for Defendant on a full-time basis will be based on the number of workweeks during which he or she performed work for Defendant during the Class Period ("Compensable Workweeks") in proportion to the aggregate number of workweeks worked by all Participating Class Members during the Class Period. The Individual Settlement Payment of a Participating Class Member that performed work for Defendant on a part-time basis will be based on his or her number of Compensable Workweeks, pro-rated by the percentage of hours out of 40 hours he or she averaged per week, in proportion to the aggregate number of workweeks worked by all Participating Class Members during the Class Period.

This means that your anticipated payment is "pro rata" and will be based upon the number of Compensable Workweeks you worked for Arizona Tile, either on a full-time basis or a part-time basis, during the time period from September 15, 2016 to October 21, 2021.

All Individual Settlement Payments will be allocated as follows: 20% wages and 80% interest, penalties, and non-wage damages.

According to Arizona Tile, LLC's records, the total number of Compensable Workweeks that you worked for Defendant *during the relevant time period* is                     . [According to

Arizona Tile, LLC's records, you performed work for Defendant on a full-time basis.] OR [According to Arizona Tile, LLC's records, you performed work for Defendant on a part-time basis and the average number of hours you performed work for Defendant per week totals \_\_\_\_\_ hours.] If you disagree with this information and would like someone to look into the matter, please follow the procedure below. Based on these Compensable Workweeks, your estimated settlement amount is \_\_\_\_\_.

**6. What if I disagree with the number of workweeks shown above and/or the average number of hours I performed work for Defendant per week if I performed work for Defendant on a part-time basis?**

If you believe the information in this notice is incorrect regarding the number of Compensable Workweeks attributed to you and/or the average number of hours you performed work for Defendant per week on a part-time basis, you will need to write a letter setting forth the number of Compensable Workweeks and/or the average number of hours you performed work for Defendant per week that you believe are correct. You must mail your letter to:

Settlement Administrator  
c/o Phoenix Class Action Administration Solutions

The letter disputing the number of Compensable Workweeks and/or your average number of hours per week must: (1) contain your full name, address, and telephone number; (2) contain a statement expressing that you dispute the number of Compensable Workweeks credited to you and/or that you dispute the average number of hours you performed work for Defendant per week, and, if available, to attach documentation and/or an explanation to show contrary information; (3) be signed by you; and (4) be postmarked or fax stamped by XXXX and returned to the Settlement Administrator at the specified address or fax number above.

Class Counsel and the Settlement Administrator will work together in good faith and do their best to promptly resolve the dispute based on available records. In the event they are unable to resolve any dispute, the Settlement Administrator shall review all information, material and documents and make a decision regarding the dispute.

**7. What do I have to do to receive a share of the settlement?**

If you wish to receive an award under the terms of this settlement, you do not have to do anything. However, please make sure the Settlement Administrator always has your current home address on file to ensure you receive your settlement share. If you move, call the Settlement Administrator to provide your new address.

**8. What rights am I giving up?**

The claims you will Release by doing nothing are: All causes of action and factual or legal theories that were alleged in the Operative Complaint or reasonably could have been alleged based on the facts and legal theories contained in the Operative Complaint, including all of the following claims for relief: (a) failure to pay all regular wages, minimum wages and overtime wages due; (b) failure to properly calculate the regular rate of pay for payment of overtime wages; (c) failure to provide proper meal periods, and to properly provide premium pay in lieu thereof; (d) failure to provide proper rest periods, and to properly provide premium pay in lieu thereof; I failure to pay all wages

timely during employment; (f) failure to pay all wages timely at the time of termination; (g) failure to provide complete, accurate or properly formatted wage statements; (h) failure to keep required payroll records; (i) failure to reimburse business expenses; (j) unfair business practices that could have been premised on the claims, causes of action or legal theories of relief described above or any of the claims, causes of action or legal theories of relief pleaded in the operative complaint; (k) all claims under the California Labor Code Private Attorneys General Act of 2004 that could have been premised on the claims, causes of action or legal theories described above or any of the claims, causes of action or legal theories of relief pleaded in the Operative Complaint; (l) any other claims or penalties under the wage and hour laws pleaded in the Operative Complaint; and (m) all damages, penalties, interest and other amounts recoverable based on the claims, causes of action, or legal theories of relief pleaded in the Operative Complaint (collectively, the “Released Claims”).

#### **9. What if I do not wish to be involved?**

Anyone not wishing to participate in the settlement may exclude himself or herself (“opt out”) by completing, signing, and mailing a letter indicating that they do not want to participate in the settlement to the Settlement Administrator, Phoenix Class Action Administration Solutions, by XXXX (“Request for Exclusion”).

Settlement Administrator  
c/o Phoenix Class Action Administration Solutions

The Request for Exclusion: (1) must contain your name, address, and telephone number; (2) a statement expressing that you want to be excluded from the settlement; (3) must be signed by you; and (4) must be postmarked or fax stamped by XXXX and returned to the Settlement Administrator at the specified address or fax number above. The Request for Exclusion will be deemed invalid if it does not contain your name, address, signature, and a statement requesting exclusion.

Anyone who submits a timely and valid Request for Exclusion shall not be deemed a Participating Class Members and will not receive any payment as part of the settlement. Such persons will keep any rights to sue Arizona Tile, LLC separately about the claims made in this lawsuit. An individual who submits a valid Request for Exclusion may not object to the settlement.

#### **10. What if I have an objection to the settlement?**

A class member may object to the settlement in writing or in person. Written objections and all supporting briefs or other materials must be submitted to the Settlement Administrator no later than XXXX.

The Notice of Objection must be signed by the Class Member and state: (1) the full name of the Class Member; (2) the basis for the objection; and (3) if the Class Member intends to appear at the Final Approval Hearing.

Any Class Member may make an objection at the Final Approval Hearing with or without filing or serving any written objection. The Class Member may appear personally or through an attorney, at his or her own expense, at the Final Approval Hearing to present his or her objection directly to the Court. The Final Approval Hearing will be held in Courtroom      of the United States District Court for the Central District of California, located at                      on             , 2022,

at XX (a.m./p.m.) (Pacific Time).

Any attorney who will represent an individual objecting to this settlement who has not filed a written objection must file a notice of appearance with the Court and serve Class Counsel and counsel for Arizona Tile, LLC no later than the [Response Deadline].

Any Class Member who fails to submit a timely written objection or to present an objection in person at the Final Approval Hearing shall be deemed to have waived any objections and shall be foreclosed from making any objection to the settlement whether by appeal or otherwise.

#### 11. Do I need a lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. However, if you want your own lawyer, you are free to hire one at your own expense.

The below are Class Counsel and Defendant's Counsel in this case:

<u>Class Counsel:</u>	<u>Counsel for ARIZONA TILE, LLC</u>
<b>LAWYERS for JUSTICE, PC</b> Edwin Aiwazian edwin@calljustice.com Arby Aiwazian arby@calljustice.com Joanna Ghosh joanna@calljustice.com 410 West Arden Avenue, Suite 203 Glendale, California 91203 Telephone: (818) 265-1020 Facsimile: (818) 265-1021	<b>OGLETREE, DEAKINS, NASH, SMOAK &amp; STEWART, P.C.</b> EVAN R. MOSES evan.moses@ogletree.com AARON H. COLE aaron.cole@ogletree.com ANDREW B. LEVIN andrew.levin@ogletree.com 400 South Hope Street, Suite 1200 Los Angeles, CA 90071 Telephone: 213.239.9800 Facsimile: 213.239.9045

#### 12. What happens next in the case?

The settlement has only been preliminarily approved. The Court will hold a hearing in Courtroom [redacted] of the United States District Court for the Central District of California, located at [redacted] on [redacted], 2022, at XX (a.m./p.m.) (Pacific Time), to consider any objections and determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for Attorneys' Fees and Costs, Plaintiff's Service Award, the LWDA Payment, and the Settlement Administrator Costs. The hearing may be continued without further notice to you. It is not necessary for you to appear at this hearing.

#### 13. How can I receive more information?

This notice is a summary of the basic terms of the settlement. For further information, you may also telephone the Settlement Administrator, Phoenix Class Action Administration Solutions (listed above), or Class Counsel (listed above). You may also visit the following website at which you can access certain documents relating to the settlement by entering the name of this lawsuit: [insert URL].

**Please do not telephone the Court, the Office of the Clerk, or Arizona Tile's counsel for information regarding this settlement.**

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