

## CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Ethan Troupe (“Plaintiff”) and defendant Azurelite, Inc. (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

### 1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *Ethan Troupe v. Azurelite, Inc.* initiated on October 28, 2021 and pending in Superior Court of the State of California, County of Los Angeles (Case No. 21CMCV00282).
- 1.2. “Administrator” means Phoenix Settlement Administration, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means a person employed by Defendant in California and classified as a nonexempt employee who worked for Defendant during the PAGA Period.
- 1.5. “Class” means all persons employed by Defendant in California and classified as nonexempt employees who worked for Defendant during the Class Period.
- 1.6. “Class Counsel” means Gaines & Gaines, APLC, and attorneys Daniel F. Gaines, Alex P. Katofsky, and Evan S. Gaines.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8. “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available

sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

- 1.11. "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English with a Spanish translation, in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12. "Class Period" means the period from October 5, 2018 to November 5, 2022.
- 1.13. "Class Representative" means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14. "Class Representative Service Payment" means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15. "Court" means the Superior Court of California, County of Los Angeles.
- 1.16. "Defendant" means named Defendant Azurelite, Inc.
- 1.17. "Defense Counsel" means Ballard Rosenberg Golper & Savitt, LLP and attorneys Matthew B. Golper, and Daniel J. Corbett.
- 1.18. "Effective Date" means the date by when both of the following have occurred:  
(a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.19. "Final Approval" means the Court's order granting final approval of the Settlement.
- 1.20. "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval of the Settlement.
- 1.21. "Final Judgment" means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.22. "Gross Settlement Amount" means \$150,000.00 which is the maximum and total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments,

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

- 1.23. "Individual Class Payment" means a Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.24. "Individual PAGA Payment" means an Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.
- 1.25. "Judgment" means the judgment entered by the Court based upon the Final Approval.
- 1.26. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.27. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.28. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29. "Non-Participating Class Member" means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.31. "PAGA Period" means the period from April 6, 2020 to November 5, 2022.
- 1.32. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.33. "PAGA Notice" means Plaintiff's August 23, 2021 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.34. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$3,750) and the 75% to LWDA (\$11,250) in settlement of PAGA claims.

- 1.35. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.36. "Plaintiff" means Ethan Troupe, the named plaintiff in the Action.
- 1.37. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.
- 1.38. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.39. "Released Class Claims" means the claims being released as described in Paragraph 6.2 below.
- 1.40. "Released PAGA Claims" means the claims being released as described in Paragraph 6.2 below.
- 1.41. "Released Parties" means: (i) Defendant and (ii) each of Defendant's respective past, present and future parents, subsidiaries, and affiliates including, without limitation, any corporation, limited liability company, partnership, trust, foundation, and non-profit entity which controls, is controlled by, or is under common control with Defendant; (iii) the past, present and future shareholders, directors, officers, agents, employees, attorneys, insurers, members, partners, managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors, and assigns of any of the foregoing; and (iv) any individual or entity which could be jointly liable with any of the foregoing under Labor Code section 558.1 or otherwise.
- 1.42. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.43. "Response Deadline" means 45 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.44. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.
- 1.45. "Workweek" means any week during which a Class Member worked for Defendant for at least one day, during the Class Period.

## 2. RECITALS.

- 2.1. On October 28, 2021, Plaintiff commenced this Action by filing a Complaint alleging a single representative cause of action under PAGA against Defendant for: (i) failure to pay minimum wage and overtime; (ii) failure to provide meal and rest periods; (iii) failure to reimburse for business expenses; (iv) failure to provide wage statements in compliance with Cal. Lab. Code § 226; and (v) failure to provide statutory paid sick leave pursuant to Cal Lab. Code § 246(d).
- 2.2. The Complaint is presently the operative complaint in the Action. As described in Section 7, below, however, Plaintiff will file a First Amended Complaint as part of his Motion for Preliminary Approval which adds class allegations predicated on the same factual bases as the Complaint. The First Amended Complaint, a copy of which is attached hereto as Exhibit B, shall hereinafter be referred to as the “Operative Complaint.” Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged.
- 2.3. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.
- 2.4. On September 20, 2022 and October 5, 2022, the Parties participated in two mediation sessions presided over by Brandon McKelvey, Esq. of McKelvey Resolution, which led to this Agreement to settle the Action.
- 2.5. Prior to the mediation of this Action, Plaintiff obtained, through informal discovery certain data points related to the number of putative Class members and allegedly Aggrieved Employees, pay periods worked during the proposed Class and PAGA Periods, average rates of pay, timekeeping and payroll records for a statistically significant portion of the proposed Class and allegedly Aggrieved Employees, as well as all documents that describe Defendant’s policies or practices regarding the legal claims and factual allegations in the Complaint. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4<sup>th</sup> 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4<sup>th</sup> 116, 129-130 (“*Dunk/Kullar*”).
- 2.6. The Court has not granted class certification.
- 2.7. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

## 3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant promises to pay \$150,000.00 and no more as the Gross Settlement Amount

and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$10,000 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment, and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of this Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 33-1/3% of the Gross Settlement Amount, which is currently estimated to be \$50,000.00 and \$15,070 for Class Counsel's fees in connection with Plaintiff's anti-SLAPP motion scheduled to be heard on October 18, 2022, but which was withdrawn by Class Counsel as part of the settlement's compromise; and a Class Counsel Litigation Expenses Payment of not more than \$15,000. Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 10 calendar days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel

Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$11,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$11,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1. Tax Allocation of Individual Class Payments. 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The remaining 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for, *e.g.*, interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

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

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$15,000.00 to be paid from the Gross Settlement Amount, with 75% (\$11,250) allocated to the LWDA PAGA Payment and 25% (\$3,750) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$3,750) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

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

#### **4. SETTLEMENT FUNDING AND PAYMENTS.**

- 4.1. Class Workweeks. Based on a review of its records to date, Defendant estimates there are 218 Class Members who collectively worked a total of 11,000 Workweeks during the Class Period.
- 4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator pursuant to the following schedule:
- (a) Defendant shall fund twenty percent (20%) of the Gross Settlement and twenty percent (20%) of Defendant's share of payroll taxes within ten (10) calendar days after the Effective Date (the "First Installment");
  - (b) Defendant shall fund twenty percent (20%) of the Gross Settlement and twenty percent (20%) of Defendant's share of payroll taxes within six (6) months after the Effective Date (the "Second Installment");
  - (c) Defendant shall fund twenty percent (20%) of the Gross Settlement and twenty percent (20%) of Defendant's share of payroll taxes within 12 months after the Effective Date (the "Third Installment");
  - (d) Defendant shall fund twenty percent (20%) of the Gross Settlement and twenty percent (20%) of Defendant's share of payroll taxes within 18 months after the Effective Date (the "Fourth Installment");



- (c) Defendant shall fund twenty percent (20%) of the Gross Settlement and twenty percent (20%) of Defendant's share of payroll taxes within 24 months after the Effective Date (the "Fifth Installment");

To the extent Defendant fails to timely make any installment payment in a timely manner, the total of all remaining payments, shall be accelerated and shall become immediately due and payable. Time is of the essence with respect to these payment terms and all provisions of this Agreement.

- 4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant funds 40%, 80%, and 100% of the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, and the Administration Expenses Payment (i.e. three distributions during the course of the installment payments). Pro rata shares of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment shall be paid to Class Counsel and the Class Representative after each deposit by Defendant.

- 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

- 4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

- 4.4.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California

Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). The Parties, Class Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient.

- 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

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

- 6.1 Plaintiff's Release. Plaintiff and his respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under 6.2, below. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

- 6.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542.  
For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

- 6.2 Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts

stated in the Operative Complaint and the PAGA Notice, but not limited to claims for (a) failure to pay minimum, straight time, overtime, or double time wages, and failure to pay other wages of any kind during employment; (b) failure to authorize and permit rest periods or pay rest period premiums; (c) failure to provide meal periods or pay meal period premiums; (d) failure to provide accurate and itemized wage statements; (e) failure to maintain accurate employment records; (f) failure to pay final wages due at separation; (g) failure to reimburse or indemnify all necessary business expenses; (h) failure to provide statutory sick leave; (i) claims brought under Business & Professions Code section 17200, *et seq.*, based on the aforementioned; (j) claims for civil penalties brought under PAGA based on the aforementioned, and all damages, interest, penalties, attorneys' fees, costs, and other amounts recoverable based on the aforementioned, to the extent permissible, including, but not limited to, the California Labor Code and the applicable Wage Orders. This release applies for all periods of time during which a Participating Class Member was employed by Defendant in a nonexempt position in California during the Class Period. Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

- 6.3 Release by Non-Participating Class Members Who Are Aggrieved Employees: All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA civil penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint, and the PAGA Notice, but not limited to, any claims for civil penalties based on Defendant's alleged: (a) failure to pay minimum, straight time, overtime, or double time wages, and failure to pay other wages of any kind during employment; (b) failure to authorize and permit rest periods or pay rest period premiums; (c) failure to provide meal periods or pay meal period premiums; (d) failure to provide accurate and itemized wage statements; (e) failure to maintain accurate employment records; (f) failure to pay final wages due at separation; (g) failure to reimburse or indemnify all necessary business expenses; and (h) failure to provide statutory sick leave. This includes, but is not limited, claims for alleged violation of California Labor Code §§ 201, 202, 203, 226, 226.3, 226.7, 246, 510, 512, 558, 1174, 1174.5, 1194, 1198, and 2802. This release applies for all periods of time during which a Non-Participating Class Member who is an Aggrieved Employee was employed by Defendant in a nonexempt position in California during the PAGA Period.

7. **MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval"). Prior to filing any Motion for Preliminary Approval, Plaintiff shall give Defendant no fewer than five (5) business days to comment on and review the motion. As part of the Motion for Preliminary Approval, Plaintiff will seek leave to amend to file the First Amended Complaint in the form attached hereto as Exhibit B.

- 7.1 Defendant's Declaration in Support of Preliminary Approval. Within 14 days of the full execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed Declaration from Defendant and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator and Cy Pres Recipient. In their Declarations, Defense Counsel and Defendant shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.
- 7.2 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; and (iii) a "not to exceed" bid for the Settlement Administrator for administering the Settlement;
- 7.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.
- 7.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

## 8. SETTLEMENT ADMINISTRATION.

- 8.1 Selection of Administrator. The Parties have jointly selected Phoenix Settlement Administration to serve as the Administrator and verified that, as a condition of appointment, Phoenix Settlement Administration agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 8.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

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

8.4 Notice to Class Members.

8.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.

8.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice with Spanish translation, if applicable substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

8.4.3 Not later than 3 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

8.4.4 The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 45 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

8.4.5 If the Administrator, Defendant, or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a

Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

8.5 Requests for Exclusion (Opt-Outs).

- 8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that states: "I WISH TO BE EXCLUDED FROM THE CLASS IN THE TROUPE V, AZURELITE, INC. CLASS ACTION IN LOS ANGELES COUNTY SUPERIOR COURT" or otherwise reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- 8.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
- 8.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- 8.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.4 of this Agreement and are eligible for an Individual PAGA Payment irrespective of their submission of a Request for Exclusion.

8.6 Challenges to Calculation of Workweeks. Each Class Member shall have 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

8.7 Objections to Settlement.

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

8.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 45 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

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

8.8 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email

address and a toll-free telephone number to receive Class Member calls, faxes and emails.

- 8.8.2        Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”) and (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion.
- 8.8.3        Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- 8.8.4        Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- 8.8.5        Administrator’s Declaration. Not later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.
- 8.8.6        Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all



payments made under this Agreement. At least 15 days before any deadline set by the Court, if any, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

9. **CLASS SIZE ESTIMATE AND ESCALATOR CLAUSE.** Based on its records, Defendant estimates that, as of the date of this Settlement Agreement, (1) there are 218 Class Members and 11,000 Total Workweeks during the Class Period (October 5, 2018 to November 5, 2022). In the event the number of Workweeks worked by Class Members during the Class Period increases by more than 10%, to greater than 12,100, then the Gross Settlement Amount shall be increased proportionally by the Workweeks worked in excess of 11,000 (e.g., if the number of Workweeks worked during the Class Period increased by 11%, the Maximum Settlement Amount will increase by 1%).
10. **DEFENDANT'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the total of all Class Members, Defendant may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than 10 days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.
11. **MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than seven days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.
  - 11.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
  - 11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts

requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

12. **AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

### 13. **ADDITIONAL PROVISIONS.**

13.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an

admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

13.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant, and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

13.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

13.4 Integrated Agreement. Upon execution by all Parties and their counsel, and upon final approval, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party, except as to the Settlement Agreement entered into between Plaintiff and Defendant in EEOC Charge Number 480-2021-02992 on or about September 3, 2021.

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

13.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.

13.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

13.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

13.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Daniel F. Gaines ([daniel@gainestlawfirm.com](mailto:daniel@gainestlawfirm.com))  
Alex P. Katofsky ([alex@gainestlawfirm.com](mailto:alex@gainestlawfirm.com))  
Evan S. Gaines ([evan@gainestlawfirm.com](mailto:evan@gainestlawfirm.com))  
GAINES & GAINES, APLC  
4550 East Thousand Oaks Boulevard, Suite 100  
Westlake Village, CA 91362

To Defendant:

Matthew B. Golper ([mgolper@brgslaw.com](mailto:mgolper@brgslaw.com))  
Daniel J. Corbett ([dcorbett@brgslaw.com](mailto:dcorbett@brgslaw.com))  
BALLARD ROSENBERG GOLPER AND SAVITT, LLP  
15760 Ventura Boulevard, 18<sup>th</sup> Floor  
Encino, CA 91436

13.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of

them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

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

*[SIGNATURES ON FOLLOWING PAGE]*

Dated: 01 / 12 / 2023

By: 

ETHAN TROUPE  
Plaintiff and Class Representative

Dated: 1/17/2023

AZURELITE, INC.

By: 

Its: \_\_\_\_\_

Sung T. Lim, President

**APPROVED AS TO FORM AND CONTENT:**

Dated: 1/12/2023

GAINES & GAINES, APLC

By: 

Daniel F. Gaines, Esq.

Alex P. Katofsky, Esq.

Counsel for Plaintiff and Class  
Representative

Dated: 1/17/2023

BALLARD ROSENBERG GOLPER &  
SAVITT, LLP

By: 

Matthew B. Golper, Esq.

Daniel J. Corbett, Esq.

Counsel for Defendant

# EXHIBIT A



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

*Ethan Troupe v. Azurelite, Inc.*, Los Angeles County Superior Court Case No. 21CMCV00282

***The Superior Court for the State of California authorized this Notice. Read it carefully!  
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

**You may be eligible to receive money** from an employee class action lawsuit ("Action") against Azurelite, Inc. ("Defendant") for alleged wage and hour violations. The Action was filed by a former employee of Defendant, Ethan Troupe ("Plaintiff") and seeks (1) damages, restitution, and penalties for Defendant's alleged failure to pay all minimum and overtime wages due, provide meal and rest periods, or compensation in lieu thereof, reimburse necessary business expenses, issue complete and accurate wage statements, and timely pay all wages due at the separation of employment for a class of non-exempt California employees who worked for Defendant from October 5, 2018 through November 5, 2022 ("Class Members") ("Class Period"); and (2) penalties under the California Private Attorney General Act ("PAGA") for all non-exempt California employees who worked for Defendant during the PAGA Period (April 6, 2020 through November 5, 2022) ("Aggrieved Employees").

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

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

The above estimates are based on Defendant's records showing that **you worked \_\_\_\_\_ workweeks** during the Class Period and **you worked \_\_\_\_\_ workweeks** during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

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

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

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

#### **SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT**

|   |   |
|---|---|
| <b>You Don't Have to Do Anything to Participate in the Settlement</b>   | If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendant that are covered by this Settlement (Released Claims).  |
| <b>You Can Opt-out of the Class Settlement but not the PAGA Settlement</b><br><br><b>The Opt-out Deadline is [date]</b> | If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.<br><br>You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below). |
| <b>Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement</b>                       | All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members.  |

|   |  |
|---|--|
| <b>Written Objections<br/>Must be Submitted by<br/>[date]</b>   | You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.  |
| <b>You Can Participate in<br/>the [date] Final<br/>Approval Hearing</b>   | The Court's Final Approval Hearing is scheduled to take place on [date]. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.   |
| <b>You Can Challenge the<br/>Calculation of Your<br/>Workweeks/Pay<br/>Periods</b><br><br><b>Written Challenges<br/>Must be Submitted by<br/>[date]</b> | The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Pay Periods you worked according to Defendant's records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by [date]. See Section 4 of this Notice. |

## 1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of Defendant. The Action accuses Defendant of violating California labor laws by failing to pay all minimum and overtime wages due, provide meal and rest periods, or compensation in lieu thereof, reimburse necessary business expenses, issue complete and accurate wage statements, and timely pay all wages due at the separation of employment. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) ("PAGA"). Plaintiff is represented by attorneys in the Action: Daniel F. Gaines, Alex P. Katofsky, and Evan S. Gaines of Gaines & Gaines, APLC ("Class Counsel.")

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

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

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

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

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

1. Defendant Will Pay \$150,000 as the Gross Settlement Amount (Gross Settlement). Defendant has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, Defendant will fund the Gross Settlement over a period of 2 years, with payments to be disbursed after 6 months, 18 months, and 24 months.

The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
  - A. Up to \$65,070 (33-1/3% of the Gross Settlement, plus attorney's fees of \$15,070 related to an anti-SLAPP motion filed by Plaintiff's Counsel) to Class Counsel for attorneys' fees and up to \$15,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
  - B. Up to \$10,000 as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
  - C. Up to \$11,000 to the Administrator for services administering the Settlement.
  - D. Up to \$15,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

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

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.
4. Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages ("Wage Portion") and 80% to interest and penalties ("Non-Wage Portion."). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

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

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name. If the monies represented by your check is sent to the Controller's Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.
6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than [date], that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the [date] Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member's name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendant.

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

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant.
8. Administrator. The Court has appointed a neutral company, Phoenix Settlement Administration (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.
9. Participating Class Members' Release. After the Judgment is final and Defendant has fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, but not limited to claims for (a) failure to pay minimum, straight time, overtime, or double time wages, and failure to pay other wages of any kind during employment; (b) failure to authorize and permit rest periods or pay rest period premiums; (c) failure to provide meal periods or pay meal period premiums; (d) failure to provide accurate and itemized wage statements; (e) failure to maintain accurate employment records; (f) failure to pay final wages due at separation; (g) failure to reimburse or indemnify all necessary business expenses; (h) failure to provide statutory sick leave; (i) claims brought under Business & Professions Code section 17200, et seq., based on the aforementioned; (j) claims for civil penalties brought under PAGA based on the aforementioned, and all damages, interest, penalties, attorneys' fees, costs, and other amounts recoverable based on the aforementioned, to the extent permissible, including, but not limited to, the California Labor Code and the applicable Wage Orders. This release applies for all periods of time during which a Participating Class Member was employed by Defendant in a nonexempt position in California during the Class Period. Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability,

social security, workers' compensation, or claims based on facts occurring outside the Class Period

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

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA civil penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint, and the PAGA Notice, but not limited to, any claims for civil penalties based on Defendant's alleged: (a) failure to pay minimum, straight time, overtime, or double time wages, and failure to pay other wages of any kind during employment; (b) failure to authorize and permit rest periods or pay rest period premiums; (c) failure to provide meal periods or pay meal period premiums; (d) failure to provide accurate and itemized wage statements; (e) failure to maintain accurate employment records; (f) failure to pay final wages due at separation; (g) failure to reimburse or indemnify all necessary business expenses; and (h) failure to provide statutory sick leave. This includes, but is not limited, claims for alleged violation of California Labor Code §§ 201, 202, 203, 226, 226.3, 226.7, 246, 510, 512, 558, 1174, 1174.5, 1194, 1198, and 2802. This release applies for all periods of time during which a Non-Participating Class Member who is an Aggrieved Employee was employed by Defendant in a nonexempt position in California during the PAGA Period.

#### **4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?**

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$3,750 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.

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

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

## **5. HOW WILL I GET PAID?**

1. Participating Class Members. The Administrator will send, by U.S. mail, three checks to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees within 14 days after Defendant funds 40%, 80%, and 100% of the Gross Settlement (i.e. approximately 6 months, 18 months, and 24 months after the Court approves the Settlement. The three checks will combine the Individual Class Payment and the Individual PAGA Payment.
2. Non-Participating Class Members. The Administrator will send, by U.S. mail, three Individual PAGA Payment checks to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member) within 14 days after Defendant funds 40%, 80%, and 100% of the Gross Settlement.

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

## **6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?**

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Ethan Troupe v. Azurelite, Inc.*, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The**



**Administrator must be sent your request to be excluded by [date], or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

## **7. HOW DO I OBJECT TO THE SETTLEMENT?**

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendant are asking the Court to approve. At least [insert] days before the [date] Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Court's website at <https://www.lacourt.org/casesummary/ui/index.aspx?casetype=civil>.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is [date].** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action *Ethan Troupe v. Azurelite, Inc.* and include your name, current address, telephone number, and approximate dates of employment for Defendant and sign the objection. Section 9 of this Notice has the Administrator's contact information.

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

## **8. CAN I ATTEND THE FINAL APPROVAL HEARING?**

You can, but don't have to, attend the Final Approval Hearing on [date] at [time] in Department B of the Los Angeles Superior Court, located at 200 West Compton Blvd., Compton, CA 90220. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via LACourtConnect (<https://www.lacourt.org/lacc/>). Check the Court's website for the most current information.

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

## **9. HOW CAN I GET MORE INFORMATION?**

The Agreement sets forth everything Defendant and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to the Administrator's website at [URL of website]. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.lacourt.org/casesummary/ui/index.aspx>) and entering the Case Number for the Action, Case No. 21CMCV00282. You can also make an appointment to personally review court documents in the Clerk's Office at the Compton Courthouse by calling (310) 761-8657.

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

#### Class Counsel:

Daniel F. Gaines, Esq.  
Alex P. Katofsky, Esq.  
Evan S. Gaines, Esq.  
GAINES & GAINES, APLC  
[office@gaineslawfirm.com](mailto:office@gaineslawfirm.com)  
4550 East Thousand Oaks Blvd,  
Suite 100  
(866) 550-0855

#### Settlement Administrator:

Phoenix Settlement Administration  
[Email Address]  
[Mailing Address]  
[Telephone]  
[Fax Number]

#### **10. WHAT IF I LOSE MY SETTLEMENT CHECK?**

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

#### **11. WHAT IF I CHANGE MY ADDRESS?**

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

# **EXHIBIT B**

DANIEL F. GAINES, ESQ. SBN 251488  
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ALEX P. KATOFISKY, ESQ. SBN 202754  
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4550 East Thousand Oaks Boulevard, Suite 100  
Westlake Village, California 91362  
Telephone: (818) 703-8985  
Facsimile: (818) 703-8984

Attorneys for Plaintiff Ethan Troupe, on behalf of himself and all "aggrieved employees" pursuant to Labor Code § 2698 *et seq.*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF LOS ANGELES**

ETHAN TROUPE, on behalf of himself and  
all "aggrieved employees" pursuant to Labor  
Code § 2698 *et seq.*,

Plaintiffs,

v.

AZURELITE, INC., a California corporation,  
and DOES 1 through 10, inclusive,

Defendants.

CASE NO: 21CMCV00282

*Assigned to the Honorable George F. Bird,  
Dept. B*

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

- 1. FAILURE TO PAY ALL MINIMUM  
AND OVERTIME WAGES DUE (LABOR  
CODE §§ 510, 1194, AND 1194.2)**
- 2. FAILURE TO PROVIDE REST  
PERIODS OR COMPENSATION IN LIEU  
THEREOF (LABOR CODE § 226.7; IWC  
WAGE ORDER 9-2001)**
- 3. FAILURE TO PROVIDE MEAL  
PERIODS OR COMPENSATION IN LIEU  
THEREOF (LABOR CODE §§ 226.7, 512,  
558, 1174, AND 1174.; IWC WAGE ORDER  
9-2001)**
- 4. FAILURE TO REIMBURSE  
NECESSARY BUSINESS EXPENSES  
(LABOR CODE § 2802)**
- 5. KNOWING AND INTENTIONAL  
FAILURE TO COMPLY WITH ITEMIZED  
EMPLOYEE WAGE STATEMENT  
PROVISIONS (LABOR CODE § 226(a), (e))**

**8. PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR CODE §§ 201, 202, 226(a), 226.7, 246(d), 510, 512, 1174, 1174.5, 1194, AND 2802 AND PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558**

*Complaint Filed: October 28, 2021*

I.

2. For at least four (4) years prior to the filing of this action and continuing to the present (the “liability period”), Defendants have had a consistent policy of failing to pay all minimum and overtime wages due to Class Members (as defined below); provide legally compliant rest and meal periods or compensation in lieu thereof to Class Members; maintain accurate employment records for Class Members; reimburse Class Members for all necessary business expenses; provide accurately itemized wage statements to Class Members; timely pay certain Class Members all wage due at the separation of their employment.

3. Plaintiff, on behalf of himself and members of the Class, brings this action pursuant to Labor Code §§ 201, 202, 226(a), 226.3, 226.7, 246(d), 510, 512, 558, 1174, 1174.5, 1194, and 2802 seeking compensation for all unpaid wages, liquidated damages, civil and statutory penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

4. Plaintiff, on behalf of himself and Class Members, and pursuant to Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all benefits Defendants enjoyed from their failure to pay all wages and expense reimbursement due.

5. Plaintiff, on behalf of himself and all Aggrieved Employees pursuant to Labor Code §§ 2698 *et seq.*, seek penalties for Defendants' various violations of the California Labor Code.

6. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395 because Defendants employed Plaintiff and Class Members throughout the State of California, including Los Angeles County.

## II.

## PARTIES

### A. Plaintiff

7. Plaintiff ETHAN TROUPE was employed by Defendants in a non-exempt position from March 2020 through September 2020 in Los Angeles County, California.

8. During his work with Defendants, Plaintiff was:

- a. Willfully denied the payment of all wages due, including all minimum and overtime wages due;
- b. Willfully denied rest and meal periods or compensation in lieu thereof;
- c. Willfully denied reimbursement of all necessary business expenses;
- d. Willfully denied accurately itemized wage statements; and
- d. Willfully denied the timely payment of all wages upon separation of their employment.

## B. Defendants

9. Defendant AZURELITE, INC. is a California corporation. Defendant AZURELITE, INC., employed Plaintiff and Class Members throughout the State of California, including in Los Angeles County, California.

10. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who therefore sue Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants.

12. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more provisions of the California Labor Code as alleged herein.

### III.

## CLASS ACTION ALLEGATIONS

13. Plaintiff brings this action on behalf of himself, and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent the following Class composed of and defined as follows:

## THE CLASS

All persons employed by Defendant in California and classified as nonexempt employees who worked for Defendant during the Class Period (October 5, 2018 through November 5, 2022).



1           14.     Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or  
2     modify this class description with greater specificity or further division into subclasses or limitation  
3     to particular issues.

4           15.     This action has been brought and may properly be maintained as a class action under  
5     the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of  
6     interest in the litigation and the proposed Class is easily ascertainable.

7     **A.     Numerosity**

8           16.     The potential members of the Class as defined are so numerous that joinder of all Class  
9     Members is impracticable. While the precise number of members of the Class has not been  
10    ascertained at this time, Plaintiff is informed and believes, and based thereon alleges, that Defendants  
11    currently employ, and during the relevant time periods employed, over 50 persons in the State of  
12    California who fall within the Class definition.

13          17.     Accounting for employee turnover during the relevant period necessarily increases this  
14    number. Plaintiff alleges Defendants' employment records would provide information as to the  
15    number and location of members of the Class. Joinder of members of the Class is not practicable.

16    **B.     Commonality**

17          18.     There are questions of law and fact common to the Class that predominate over any  
18    questions affecting only individual Class Members. These common questions of law and fact include,  
19    without limitation:

- 20           a.     Whether Defendants fail to pay all wages due to Plaintiff and Class Members,  
21                   in violation of Labor Code §§ 510, 1194, and 1194.2 and IWC Wage Order 9-  
22                   2001;
- 23           b.     Whether Defendants failed to properly provide rest periods or compensation in  
24                   lieu thereof to Plaintiff and Class Members, in violation of Labor Code § 226.7  
25                   and IWC Wage Order 9-2001;
- 26           c.     Whether Defendants failed to properly provide meal periods or compensation  
27                   in lieu thereof to Plaintiff and Class Members, in violation of Labor Code §§  
28                   226.7, 512, 1174, 1174.5, and IWC Wage Order 9-2001;

- 1 d. Whether Defendants failed to reimburse Plaintiff and Class Members for all  
2 necessary business expenses, in violation of Labor Code § 2802;
- 3 e. Whether Defendants failed to provide Plaintiff and Class Members with  
4 accurately itemized wage statements, in accordance with Labor Code § 226(a)  
5 and (e);
- 6 f. Whether Defendants failed to timely pay Plaintiff and Class Members all  
7 wages due and owing at the separation of their employment, in violation of  
8 Labor Code §§ 201-203; and
- 9 g. Whether Plaintiff and Class Members are entitled to equitable relief pursuant  
10 to Business & Professions Code § 17200 *et seq.*

11 **C. Typicality**

12 19. The claims of the named Plaintiff are typical of the claims of members of the Class.  
13 Plaintiff and Class Members sustained injuries and damages arising out of and caused by Defendants'  
14 common course of conduct in violation of laws, regulations that have the force and effect of law, and  
15 statutes as alleged herein.

16 **D. Adequacy of Representation**

17 20. Plaintiff will fairly and adequately represent and protect the interests of members of  
18 the Class. Counsel who represents Plaintiff are competent and experienced in litigating large  
19 employment class actions.

20 **E. Superiority of Class Action**

21 21. A class action is superior to other available means for the fair and efficient adjudication  
22 of this controversy. Individual joinder of all proposed members of the Class is not practicable, and  
23 questions of law and fact common to the proposed Class predominate over any questions affecting  
24 only individual members of the proposed Class. Each member of the proposed Class has been  
25 damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices.

26 22. Class action treatment will allow those similarly situated persons to litigate their  
27 claims in the manner that is most efficient and economical for the parties and the judicial system.  
28

1 Plaintiff are unaware of any difficulties that are likely to be encountered in the management of this  
2 action that would preclude its maintenance as a class action.

3 ///

4 **IV.**

5 **CAUSES OF ACTION**

6 **FIRST CAUSE OF ACTION**

7 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

8 **FAILURE TO PAY ALL MINIMUM AND OVERTIME WAGES DUE**

9 **(LABOR CODE §§ 510, 1194, AND 1194.2)**

10 23. Plaintiff incorporates paragraphs 1 through 22 of this Complaint as though fully set  
11 forth herein.

12 24. Defendants failed to pay Plaintiff and Class Members all overtime wages earned, in  
13 violation of Labor Code §§ 510 and 1194. Plaintiff and Class Members earned non-base wages,  
14 including but not limited to, hazard pay. These non-base wages were not factored into the regular  
15 rate of pay when Plaintiff and Class Members worked overtime hours and earned overtime pay. As a  
16 result, they have been underpaid overtime wages.

17 25. Furthermore, Defendants also failed to pay Plaintiff and Class Members all minimum  
18 wages and overtime wages earned, in violation of Labor Code §§ 510, 1194, and 1194.2. Plaintiff  
19 and Class Members often worked prior to clocking in at the start of their shifts and after clocking out  
20 at the end of their shifts. Defendants also rounded down the hours worked by Plaintiff and Class  
21 Members to pay fewer hours than were actually worked. This resulted in a significant underpayment  
22 of wages, in violation of Labor Code §§ 510, 1194, and 1194.2.

23 26. As a result of the unlawful acts of Defendants in willfully failing to pay all wages due,  
24 Plaintiff and members of the Class have been deprived of wages in amounts to be determined at trial  
25 and are entitled to restitution and recovery of such amounts, plus interest thereon, attorneys' fees, and  
26 costs, pursuant to Labor Code § 1194, and liquidated damages, pursuant to Labor Code § 1194.2.

27 Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

28 ///

V.

SECOND CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF

(LABOR CODE § 226.7 AND IWC WAGE ORDER 9-2001)

27. Plaintiff incorporates paragraphs 1 through 26 of this Complaint as though fully set forth herein.

28. Plaintiff and Class Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more rest periods as set forth in Labor Code § 226.7 and IWC Wage Order 9-2001.

29. Defendants failed to pay proper premium wages to Plaintiff and Class Members who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 9-2001. Plaintiff and Class Members were routinely unable to take a 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one hour's pay at the correct rate for each missed rest period. When they were able to take a rest period, they were oftentimes late, cut short or on-duty, in violation of Labor Code § 226.7 and IWC Wage Order No. 9-2001.

30. Pursuant to Labor Code § 226.7 and IWC Wage Order 9-2001, Plaintiff seeks the payment of all rest period compensation that they and Class Members are owed, according to proof.

Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

VI.

THIRD CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF

(LABOR CODE §§ 226.7, 512, 1174, AND 1174.5 AND IWC WAGE ORDER 9-2001)

31. Plaintiff incorporates paragraphs 1 through 30 of this Complaint as though fully set forth herein.

32. Plaintiff and Class Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more meal periods as set forth in Labor Code §§ 226.7 and 512 and IWC Wage Order 9-2001.

33. Defendants failed to pay proper premium wages to Plaintiff and other Class Members who were denied proper meal periods, in violation of Labor Code §§ 226.7 and 512 and IWC Wage Order 9-2001. Plaintiff and Class Members were routinely denied, and not authorized to take, a timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours, or a second timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten hours, but were not paid premium wages of one hour's pay at the correct rate for each missed first or second meal period. When they were able to take a meal period, they were oftentimes late, cut short, or on-duty. Defendants also failed to maintain meal period records which indicated when meal periods were taken and clock records relating to such. This violates Labor Code §§ 226.7, 512, 1174, 1174.5, and IWC Wage Order 9-2001.

34. Pursuant to Labor Code §§ 226.7, 512, 1174, 1174.5 and IWC Wage Order 9-2001, Plaintiff seek the payment of all meal period compensation and unpaid wages that Class Members are owed for four years preceding the filing of this Action, according to proof.

Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

## VII.

#### FOURTH CAUSE OF ACTION

**PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

## FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES

**(LABOR CODE § 2802)**

35. Plaintiff incorporates paragraphs 1 through 34 of this Complaint as though fully set forth herein.

36. Pursuant to California Labor Code § 2802, Defendants are required to fully reimburse Plaintiff and Class Members for all out-of-pocket expenses incurred by them in the performance of their job duties.

37. Defendants required Plaintiff and Class Members to purchase office equipment and power tools, among other things, for work-related purposes but failed to reimburse them for their use. Plaintiff and Class Members must be reimbursed for these expenses pursuant to Labor Code § 2802.

38. As a proximate result of the aforementioned violations, Plaintiff and Class Members have been damaged in an amount according to proof at the time of trial.

39. Pursuant to Labor Code § 2802, Plaintiff and Class Members are entitled to recover from Defendants the full amount of the expenses they incurred in the performance of their job duties that have not been reimbursed, plus interest, reasonable attorney's fees, and costs of suit.

Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

## VIII.

### FIFTH CAUSE OF ACTION

**KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED**

## EMPLOYEE WAGE STATEMENT PROVISIONS

**(LABOR CODE § 226(a), (e))**

40. Plaintiff incorporates paragraphs 1 through 39 of this Complaint as though fully set forth herein.

41. Section 226(a) of the California Labor Code requires Defendants to provide wage statements to employees. In those wage statements, Defendants must provide an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer..., and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendants have knowingly and intentionally failed to comply with Labor Code § 226(a).

42. Defendants failed to issue Plaintiff and Class Members wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a). As Plaintiff and Class Members were not paid all wages due, as stated above, the wage statements provided by Defendants failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(9).

43. Separately, Defendants issued wage statements to Plaintiff and Class Members that failed to set forth the inclusive dates of the pay period for which the employee is paid, in violation of Labor Code § 226(a)(6). The wage statements fail to list the pay period start date. The wage statements also fail to set forth the name and address of the legal entity that is the employer, in violation of Labor Code § 226(a)(8).

44. As a consequence of Defendants' willful conduct in failing to provide Class Members with accurate itemized wage statements, Plaintiff and members of the Class have been injured because they have not been paid all wages due and were issued wage statements which do not reflect, and fail to state, all information required by Labor Code § 226(a). The missing information cannot be discerned at all from the face of the wage statements himself. Plaintiff and Class Members are entitled to penalties pursuant to Labor Code § 226(e) to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000 per employee, and are entitled to an award of costs and reasonable attorneys' fees pursuant to Labor Code § 226(h).

Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

## IX.

### SIXTH CAUSE OF ACTION

**PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

## FAILURE TO TIMELY PAY WAGES DUE AT

## SEPARATION OF EMPLOYMENT

**(LABOR CODE §§ 201-203)**

1           45.     Plaintiff incorporates paragraphs 1 through 44 of this Complaint as though fully set  
2     forth herein.

3           46.     California Labor Code § 201 and § 202 require Defendants to pay employees all wages  
4     due within 72 hours after resignation of employment or the day of termination of employment. Labor  
5     Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must,  
6     as a penalty, continue to pay the subject employee's daily wages until the back wages are paid in full  
7     or an action is commenced. The penalty cannot exceed 30 days of wages.

8           47.     Defendants paid Plaintiff and Class Members their final wages beyond the time frames  
9     set forth in Labor Code §§ 201 and 202, in violation of Labor Code § 203. Plaintiff and Class  
10    Members were not paid all wages due and owing throughout the course of their employment, as  
11    detailed above. Consequently, at the time of their separation from employment with Defendants, they  
12    were not paid all final wages due and owing for the entirety of their employment. This violates Labor  
13    Code §§ 201-202 and is alleged on behalf of Plaintiff and certain Class Members no longer employed  
14    by Defendants.

15          48.     More than 30 days have passed since Plaintiff and Class Members have left  
16    Defendants' employ.

17          49.     As a consequence of Defendants' willful conduct in not paying wages owed timely  
18    upon separation of employment, Plaintiff and Class Members are entitled to up to 30 days' wages as  
19    a penalty under Labor Code § 203 for Defendants' failure to timely pay legal wages at separation of  
20    employment.

21                 Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

22                         **X.**

23                                 **SEVENTH CAUSE OF ACTION**

24                                 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

25                                 **UNFAIR COMPETITION PURSUANT TO**

26                                 **BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.**

27          50.     Plaintiff incorporates paragraphs 1 through 49 of this Complaint as though fully set  
28    forth herein.



1           51.     This is a Class Action for Unfair Business Practices. Plaintiff, on their own behalf and  
2     on behalf of the general public, and on behalf of others similarly situated, bring this claim pursuant  
3     to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this  
4     Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public,  
5     and Class Members. Plaintiff seek to enforce important rights affecting the public interest within the  
6     meaning of Code of Civil Procedure § 1021.5.

7           52.     Plaintiff are “persons” within the meaning of Business & Professions Code § 17204,  
8     and therefore have standing to bring this cause of action for injunctive relief, restitution, and other  
9     appropriate equitable relief.

10          53.     Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business  
11     practices.

12          54.     Wage and hour laws express fundamental public policies. Properly providing  
13     employees with all wages and expense reimbursement due is a fundamental public policy of this State  
14     and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce  
15     vigorously minimum labor standards, to ensure that employees are not required or permitted to work  
16     under substandard and unlawful conditions, and to protect law-abiding employers and its employees  
17     from competitors who lower their costs by failing to comply with minimum labor standards.

18          55.     Defendants have violated statutes and public policies. Through the conduct alleged  
19     in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have  
20     violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair  
21     business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiff,  
22     and all persons similarly situated, and all interested persons of rights, benefits, and privileges  
23     guaranteed to all employees under law.

24          56.     Defendants’ conduct, as alleged herein, constitutes unfair competition in violation of  
25     §17200 *et seq.* of the Business & Professions Code.

26          57.     Defendants, by engaging in the conduct herein alleged, either knew or in the exercise  
27     of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §  
28     17200 *et seq.* of the Business & Professions Code.

58. As a proximate result of the above-mentioned acts of Defendants, Plaintiff and others similarly situated have been damaged in a sum as may be proven.

59. Unless restrained by this Court, Defendants will continue to engage in the unlawful conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or deceptive practice prohibited by the Business & Professions Code, and/or, including but not limited to, disgorgement of profits which may be necessary to restore Plaintiff and Class Members to the money Defendants have unlawfully failed to pay.

XI.

## EIGHTH CAUSE OF ACTION

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS  
PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR  
CODE §§ 201, 202, 226(a), 226.7, 246(d), 510, 512, 1174, 1174.5, 1194, AND 2802 AND  
PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3  
AND 558**

60. Plaintiff incorporates paragraphs 1 through 59 of this Complaint as though fully set forth herein.

61. As a result of the acts alleged above, including the Labor Code violations set forth in paragraph 2 above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.*

62. Furthermore, Defendants failed to provide Plaintiff and other non-exempt Aggrieved Employees with any paid sick leave, as required by the California Healthy Workplaces/Healthy Families Act of 2014 (the “Act”), codified at Labor Code § 246(d). Pursuant to the Act, at a minimum, employers must provide employees with 24 hours or three days of accrued sick leave for each year of employment. Defendants failed to provide any paid sick leave, in violation of the Act, resulting in a failure to pay all wages due, in violation of Labor Code §§ 246(d), 510, 558, and 1194.

63. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to penalties and other relief in an amount to be shown at the time of trial subject to the following formula:

- a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 246(d), 510, 512, 1174, 1174.5, 1194, and 2802; and
- b. Pursuant to Labor Code § 2699(a), the penalties as authorized by Labor Code §§ 226.3 and 558.

64. Civil penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

65. On August 23, 2021, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of August 23, 2021. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the Aggrieved Employees he seeks to represent request relief as described below.

#### **RELIEF REQUESTED**

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages pursuant to Labor Code § 1194, in the amount of all unpaid wages due to Plaintiff and Class Members;
2. For liquidated damages pursuant to Labor Code § 1194.2, in the amount of all unpaid minimum wages due to Plaintiff and Class Members;
3. For compensatory damages in the amount of one hour of wages for each day on which a meal and/or rest period was not properly provided to Plaintiff and Class Members pursuant to Labor Code §§ 226.7 and 512;
4. For penalties pursuant to Labor Code § 226(e) for Plaintiff and Class Members;
5. For penalties pursuant to Labor Code § 203 for Plaintiff and Class Members;
6. For reimbursement of all expenses incurred by Plaintiff and Class Members pursuant to Labor Code § 2802;

1           7.     For restitution for unfair competition pursuant to Business & Professions Code §  
2 17200 *et seq.* for Plaintiff and Class Members;

3           8.     An award of prejudgment and post-judgment interest;

4           9.     For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other  
5 Class Members;

6           10.    An award providing for payment of costs of suit pursuant to Labor Code §§ 226(h),  
7 2699(g)(1), and other applicable law;

8           11.    An award of attorneys' fees pursuant to Labor Code §§ 226(h), 2699(g)(1), 2802, and  
9 other applicable law; and

10          12.    Such other and further relief as this Court may deem just and proper.

11 Dated: February 14, 2023

Respectfully submitted,

12  
13 GAINES & GAINES  
A Professional Law Corporation

14 By: \_\_\_\_\_  
15 DANIEL F. GAINES  
16 EVAN S. GAINES  
Attorneys for Plaintiff

17  
18 **DEMAND FOR JURY TRIAL**

19 Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

20 Dated: February 14, 2023

Respectfully submitted,

21  
22 GAINES & GAINES  
A Professional Law Corporation

23  
24 By: \_\_\_\_\_  
25 DANIEL F. GAINES  
26 EVAN S. GAINES  
Attorneys for Plaintiff

## **ADDENDUM TO CLASS ACTION AND PAGA SETTLEMENT AGREEMENT**

In consideration of the Class Action and PAGA Settlement Agreement ("Settlement Agreement") made by and between plaintiff Ethan Troupe ("Plaintiff") and defendant Azurelite, Inc. ("Defendant") (collectively, the "Parties"), to which this Addendum is attached and incorporated, the Parties hereby agree as follows:

### **Recitals**

On October 28, 2021, Plaintiff commenced this Action by filing a Complaint alleging a single representative cause of action under PAGA against Defendant for: (i) failure to pay minimum wage and overtime; (ii) failure to provide meal and rest periods; (iii) failure to reimburse for business expenses; (iv) failure to provide wage statements in compliance with Cal. Lab. Code § 226; and (v) failure to provide statutory paid sick leave pursuant to Cal Lab. Code § 246(d).

On February 28, 2022, Defendant filed a cross-complaint against Plaintiff for breach of contract based on a previous settlement agreement and release that Plaintiff had entered into with Defendant following an EEOC mediation ("Cross-Complaint").

Following their participation in two mediation sessions with Brandon McKelvey, Esq. of McKelvey Resolution (on September 20, 2022 and October 5, 2022), the Parties entered into the Settlement Agreement, which was signed by the Parties and approved by their respective counsel of record as to form and content, as of January 17, 2023.

### **Dismissal of Cross-Complaint**

The Parties agree that, on the "Effective Date" of the Class Action and PAGA Settlement (as defined in the Settlement Agreement), the below mutual general release of claims with prejudice shall take effect as to the Cross-Complaint. Subject to the occurrence of the Effective Date of the Class Action and PAGA Settlement, Defendant shall dismiss the Cross-Complaint with prejudice.

### **Mutual Release of Claims**

In consideration of the Settlement Agreement, the Parties hereby, for themselves and behalf of their spouses, successors, heirs, and assigns, forever relieve, release, and discharge each other (and their respective spouses, successors, heirs, and assigns) from any and all causes of action, claims, actions, rights, judgments, obligations, damages, demands, accountings or liabilities of whatever kind and character, which the Parties have or may have against each other, by reason of, or arising out of, touching upon, or concerning the facts and allegations in the Cross-Complaint (and defenses thereto) to the fullest extent permitted by law.

This Addendum is intended to be effective as a general release of and bar to all claims. **The Parties and their respective spouses, successors, heirs, and assigns, specifically waive the protections of California Civil Code Section 1542, which states:**

**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.**

The Parties each acknowledge that they may later discover claims or facts in addition to or different from those which the Parties now know or believe to exist with regards to the subject matter of this Addendum, and which if known or suspected at the time of executing this Addendum, may have materially affected its terms. Nevertheless, the Parties waive any and all claims that might arise as a result of such different or additional claims or facts. The Parties further acknowledge and agree that each has accepted the terms and conditions set forth in this Addendum as a complete compromise of all matters involving disputed issues of law and fact between the Parties, and that each assumes the risk that the facts or law may be other than what they presently believe them to be. The Parties assume the risk of misrepresentations, concealments, or mistakes, and if they should subsequently discover that any fact relied upon in entering into this Addendum was untrue, that any fact was concealed, or that his understanding of the facts or law was incorrect, they shall not be entitled to set aside this Addendum or the Settlement Agreement or be entitled to recover any damages on that account. This Addendum is intended to be final and binding between and among the Parties, regardless of any allegations of misrepresentations, or promises made without the intention of performance, or concealments of facts, or mistake of fact or law, or of any other circumstances whatsoever.

**Counterparts**


This Addendum may be executed and delivered in any number of counterparts or copies ("Counterpart") by the Parties. When each Party has signed and delivered at least one Counterpart to the other Party to this Addendum, each Counterpart shall be deemed an original and, taken together, shall constitute one and the same Addendum, which shall be binding and effective as to the Parties. The Parties acknowledge and agree that this Addendum may be signed and/or transmitted using electronic signature technology (e.g., via DocuSign, Adobe Acrobat Sign, FormStack), and that such signed electronic record shall be valid and as effective to bind the party with the same effect as delivery of an executed original of this Addendum. Electronic or facsimile copies of this Addendum shall be deemed originals.

**PLEASE READ CAREFULLY: THIS ADDENDUM INCLUDES A GENERAL RELEASE INCLUDING A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.**

**THE PARTIES ACKNOWLEDGE AND AGREE THEY HAVE FULLY READ, UNDERSTAND, AND VOLUNTARILY ENTER INTO THIS ADDENDUM. THE PARTIES ACKNOWLEDGES AND AGREE THAT THEY HAVE HAD AN OPPORTUNITY TO ASK QUESTIONS AND CONSULT WITH AN ATTORNEY OF THEIR CHOICE BEFORE SIGNING THIS ADDENDUM. THE PARTIES FURTHER ACKNOWLEDGE THAT THEIR SIGNATURES ARE AN AGREEMENT TO RELEASE THE OTHER PARTY FROM ANY AND ALL CLAIMS THAT CAN BE RELEASED AS A MATTER OF LAW.**

The Settlement Agreement remains in full force and effect, unamended, in all other respects.

Dated: 02/09/2023

By:   
ETHAN TROUPE  
Plaintiff and Class Representative

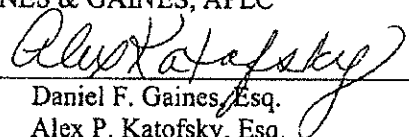
AZURELITE, INC.  
Defendant

Dated: 2/14/2023

By: sung lim  
Sung T. Lim, President


**APPROVED AS TO FORM AND CONTENT:**

Dated: 2/9/2023

GAINES & GAINES, APLC  
By:   
Daniel F. Gaines, Esq.  
Alex P. Katofsky, Esq.  
Counsel for Plaintiff and Class Representative

BALLARD ROSENBERG GOLPER AND SAVITT, LLP

Dated: February 14, 2023

By:   
Matthew B. Golper, Esq.  
Daniel J. Corbett, Esq.  
Counsel for Defendant

Title Troupe Addendum to Class Action & PAGA SA  
File name TROUPE - Addendum...-Complaint)(2.pdf  
Document ID e40afafb6cad73d036b8e0aa5d892a4b271a6392  
Audit trail date format MM / DD / YYYY  
Status \* Signed

Document History



02 / 09 / 2023  
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# Troupe Addendum to Class Action and PAGA Settlement Agreement Signed by APK & Troupe

Final Audit Report

2023-02-14

|                 |  |
|-----------------|--|
| Created:        | 2023-02-14                                   |
| By:             | Daniel Corbett (dcorbett@brgslaw.com)        |
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-  Document created by Daniel Corbett (dcorbett@brgslaw.com)  
2023-02-14 - 7:11:10 PM GMT- IP address: 38.142.231.101
-  Document emailed to slim@azureliteinc.com for signature  
2023-02-14 - 7:11:48 PM GMT
-  Email viewed by slim@azureliteinc.com  
2023-02-14 - 9:05:09 PM GMT- IP address: 12.169.31.130
-  Signer slim@azureliteinc.com entered name at signing as sung lim  
2023-02-14 - 9:11:16 PM GMT- IP address: 12.169.31.130
-  Document e-signed by sung lim (slim@azureliteinc.com)  
Signature Date: 2023-02-14 - 9:11:18 PM GMT - Time Source: server- IP address: 12.169.31.130
-  Agreement completed.  
2023-02-14 - 9:11:18 PM GMT