

1 B. James Fitzpatrick (SBN: 129056)
Charles Swanston (SBN: 181882)
2 Laura L. Franklin (SBN: 282642)
FITZPATRICK & SWANSTON
3 555 S. Main Street
Salinas, CA 93901
4 Telephone: (831) 755-1311
Facsimile: (831) 755-1319
5

Larry W. Lee (SBN: 228175)
6 Howard L. Magee (SBN: 185199)
Mai Tulyathan (SBN: 316704)
7 DIVERSITY LAW GROUP, P.C.
8 515 South Figueroa Street, Suite 1250
Los Angeles, California 90071
9 Telephone: (213) 488-6555
Facsimile (213) 488-6554
10

Attorneys for Plaintiff,
11 KARYN MONDO, on behalf of herself
and all similarly aggrieved employees
12

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

14 KARYN MONDO, on behalf of herself
15 and all similarly aggrieved employees,

16 Plaintiff,

17 v.

18 THE PAPE' GROUP, INC.; PAPE'
MATERIAL HANDLING, INC.; and DOES 1
19 through 50, inclusive,

20 Defendants.
21
22
23
24
25
26
27
28

Case No. 20CV001665

(Assigned to the Honorable Robert O'Farrell,
Dept. 13)

**DECLARATION OF MAI TULYATHAN
IN SUPPORT OF PLAINTIFF'S
MOTION TO APPROVE SETTLEMENT
AGREEMENT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT**

Date: August 24, 2021

Time: 9:00 a.m.

Dept.: 13

Complaint Filed: June 16, 2020

FAC Filed: April 20, 2021

DECLARATION OF MAI TULYATHAN

I, Mai Tulyathan, declare as follows:

1. I am an attorney at law, duly licensed to practice before all Courts in the State of California, and am with the law firm Diversity Law Group, counsel of record for Plaintiff Karyn Mondo (“Plaintiff”). I have personal knowledge of the facts set forth below and if called to testify I could and would do so competently.

2. In this lawsuit, Plaintiff asserts claims against Defendants The Papé Group, Inc. and Papé Material Handling, Inc. (collectively, “Defendants”) under the PAGA based on Defendants’ failure to pay all minimum and overtime wages owed based on off-the-clock work, failure to provide off-duty meal periods or pay premium compensation in lieu thereof, failure to provide off-duty rest periods or pay premium compensation in lieu thereof, failure to timely pay wages upon separation of employment, and failed to provide accurate itemized wage statements. Based on these allegations, Plaintiff asserts violations of California Labor Code §§ 201-204, 226, 226.7, 227.3, 510, 512, 558, 1174, 1194, 1197, and 1198 against Defendants.

3. On or about April 9, 2020, Plaintiff submitted written notice under Labor Code § 2699.3 (the “PAGA Notice”) to the LWDA and Defendants, predicated on the alleged violations of the Labor Code described above.

4. On June 16, 2020, Plaintiff filed her PAGA representative action complaint against Defendants in the Superior Court of California, County of Monterey, alleging a cause of action for violation of Labor Code § 2698, *et seq* (the “Action”).

5. After initiation of the lawsuit, the Parties commenced formal discovery. Defendants propounded written discovery on September 18, 2020.

6. Shortly thereafter, the Parties met and conferred in connection with the Case Management Conference and subsequently agreed to participate in private mediation.

7. On March 17, 2021, the Parties participated in a full-day mediation with mediator Michael Loeb, Esq. In connection with mediation, the Parties engaged in informal discovery. Defendants provided Plaintiff with pay data pertaining to the PAGA aggrieved

1 employees, the number of pay periods at issue, a sample of employee time and payroll records
2 of employees, and Defendants' pertinent payroll policies and practices. The data and
3 documents allowed Plaintiff's counsel to analyze liability and exposure in preparation for the
4 mediation.

5 8. Following arm's-length negotiations and discussions between the Parties
6 facilitated by Mr. Loeb, the Parties ultimately reached the current settlement of Plaintiff's
7 PAGA claims and individual claims. In resolution of Plaintiff's PAGA claims, the Parties
8 entered into the PAGA Settlement Agreement. A true and correct copy of the PAGA
9 Settlement Agreement is attached hereto as **Exhibit A**.

10 9. In addition to the PAGA claims asserted in this lawsuit, Plaintiff has also
11 asserted individual claims against Defendants for violations of the FEHA. On April 20, 2021,
12 upon the Parties' stipulation and Court approval, Plaintiff filed her First Amended Complaint
13 to add individual causes of action for (1) sex/gender discrimination, (2) sexual harassment, (3)
14 failure to investigate and prevent discrimination and harassment, (4) retaliation, (5) wrongful
15 termination, and (6) intentional infliction of emotional distress. The Parties have settled
16 Plaintiff's individual claims separately, under a confidential settlement agreement that is
17 separate from the PAGA Settlement Agreement.

18 10. Based on my investigation and evaluation of the lawsuit, I am of the opinion that
19 the PAGA settlement with Defendants for the consideration and on the terms set forth in the
20 Settlement Agreement is fair, reasonable, and adequate, and is in the best interests of Plaintiff,
21 the State of California, and the Aggrieved Employees.

22 11. The Settlement Agreement requires Defendants to pay the gross amount of
23 \$892,500.00 (the "Gross Settlement Fund"). The balance of the Civil Penalties remaining after
24 deduction of the approved attorneys' fees and costs, service award to Plaintiff, and settlement
25 administration costs (the "Civil Penalties") from the Gross Settlement Fund, is approximately
26 \$573,573.55. The Civil Penalties will be available for distribution to the LWDA and
27 Aggrieved Employees. Pursuant to the PAGA, 75 percent of \$573,573.55, or approximately
28 \$430,180.16, will be paid to the LWDA, and 25 percent of \$573,573.55, or \$143,393.39, will

1 be distributed to the PAGA Aggrieved Employees

2 12. The portion of the Civil Penalties distributed to Aggrieved Employees will be
3 distributed on a *pro rata* basis, based on the number of pay periods each individual Aggrieved
4 Employee was paid wages during the PAGA Period. Based on the number of Aggrieved
5 Employees, employees will be entitled to recover, on a raw average, of approximately **\$193.77**
6 each. The amount each Aggrieved Employee will be entitled to recover may be greater or
7 lower than this average depending on the actual number of pay periods he or she was paid
8 wages during the PAGA Period. This is fair, as it directly allocates greater penalties to
9 individual Aggrieved Employees who have allegedly suffered greater harm.

10 13. Using the data provided by Defendant, I performed a comprehensive damages
11 analysis pursuant to the PAGA. Based on the data provided by Defendants, Plaintiff's
12 Counsel calculated the maximum PAGA penalties at issue at approximately \$14,060,000.

13 14. The maximum penalty calculation assumes that Plaintiff will prevail on the
14 merits. While Plaintiff maintains that there does not exist any reason for reducing PAGA
15 penalties, Plaintiff is aware that Defendants could make a compelling argument to the
16 contrary. Additionally, the Court has discretion under PAGA to reduce the maximum
17 allowable PAGA penalties at its discretion. Defendants may have sought summary judgment
18 or proceeded to trial. Should Defendants have prevailed, the State of California and aggrieved
19 employees would have been left with zero recovery.

20 15. The proposed settlement amounts to approximately **6.35%** of the total potential
21 liability in this matter.

22 16. I strongly believe that Plaintiff can prevail at trial. However, after taking into
23 account sharply disputed factual and legal issues involved in this litigation, the risks attending
24 further prosecution, including the still-developing law under PAGA, and the substantial
25 benefits to be received pursuant to the compromise and settlement of the litigation, I have
26 concluded that settlement on the terms set forth in the Settlement Agreement is appropriate
27 and in the best interests of Plaintiff and the Aggrieved Employees.

28 17. I obtained settlement administration bids from third-party settlement

1 administrators. Settlement administration costs shall not exceed \$4,150.00 in this case. The
2 Parties have agreed to utilize Phoenix Settlement Administrators to administer the Settlement.

3 18. From the inception of the case, Plaintiff's Counsel have zealously represented
4 the interests of Plaintiff and the Aggrieved Employees. The settlement was obtained for the
5 benefit of the Aggrieved Employees, as opposed to the individual Plaintiff.

6 19. I am one of the primary attorneys on this matter. My qualifications are as
7 follows: I received my JD from Loyola Law School in 2017. I received the First Honors
8 Award in Legal Research and Writing, First Honors Award in Appellate Advocacy, and First
9 Honors Award in Civil Litigation Practicum I for achieving the highest grade in those classes.
10 During law school, I was a Staff Editor for Loyola Law Review. I was also an extern at the
11 U.S. District Court, Central District of California, for the Honorable Christina A. Snyder, and
12 a certified law clerk at the San Diego County District Attorney's Office, Collaborative Courts
13 Division, and the Los Angeles County District Attorney's Office, Consumer Protection and
14 Environmental Crimes Division. In 2016, I participated in Loyola Law School's Scott Moot
15 Court Competition, where I placed Top 16 and was awarded the Top Ten Brief Award. In
16 2017, I participated in the Employment Rights Clinic, an extension of the Division of Labor
17 Standards Enforcement created to investigate retaliation complaints. Upon graduation from
18 law school, I was admitted to the California Bar in December 2017.

19 20. I am currently an associate at the law firm Diversity Law Group, P.C., an
20 employment law firm that has handled numerous wage and hour class and individual actions,
21 on both plaintiff and defense sides. The firm currently has cases in numerous state courts,
22 including the Santa Clara Superior Court, Los Angeles Superior Court, Orange County
23 Superior Court, San Diego County Superior Court, Monterey County Superior Court, as well
24 as the United States District Courts for the Central, Northern, Southern, and Eastern Districts
25 of California. I have handled and am currently handling numerous wage and hour class action
26 and PAGA lawsuits, including *Magadia v. Wal-Mart Associates, Inc., et al.* (Case Number
27 5:17-cv-00062-LHK); *Garcia v. Wal-Mart Associates, Inc., et al.* (Case Number 3:18-cv-
28 00500-L-MDD); *Arroyo v. Int'l Paper Company* (Case Number 5:17-cv-06211-BLF); *Baker v.*
California Forensic Medical Group, Inc., et al., Judicial Council Coordination Proceeding No.

1 4999 (Lead Case No. 17CV003723); *Westmoreland v. KinderCare Education LLC* (Case
2 Number CGC-19-573125); *Arrington v. Automatic Data Process Insurance Agency, Inc.* (Case
3 Number 30-2019-01099994-CU-OE-CXC); *Garcia v. Apex Systems, LLC, et al.* (Case
4 Number RG19014709); *Martin v. Wells Fargo Bank* (Case Number 19-cv-01969-JAK).

5 21. In 2018, I argued before the California Court of Appeal, Second Appellate
6 District, in the case of *Lee v. California Commerce Club, Inc.* (California Court of Appeal
7 Case Number B276171, LASC Case Number BC596924), and *Perez v. Standard Drywall, Inc.*
8 (California Court of Appeal Case Number A146819, Alameda Sup. Ct. No. RG15761142). In
9 that same year, I also assisted the firm in successfully obtaining class certification and partial
10 summary judgment by the United States District Court, Central District of California in the
11 case of *Magadia v. Wal-Mart Associates, Inc.* (Case Number 17-CV-00062-LHK). I third
12 chaired the bench trial in that same case in December 2018.

13 22. I have also been certified and/or approved as class counsel in numerous other
14 wage/hour class actions. Most recently, I was certified and/or approved as class counsel in the
15 cases *Garcia v. Wal-Mart Associates, Inc., et al.* (Case Number 3:18-cv-00500-L-MDD),
16 *Richert v. Samaritan, LLC, et al.* (Case Number 17CV314186), *Song v. THC – Orange*
17 *County, Inc.* (Case No. 8-17-cv-965-JLS (DFM)), and *Hernandez v. Wells Fargo Bank*
18 *National Ass’n, et al* (Case No. 16-CV-299319). Moreover, I was granted final approval as
19 class counsel in *Lao v. H & M Hennes & Mauritz, L.P.* (Case No. 5:16-cv-333 EJD), *Abarca v.*
20 *El Estero Car Wash, Inc. et al* (Case No. 18CV003398), *Valles v. Community Hospital of the*
21 *Monterey Peninsula* (Case No. 17CV003452), *Chavez v. Hugo Boss Retail, Inc.* (Case No.
22 18CV322644), *Hernandez v. Wells Fargo Bank National Ass’n, et al* (Case No. 16-CV-
23 299319); *Baker v. California Forensic Medical Group, Inc., et al.*, Judicial Council
24 Coordination Proceeding No. 4999 (Lead Case No. 17CV003723); *Mendez v. Falcon Trading*
25 *Company* (Case No. 19CV004512); *Truong v. DS Services of America, Inc.* (Case No.
FCS054399).

26 23. To date, I have incurred approximately 108.5 hours in connection with the
27 litigation of this lawsuit. Attached hereto as **Exhibit B** is a chart summarizing the amount of
28 work I have incurred to date on this matter.

24. In addition to the hours above, I also anticipate spending an additional 8 hours through the completion of this case to handle any post approval matters, including preparing for and attending the approval hearing, and communications with Settlement Administrator and/or PAGA settlement members regarding any potential issues related to the settlement.

25. The total lodestar for my hours will be approximately \$58,250.00 based on 116.5 total hours, at an hourly rate of \$500.00 per hour. In 2019 and 2020, I have been approved at an hourly rate of \$450.00 per hour by various Courts in a number of matters, including but not limited to, *Lao v. H & M Hennes & Mauritz, L.P.* (Case No. 5:16:cv-333 EJD), *Hernandez v. Wells Fargo Bank National Ass'n, et al* (Case No. 16-CV-299319), and *Abarca v. El Estero Car Wash, Inc. et al* (Case No. 18CV003398). As of January 1, 2021, I increased my hourly rate to \$500.00 per hour. I have been approved at the hourly rate of \$500.00 in other cases in 2021, including *Baker v. California Forensic Medical Group, Inc., et al.*, Judicial Council Coordination Proceeding No. 4999 (Lead Case No. 17CV003723); *Mendez v. Falcon Trading Company* (Case No. 19CV004512); and *Truong v. DS Services of America, Inc.* (Case No. FCS054399).

26. Concurrent with the filing of the Motion to Approve PAGA Settlement, my office uploaded the Motion, Settlement Agreement, and proposed order to the LWDA's website on August 2, 2021.

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

Executed on this 2nd day of August 2021, at Los Angeles, California.

/s/ Kwanporn “Mai” Tulyathan
Kwanporn “Mai” Tulyathan

EXHIBIT A

PAGA SETTLEMENT AGREEMENT

This Settlement Agreement and Release of Claims Under the Labor Code Private Attorneys General Act, Cal. Labor Code §§ 2698 et seq. (“PAGA”) (“Agreement” or “Settlement”) is entered into by and between Plaintiff Karyn Mondo (“Plaintiff”), on behalf of herself and the California Labor and Workforce Development Agency (“LWDA”) and as a representative of “Aggrieved Employees” described herein; and Defendants The Papé Group, Inc. and Papé Material Handling, Inc. (“Defendants”). Plaintiff and Defendants are referred to herein collectively as the “Parties.”

DEFINITIONS

A. “Aggrieved Employees” and “PAGA Period”

1. “Aggrieved Employees” shall include all current and former non-exempt employees who worked for Defendants in the State of California at any time during the PAGA Period. There are approximately 740 unique individuals that comprise the Aggrieved Employees.

2. “PAGA Period” means the inclusive time period from April 9, 2019, through the date the Court enters an order approving the Settlement.

B. Additional Definitions

When used in this Agreement, along with the specified terms set forth above and elsewhere in this Agreement, the following terms have the meanings specified below:

3. “Civil Penalties” means the Gross Settlement Fund less the Service Award, costs of settlement administration, and attorneys’ fees and costs, which shall be allocated as civil penalties pursuant to PAGA, 75% of which will be distributed to the California Labor Workforce Development Agency (“LWDA”) and 25% of which will be distributed to the Aggrieved Employees as described below.

4. “Court” means the Superior Court of California for the County of Monterey.

5. “Effective Date” means the later of the following: (a) if there are no objections to or efforts to intervene in the Lawsuit (as defined below) or this Settlement, the date of approval of the Settlement by the Court; (b) if objections to the Settlement are filed and overruled or an effort to intervene in the Lawsuit or this settlement is denied and no appeal is taken from the order granting approval of the Settlement or denying an effort to intervene, then 65 days after service of notice of entry of judgment; or (c) if an appeal is taken from any aspect of the order granting approval of the Settlement or the judgment, then 20 days after the later of either (i) the appeal being withdrawn or (ii) an appellate decision affirming the order granting approval of the Settlement or judgment becoming final.

6. “Gross Settlement Fund” means Eight Hundred and Ninety-Two Thousand, Five Hundred Dollars (\$892,500.00), the total maximum sum that Defendants have agreed to pay to settle the PAGA claims in the Lawsuit, which is inclusive of attorneys’ fees, costs and expenses (both those incurred to date and those to be incurred), the settlement

administrator's fees and expenses, the Service Payment (incentive award) to Plaintiff as the PAGA representative, and payment to the California Labor Workforce Development Agency ("LWDA") and Aggrieved Employees. The Gross Settlement Fund is non-reversionary and is based on Defendants' representation at mediation that there are 25,500 pay periods at issue. If the actual number of pay periods at issue exceeds 25,500 pay periods by more than five percent (or 1,275), Defendants have the option of (1) increasing the settlement fund on a pro rata basis for those pay periods above the five percent increase (e.g., if the actual number of pay periods is 10% higher than the represented number, the Maximum Settlement Amount shall be increased by 5%), or (2) withdrawing from the settlement.

7. "Lawsuit" means this civil action, styled as *Karyn Mondo v. The Papé Group, Inc. et al.*, initially filed on June 16, 2020 in Monterey County Superior Court, Case No. 20CV001665.

8. "Plaintiff's Counsel" or "PAGA Counsel" means Larry W. Lee, Howard L. Magee, and Mai Tulyathan of Diversity Law Group, P.C.; and B. James Fitzpatrick, Charles Swanston, and Laura L. Franklin of Fitzpatrick & Swanston.

9. "Released Claims" means:

All claims for penalties under the Labor Code Private Attorneys General Act ("PAGA") predicated on off-the-clock violations, failure to pay wages, failure to provide meal periods, failure to provide rest periods, failure to timely pay wages upon separation of employment, failure to provide accurate itemized wage statements, failure to pay vacation wages, violations of Labor Code §§ 201-204, 226, 226.7, 227.3, 510, 512, 558, 1194, 1197, 1198, and all other claims under the PAGA based on the facts as alleged in the Complaint or PAGA letter that accrued during the PAGA Period.

10. "Released Parties" means Defendants The Papé Group, Inc. and Papé Material Handling, Inc. and any of their past, present, and future direct or indirect parents, subsidiaries, predecessors, successors and affiliates, as well as each of their past, present, and future officers, directors, employees, partners, members, shareholders and agents, attorneys, insurers, reinsurers, and any individual or entity which could be jointly liable with Defendants.

11. "Service Award" means the incentive payment of up to Two Thousand Dollars (\$2,000) to be paid to Plaintiff from the Gross Settlement Fund, subject to the Court's approval, in recognition of her service as representative in this action for the Aggrieved Employees. The Service Award is in addition to Plaintiff's share of the Civil Penalties as an Aggrieved Employee and in addition to any separately negotiated settlement amount paid to Plaintiff for the release of her individual discrimination and wrongful termination claims in this Lawsuit.

12. "Settlement Administrator" means the qualified third-party settlement administrator retained by the Parties to issue checks, handle all tax reporting, issue appropriate tax forms to Plaintiff, Plaintiff's Counsel, and all Aggrieved Employees, and such other related tasks as the Parties may request.

BACKGROUND AND FACTUAL RECITALS

13. On April 9, 2020, Plaintiff, through her attorneys, sent a letter to the LWDA (electronically) and Defendants (via certified mail) providing notice of alleged violations of the California Labor Code, including but not limited to alleged violations of Labor Code sections 201-204, 226, 226.7, 227.3, 510, 512, 558, 1194, 1197, and 1198. The LWDA elected not to investigate the alleged violations. Accordingly, by operation of law (Labor Code § 2699(a) and § 2699.3(a)), Plaintiff was deputized to proceed with a civil lawsuit for civil penalties on behalf of herself, the LWDA, and other allegedly aggrieved employees.

14. On June 16, 2020, Plaintiff filed the Lawsuit on behalf of herself, the LWDA, and other aggrieved employees. In her Complaint, Plaintiff alleges a cause of action for violation of the PAGA, seeking to recover civil penalties for Defendants' alleged violations, as set forth in Paragraph 13, above.

15. Over the course of the following year, the Parties engaged in discovery and litigation. Plaintiff's counsel reviewed and analyzed thousands of pages of time and pay records produced by Defendants pertaining to Plaintiff and the Aggrieved Employees.

16. On March 17, 2021, the Parties participated in a full-day mediation through JAMS with Michael Loeb, Esq., a highly respected mediator with extensive experience in California Wage & Hour matters, including over 30 years of practice as a labor and employment lawyer. With the assistance of Mr. Loeb at the mediation, and through further negotiation thereafter, the Parties were able to reach a settlement of \$892,500.00 to settle all PAGA claims in this Lawsuit.

17. Defendants, at all times, have denied Plaintiff's claims and continue to maintain this position. Nonetheless, Defendants have concluded that further litigation will be protracted and expensive and would divert management time. Defendants have taken into account the uncertainty and risks inherent in litigation and have, therefore, concluded that it is desirable that the Released Claims be settled in the manner and upon the terms and conditions set forth in this Agreement.

18. The Parties expressly acknowledge that nothing in this Agreement, nor the fact of the Agreement itself, shall be construed or deemed an admission of liability, culpability, negligence or wrongdoing of any kind by Defendants, nor shall it constitute an admission on behalf of Defendants of any fact or allegations against it.

19. Plaintiff and Plaintiff's Counsel believe that the claims asserted in this Lawsuit have merit. Plaintiff and Plaintiff's Counsel, however, recognize and acknowledge the significant expense and length of continued proceedings necessary to prosecute the litigation of the Released Claims against Defendants through trial and through appeals. Plaintiff and Plaintiff's Counsel are also mindful of the possible defenses to the Released Claims. After careful consideration and mediation, Plaintiff and Plaintiff's Counsel have concluded that it is desirable that the Lawsuit be settled in the manner and upon the terms and conditions set forth in this Agreement.

20. It is the desire of the Parties that Plaintiff shall release fully and completely for the PAGA Period, with respect to Plaintiff, the LWDA, and all Aggrieved Employees, all claims for civil penalties available under PAGA based upon the facts and theories alleged in the operative First Amended Complaint filed by Plaintiff in this Lawsuit.

21. The Parties and their respective counsel of record deem the Agreement to be fair and reasonable and have arrived at the Agreement in arms-length negotiations, taking into account all relevant factors, present or potential.

COURT APPROVAL OF THIS AGREEMENT

22. The Parties and their respective counsel shall take all necessary steps to implement this Agreement, any steps that may be requested by the Court relating to the approval of this Agreement, and shall otherwise use their respective best efforts to obtain Court approval of this Agreement and implement this Agreement. The procedure for obtaining Court approval of this Agreement and implementing this Agreement shall be as set forth below.

23. As soon as practicable after this Agreement has been signed by all parties and their counsel, Plaintiff shall submit a motion to the Court for approval of this Agreement pursuant to Labor Code § 2699(1). Plaintiff will request entry of an order that accomplishes the following:

- a. approves the Agreement;
- b. provides that the Court shall retain continuing jurisdiction over the Parties, the LWDA, and the Aggrieved Employees to enforce the Agreement; and
- c. enters judgment in accordance with the terms of this Agreement.

24. Plaintiff's counsel shall be responsible for ensuring that at least the following documents are filed with the Court in support of seeking approval of this Agreement and in anticipation of an approval hearing:

- a. A duly noticed motion, accompanying memorandum of points and authorities prepared by Plaintiff's Counsel, and such other pleadings, evidence, or other documents as may be necessary for the Court to approve the Agreement.
- b. A [Proposed] Order and Judgment for the Court's signature (i) to approve this Agreement, (ii) to provide that the Court shall retain continuing jurisdiction over the Parties, the LWDA, and the Aggrieved Employees to enforce the Agreement; and (iii) to enter judgment consistent with this Agreement.

25. Upon request, Plaintiff's Counsel shall provide Defendants' counsel with an opportunity to review, provide comments to, and otherwise approve any briefing or motion for approval of the Agreement and supporting papers before the briefing, motion, and supporting papers are filed with the Court.

SETTLEMENT CALCULATIONS AND PAYMENTS

26. All amounts paid as part of this Settlement shall be paid out of the Gross Settlement Fund. Subject to Court approval, these amounts shall be:

- a. Up to \$297,500.00 (one-third (1/3) of the Gross Settlement Fund) for attorneys' fees to be paid to Plaintiff's Counsel (or such other amount as the Court approves);
- b. Up to \$35,000.00 as reimbursement for litigation costs incurred to be paid to Plaintiff's Counsel (or such other amount as the Court approves);
- c. Up to \$2,000.00 for the Service Award to be paid to Plaintiff;
- d. Up to \$4,150.00 for costs of settlement administration to be paid to the Settlement Administrator (or such other amount as the Court approves);
- e. The Civil Penalties;
- f. The Parties agree that the Settlement shall not be contingent upon the Court awarding Plaintiff's Counsel any particular amount for attorneys' fees or costs.

27. Defendants shall have no obligation under this Agreement to make any payment whatsoever beyond what is set forth in Paragraph 7.

28. Each Aggrieved Employee shall be allocated a pro rata portion of the 25% share of Civil Penalties to be paid to the Aggrieved Employees based on the respective number of pay periods each Aggrieved Employee was paid wages during the PAGA Period.

29. The Parties are mindful that the total consideration payable hereunder is comprised of a number of separate and distinct claims for damages and penalties by Plaintiff, the Aggrieved Employees, and the LWDA. Accordingly, having considered the matter in detail, having performed their own separate and independent computations and estimation of the damages and penalties potentially awardable to Plaintiff, the Aggrieved Employees, and the LWDA at trial, and having done the foregoing with complete and satisfactory access to, and advice from, accounting and legal advisors, the Parties mutually consent and agree that the Gross Settlement Fund be apportioned among the various claims in this action as set forth above. Moreover, the Parties mutually consent and agree, and hereby represent to the Court in this settlement transaction, that the apportionment of Gross Settlement Fund, as stated above, is a reasonable and arm's length determination of the character of the distribution for all purposes.

30. Within ten (10) calendar days of the Effective Date, Defendants will provide to the Settlement Administrator an Excel spreadsheet including the following information for each Aggrieved Employee: (1) full name; (2) employee ID number; (3) last known address, (4) Social Security Number, and (5) the number of pay periods during which each respective Aggrieved Employee was paid wages during the PAGA Period (the "Database"). Before being provided the Database, the Settlement Administrator will agree in writing to keep the Database confidential, use it only for the purposes described herein, and return it to Defendants or otherwise certify that it has been permanently and irreversibly destroyed after the administration of the settlement is complete.

31. Within ten (10) calendar days of receipt of the Database, the Settlement

Administrator will calculate the amount of the payments to be distributed to each Aggrieved Employee and provide Plaintiff's Counsel and Defendants' Counsel with a report (using unique identification numbers, not names) listing the amount of all payments to be made to each Aggrieved Employee.

32. Defendants will transfer payment of the Gross Settlement Fund (the "Qualified Settlement Fund") as directed by the Settlement Administrator within 10 calendar days of service on Defendants' counsel of a court order approving the PAGA settlement. If the order approving this Agreement or the judgment is reversed on appeal or otherwise set aside, then Defendants will be entitled to a return of all of the deposited funds, and any interest accrued. The Settlement Administrator shall provide Defendants with an IRS Form W-9 prior to Defendants depositing the Gross Settlement Fund and will cause an IRS Form 1099 to be issued to the Defendants for the Qualified Settlement Fund.

33. Within 15 calendar days following providing Plaintiff's Counsel and Defendants' Counsel the report described in Paragraph 31, the Settlement Administrator shall disburse the money in the Qualified Settlement Fund by (a) sending to all Aggrieved Employees, by first class mail, a check representing their share of the Civil Penalties, along with a copy of the Notice of Settlement Payment (a copy of which is attached hereto as **Exhibit A**); (b) issuing payment to Plaintiff's Counsel for Plaintiff's attorneys' fees as approved by the Court and up to \$35,000.00 for Plaintiff's litigation costs as approved by the Court; (c) issuing payment to Plaintiff of up to \$2,000.00 for the Representative Enhancement Award; and (d) issuing payment to the LWDA for its share of the Civil Penalties.

34. Plaintiff and all Aggrieved Employees shall have 180 calendar days after mailing to negotiate their settlement checks. For settlement payment check(s) that any Aggrieved Employee does not cash within the 180-day period, the funds for the checks will be submitted to the **Watsonville Law Center**.

35. All costs for administration of the settlement, whether foreseen or unforeseen, including, but not limited to, issuing and mailing settlement checks, printing and mailing of a notice to Aggrieved Employees, responding to inquiries from Aggrieved Employees, reasonable efforts to locate Aggrieved Employees, and preparing any required tax returns and tax reports, will be paid from the Gross Settlement Fund. The Settlement Administrator shall submit one invoice to Plaintiff's Counsel and Defendants' counsel and, if approved, such invoice shall be paid out of the Gross Settlement Fund.

36. Any unused portion of the amount allocated in Paragraph 26 to settlement administration costs shall be reallocated to Civil Penalties.

ALLOCATION AND TAX TREATMENT

37. The portion of Civil Penalties distributed to each Aggrieved Employee will be considered penalties and will be reported by the Settlement Administrator as such to each Aggrieved Employee on an IRS Form 1099.

38. The Parties represent that they have not received, and shall not rely on, advice or representations from the other party or their agents regarding the tax treatment of payments pursuant to this Settlement Agreement under federal, state, or local law. The

Settlement Administrator must coordinate the calculation and remittance of all payroll taxes with Defendants to ensure compliance with the requirements of all taxing authorities related to payments made by qualified settlement funds.

39. No amount of any Aggrieved Employee's payments made under this Settlement Agreement will constitute wages with regard to any employment-related benefit or incentive compensation plan or program previously, now or hereafter offered by or on behalf of Defendants to any Aggrieved Employee.

40. Plaintiff's Counsel will provide a completed IRS Form W-9 and a completed California Form 590 (using the most recent versions of the Form W-9 and the Form 590) and will be issued an IRS Form 1099 by the Settlement Administrator for their attorneys' fees and costs.

41. Plaintiff's Service Award will be treated as a non-wage payment and reported as such by the Settlement Administrator to the appropriate government taxing authorities, with Plaintiff being solely responsible for paying any and all taxes due on the Representative Enhancement Award. Plaintiff will provide completed IRS Forms W-9 (using the most recent version of the Form W-9) and will be issued an IRS Form 1099 by the Settlement Administrator in connection with the Service Award.

RELEASE OF CLAIMS

42. Upon the Effective Date, Plaintiff, on behalf of herself, the LWDA, and all Aggrieved Employees, shall and hereby does, for the entire PAGA Period, fully release and discharge the Released Parties from any and all Released Claims. Beyond the Gross Settlement Fund, and as set forth in this Settlement Agreement, Defendants shall not owe any further monies to Plaintiff, the LWDA, or the Aggrieved Employees based upon the Released Claims. The release and discharge of the Released Claims is not contingent upon Aggrieved Employees receiving or negotiating the settlement checks. The Released Claims are not intended to include any release by Plaintiff of her individual claims for wages, penalties, or other damages beyond the Released Claims, even if such individual claims arise from or relate to allegations asserted by Plaintiff in this Lawsuit.

VOIDING THE AGREEMENT

43. In the event: (i) the Court does not enter an order approving this Agreement as provided herein; (ii) the Court does not enter judgment as provided herein; (iii) the Effective Date does not occur; or (iv) the settlement set forth in this Agreement does not become final for any other reason, this Agreement shall be null and void ab initio and any order, dismissal, or judgment entered by the Court in furtherance of the Settlement set forth herein shall be treated as withdrawn or vacated by stipulation of the parties. In such case, the Parties shall be returned to their respective statuses as of the date immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects as if this Agreement had not been executed. In the event an appeal is filed from the Court's order or any order, dismissal, or judgment entered pursuant thereto, or any other appellate review is sought prior to the Effective Date, administration of the Settlement shall be stayed pending final resolution of the appeal or other appellate review. However, the Parties agree that, if the settlement is not approved, they will use their best efforts and good faith to make

any modifications or amendments to the settlement and re-seek court approval, including but not limited to amendment of the operative pleadings.

MISCELLANEOUS PROVISIONS

44. Each Party to Bear Own Costs. Except as specifically provided herein, the Parties hereto will bear responsibility for their own attorneys' fees and costs, taxable or otherwise, incurred by them or arising out of this Lawsuit, and will not seek reimbursement thereof from any Party to this Agreement.

45. Severability. If any of the above provisions are found null, void, or inoperative, for any reason, the remaining provisions will remain in full force and effect. Notwithstanding, the invalidation of any material term of this Agreement, including but not limited to all the terms and provisions specified in the release of claims, will invalidate this Agreement in its entirety unless the Parties subsequently agree in writing that the remaining provisions will remain in force and effect.

46. Headings. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute any part of this Agreement.

47. No Admission. Neither the acceptance nor the performance by Defendants of the terms of this Agreement nor any of the related negotiations or proceedings is or shall be claimed to be construed as, or deemed to be an admission by Defendants of the truth of any of the allegations of the Lawsuit, the representative character of the Lawsuit, the validity of any of the claims that were or could have been asserted by Plaintiff, the LWDA, and/or the Aggrieved Employees in the Lawsuit, or any liability or guilt of Defendants for the claims alleged in the Lawsuit or otherwise.

48. Agreement Jointly Prepared. The Parties and their attorneys have reviewed this Agreement. The Parties have had a full opportunity to negotiate the terms and conditions of this Agreement. Accordingly, the Parties expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement, and agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

49. Non-Evidentiary Use. Neither the fact of this Agreement, the existence of this Agreement, the terms of this Agreement, nor any order or action pursuant thereto may be referred to, relied upon, cited, or used as evidence by any of the Parties, Aggrieved Employees, or their respective counsel in the Lawsuit or in any other action or proceeding; provided, however, that nothing contained in this section shall prevent this Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Agreement.

50. Amendment or Modification. Unless otherwise provided herein, this Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest.

51. Authorization to Enter Into Agreement. Each individual signing this Agreement warrants that he or she has the authority and is expressly authorized to enter

into this Agreement on behalf of the party for which that individual signs.

52. Advice of Counsel. The Parties to this Agreement are represented by competent counsel, and they have had an opportunity to consult with counsel. The Parties to this Agreement agree that it reflects their good faith compromise of the claims raised in this action, based upon their assessment of the mutual risks and costs of further litigation and the assessments of their respective counsel.

53. Assignment. None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Aggrieved Employee, Plaintiff's Counsel, or Defendants' Counsel without the express written consent of each Party and their respective counsel hereto. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement, the LWDA, and the Aggrieved Employees, and shall not be construed to confer any right or to avail any remedy to any other person.

54. Governing Law. This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California, irrespective of the State of California's choice of law principles.

55. Entire Agreement. This Agreement and any supplemental written agreement subsequently incorporated constitute the entire Agreement among these Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning this Agreement other than the representations, warranties and covenants contained and memorialized herein. This Agreement, once it is fully executed, supersedes, any and all prior agreements between the Parties, whether written or verbal, including, but not limited to, the Parties' Memorandum of Understanding.

56. Counterparts. This Agreement, and any amendments hereto, may be executed in any number of counterparts (and by facsimile or electronically-transmitted signatures, including DocuSign and pdf, which shall be deemed to be originals) and any Party and/or their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

57. Cooperation. The Parties shall cooperate fully with one another and to use their best efforts to consummate the Agreement and cause the Court to enter an order and judgment as described herein. No Party to this Agreement shall seek to evade his, her, or its good faith obligations to seek approval and implementation of the Agreement by virtue of any ruling, order, or other development, whether in the Lawsuit, in any other litigation or otherwise that hereafter might occur and might be deemed to alter the relative strengths of the Parties with respect to any claims or defenses of their relative bargaining power with respect to negotiating.

58. Enforcement. Pursuant to California Code of Civil Procedure § 664.6, the Court shall retain jurisdiction of this Lawsuit for purposes of enforcing this Agreement. The prevailing party to any action enforcing the terms of this Agreement shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection with any such

enforcement.

* * *

THE UNDERSIGNED ACKNOWLEDGE THAT EACH HAS READ THE FOREGOING AGREEMENT AND ACCEPTS AND AGREES TO THE PROVISIONS CONTAINED THEREIN, AND HEREBY EXECUTES IT VOLUNTARILY WITH FULL KNOWLEDGE OF ITS CONSEQUENCES.

Agreed to this June 29, 2021.

Defendant The Pape Group, Inc.

By: 

Its: VP + General Counsel

Defendant Pape Material Handling, Inc.

By: 

Its: VP

Counsel for Defendants



RYAN EDDINGS
Littler Mendelson, P.C.

Named Plaintiff Karyn Mondo



Karyn Mondo

Counsel for Plaintiff



LARRY W. LEE
Diversity Law Group, P.C.



B. JAMES FITZPATRICK
Fitzpatrick & Swanston

EXHIBIT A
NOTICE OF SETTLEMENT PAYMENT

Karyn Mondo v. The Papé Group, Inc. et al.
Monterey Superior Court Case No. 20CV001665

[Address Line 1]
[Address Line 2]
[Address Line 3]

[Dear Mr./Ms. _____]:

You are receiving this letter and a check made payable to you pursuant to a court-approved settlement in the matter of *Karyn Mondo v. The Papé Group, Inc. et al.* The check is in the amount of \$ _____ and is for your share of “Civil Penalties” arising out of the settlement of this lawsuit. Please read this letter carefully. It explains the matter and how the settlement affects you.

A. Why am I Receiving This Notice and These Checks?

On June 16, 2020, Karyn Mondo (“Plaintiff”) filed an action against her former employers, Defendants The Papé Group, Inc. and Papé Material Handling, Inc. (“Defendants”), pursuant to the California Labor Code Private Attorney General Act (“PAGA”) seeking civil penalties on behalf of herself, the State of California, and all other allegedly “aggrieved employees.” Plaintiff and Defendants have reached a settlement, and you are eligible to receive a payment from this settlement.

In the lawsuit, Plaintiff alleges that Defendants violated the California Labor Code by failing to pay all overtime and minimum wages owed to non-exempt employees, failing to provide accurate itemized wage statements, failing to reimburse for business-related expenses, failing to provide legally-compliant meal and rest periods, failing to pay all wages due upon termination of employment, and failing to maintain proper records. Plaintiff seeks to recover certain penalties on behalf of herself and all other employees allegedly impacted by these violations. By statute, the penalty amounts recovered in a PAGA action must be paid 75% to the State of California and 25% to the impacted employees.

The individuals impacted by this settlement includes all persons employed by Defendants as a non-exempt employee in California from April 9, 2019 through the date of the Court’s order approving the settlement. According to Defendants’ records, you fall within this definition, and you are therefore receiving this notice and the enclosed check.

Defendants deny Plaintiff’s allegations. Specifically, Defendants maintain that they have complied with all applicable laws in connection with properly paying employees and dispute that any penalties are owed. **The settlement and the amount you are receiving represent a compromise of disputed claims.**

B. How Has The Court Ruled?

The Court has not ruled on the merits of the claims, Defendants' defenses, or any of the contentions of the parties. No inferences regarding the merits of the lawsuit should be drawn from the fact there is a settlement.

The parties did not go to trial. Instead, the parties agreed to a settlement, which entails a compromise by both sides. That way, each side avoids the costs, risks and uncertainty of a trial.

C. What Rights Am I Giving Up?

The settlement of this lawsuit provides for a release of any claim for civil penalties based upon Plaintiff's allegations as described in Paragraph A above against Defendants. These releases will impact you *regardless of whether you cash/negotiate the checks you receive*.

Release of Civil Penalties. The settlement provides that all "Aggrieved Employees" (which includes you), will release, for the time period of April 9, 2019 through _____, the right to pursue a claim for civil penalties under PAGA based on off-the-clock violations, failure to pay wages, failure to provide meal periods, failure to provide rest periods, failure to timely pay wages upon separation of employment, failure to provide accurate itemized wage statements, failure to pay vacation wages, violations of Labor Code §§ 201-204, 226, 226.7, 227.3, 510, 512, 558, 1194, 1197, 1198, and for other claims under the PAGA based on the facts and theories alleged in this lawsuit that accrued during the time period of April 9, 2019, through _____, regardless of whether you deposit the check for Civil Penalties. This does not apply to claims that may be pursued independent of a PAGA action.

EXHIBIT B

Karyn Mondo v. The Papé Group, Inc. et al
Time and Task Chart for Mai Tulyathan

Hours	Description of Work
7.9	Factual investigation, review of file and client documents, review PAGA letter and complaint, confer with co-counsel regarding the case upon assignment to case.
6.7	Meet and confer with opposing counsel for case management conferences, draft, review and revise joint statements and updated statements in connection therewith
4.1	Review Defendant's discovery requests (five sets); confer with client and co-counsel regarding discovery
5.3	Review personnel records produced by Defendant
3.1	Review and analyze arbitration agreement; research case law in connection with such; confer with co-counsel regarding enforceability of such
2.0	Meet and confer with opposing counsel regarding mediation; draft and prepare informal discovery request in connection with mediation
2.0	Meet and confer with opposing counsel regarding amendment to complaint
15.6	Review and analyze production of informal discovery for mediation, including time punches, payroll records, and pay stubs; meet and confer with opposing counsel regarding data and documents; meet and confer with opposing counsel regarding sampling of data
3.0	Confer with co-counsel regarding violation of Labor Code § 227.3 claim; further analyze time records and paystubs in connection with such
1.6	Prepare for and conduct joint pre-mediation call with mediator Michael Loeb
10.2	Draft mediation brief; revise and revise brief; conducted exposure analysis based on data produced by Defendant
8.5	Attend mediation
6.6	Draft Memorandum of Understanding; further review and revise MOU; further confer with co-counsel and opposing counsel regarding the terms therein
4.0	Draft stipulation to file the First Amended Complaint; review First Amended Complaint; confer with opposing counsel regarding the filing of such
7.4	Review and revise long-form PAGA settlement agreement; confer with opposing counsel regarding same
3.8	Review and revise notice of settlement to be sent to employees
1.5	Confer with settlement administration regarding administration and admin expenses

15.2	Draft motion for settlement approval, proposed order, and supporting documents; further revise same
108.5	TOTAL HOURS