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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF RIVERSIDE**  
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14 JACINTO MALDONADO, individually and  
15 on behalf of others similarly situated,

16 Plaintiff,

17 vs.

18 P & K INVESTMENT CO., LLC, a California  
19 limited liability; and DOES 1 through 50,  
20 inclusive,

21 Defendants.  
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Case No. RIC2002722

*Assigned for all purposes to: Hon. Sunshine S.  
Sykes, Dept. 6*

**JOINT STIPULATION OF PAGA  
SETTLEMENT**

Complaint filed: July 20, 2020

Trial: None Set

## **JOINT STIPULATION OF PAGA SETTLEMENT**

This Joint Stipulation of PAGA Settlement (“Settlement”, “Agreement”, or “Settlement Agreement”) is made and entered into by and between Plaintiff Jacinto Maldonado (“Plaintiff”) and Defendant P & K Investment Co., LLC (“Defendant”). Plaintiff and Defendant are collectively referred to herein as “the Parties”.

### **DEFINITIONS**

1. “Agreement” or “Settlement Agreement” means this Joint Stipulation of PAGA Settlement.

2. “Action” means the court action entitled “*Maldonado v. P & K Investment Co., LLC*”, Case No. RIC2002722, pending before the Riverside County Superior Court, and the Notice filed by Jacinto Maldonado on May 29, 2020, with the Labor Workforce Development Agency (“LWDA”) bearing No. LWDA- CM-791738-20.

3. “Court” means the Superior Court of the State of California for the County of Riverside.

4. “Defendant” means P & K Investment Co., LLC.

5. “Plaintiff’s Counsel” shall mean the attorneys representing Plaintiff in the Action, Heather Davis, Esq. and Amir Nayebeddash, Esq. of Protection Law Group, LLP.

6. The “PAGA Period” shall mean the period of time commencing on February 6, 2019, and ending on November 8, 2021<sup>1</sup>.

7. “PAGA Members” shall mean all current and former hourly-paid, non-exempt employees who were employed by Defendant in the state of California at any during the PAGA Period.

8. “Aggrieved Employee List” means a complete list of all PAGA Members that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator within fourteen (14) calendar days after Approval of this Settlement. The

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<sup>1</sup> If the total number of Pay Periods worked by the PAGA Members during the PAGA Period exceeds 5,720 Pay Periods, the PAGA Period will be adjusted back from November 8, 2021, until the number of Pay Periods worked by the PAGA Members during the PAGA Period does not exceed 5,720 (*see* Paragraph 16).

Aggrieved Employee List will be formatted in a readable Microsoft Office Excel spreadsheet and will include PAGA Member's: (1) full name; (2) last known home address; (3) last known telephone number; (4) social security number; (5) start and end dates of active employment as a non-exempt employee of Defendant in the State of California; (6) total pay periods worked during the PAGA Period; and (7) any other information required by the Settlement Administrator in order to effectuate the terms of the Settlement.

9. "Plaintiff's Counsel's Fees and Costs" means attorneys' fees for Plaintiff's Counsel's litigation and resolution of this Action and their expenses and costs incurred in connection with the Action, which shall be paid from the Gross Settlement Amount. Plaintiff's Counsel will request attorneys' fees not to exceed Thirty-Five Percent (35%) of the Gross Settlement Amount, *i.e.* One Hundred and Five Thousand Dollars (\$105,000.00), and the reimbursement costs and expenses associated with the litigation and settlement of the Action, not to exceed Thirty-Five Thousand Dollars (\$35,000.00), subject to the Court's approval. Defendant has agreed not to oppose Plaintiff's Counsel's request for fees and reimbursement of costs and expenses in the amount set forth above.

10. "Plaintiff's Representative Enhancement Payment" means the amount that the Court authorizes to be paid to Plaintiff Maldonado in his capacity as the PAGA representative to compensate him for prosecuting the Action, and performing work in support of the Action, in the amount of Five Thousand Dollars (\$5,000.00), subject to approval by the Court.

11. "Settlement Administrator" means Phoenix Settlement Administrators. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

12. "Settlement Administration Payment" shall mean the payment to the Settlement Administrator for its fees and expenses in administering this Settlement in an amount not to exceed Four Thousand Dollars (\$4,000.00).

13. "Pay Period" shall mean any pay period in which a PAGA Member received payment from Defendant as an hourly-paid, non-exempt employee. Pay Period does not include

the time where Defendant's operations were shut down or the employees did not work due to COVID-19 shutdowns, furlough or other scheduling where the employee did not work at any time during the Pay Period.

14. "Individual Pay Periods" shall mean the number of Pay Periods for an individual PAGA Member.

15. "Gross Settlement Amount" shall mean the Gross Settlement Amount of Three Hundred Thousand Dollars (\$300,000.00) payable by Defendant as provided by this Settlement Agreement. The Gross Settlement Amount is non-reversionary; no portion of the Gross Settlement Amount will return to Defendant.

16. Prior to the Parties' Mediation, Defendant represents that as of September 9, 2021, the number of Pay Periods actually worked by the PAGA Members was approximately 5,200. Defendant now estimates that the total number of Pay Periods during the PAGA Period is less than 5,720 Pay Period (has not increased by more than 10% [*i.e.*, by more than 520 Pay Periods]). The Gross Settlement Amount shall be the maximum amount Defendant is required to pay under the Settlement. If the total number of Pay Periods worked by the PAGA Members during the PAGA Period exceeds 5,720 Pay Periods, the PAGA Period will be adjusted back from November 8, 2021, until the number of Pay Periods actually worked by the PAGA Members during the PAGA Period does not exceed 5,720. Therefore, Defendant shall confirm, through Defendant's consultant, the number of Pay Periods during the PAGA Period within thirty (30) days of this Agreement being fully executed to confirm that the Pay Periods did not increase by more than 10%. If an adjustment to the PAGA Period is made pursuant to this section, the PAGA Period referred to throughout this Agreement will refer to the PAGA Period with the adjusted end date.

17. "Net Settlement Amount" shall mean the Gross Settlement Amount, less (1) Plaintiff's Counsel's fees, (2) Plaintiff's Counsel's costs, (3) Settlement Administration Costs, and (4) Plaintiff's Representative Payment to Plaintiff Maldonado.

18. "LWDA Payment" shall mean the payment to the California Labor and Workforce Development Agency ("LWDA") constituting seventy-five percent (75%) of the Net Settlement Amount.

1           19.     “PAGA Payment” shall mean the remaining twenty-five percent (25%) of the Net  
2 Settlement Amount to be distributed on a *pro rata* basis based upon the number of Pay Periods  
3 worked by each PAGA Member.

4           20.     “PAGA Payment Share” shall mean the value of each PAGA Member’s share of  
5 the PAGA Payment as provided by this Settlement Agreement.

6           21.     “PAGA Notice” shall mean the Notice of Settlement and Approval, a sample of  
7 which is attached hereto as Exhibit A. The PAGA Notice shall further contain (i) a PAGA  
8 Member’s first and last name; (ii) last known address; (iii) the PAGA Member’s Individual Pay  
9 Periods; and (vi) the PAGA Member’s individual share of the PAGA Payment.

10          22.     “Effective Date” shall mean the later of the following: (a) if no timely objections  
11 are filed or if all objections are withdrawn, the date upon which the Court enters approval of the  
12 Settlement; (b) if an objection is filed and not withdrawn, the date for filing an appeal and no such  
13 appeal being filed; or (c) if any timely appeals are filed, the date of the resolution (or withdrawal)  
14 of any such appeal in a way that does not alter the terms of the Settlement.

15          23.     “Judgment” shall mean the order granting approval of the Settlement, granting  
16 approval of the PAGA Notice, and entering judgment by the Court that the Parties anticipate will  
17 be entered following a hearing for approval of the Settlement in this Action.

18          24.     “Released Parties” means Defendant P & K Investment Co., LLC, and its direct  
19 and/or indirect officers, directors, members, managers, employees, agents, representatives,  
20 attorneys, insurers, partners, investors, shareholders, administrators, parent companies,  
21 subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.

22          25.     “Released Claims” means any and all claims for the recovery of civil penalties,  
23 attorneys’ fees and costs permissible under PAGA which Plaintiff and/or the Aggrieved  
24 Employees had, or may claim to have against the Released Parties arising out of the violation  
25 alleged in the Action, including unpaid straight and overtime wages (including any work off the  
26 clock), failure to pay employees all tips, minimum wages and overtime wages owed including  
27 by failing to pay all overtime and double time at the correct regular rate of pay, failure to provide  
28 compliant meal and rest breaks, failure to pay them all premium wages owed for short, late, or

missed meal and rest periods, failure to pay all wages owed at discharge or resignation; failure to timely pay wages within the times permissible under Labor Code section 204; failure to provide complete and accurate wage statements; failure to keep complete and accurate payroll records; failure to reimburse necessary business related expenses; violations of Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 351, 353, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. This release shall apply to claims arising during the PAGA Period.

### RECITALS

26. On May 29, 2020, Plaintiff's Counsel, on behalf of Plaintiff and PAGA Members, gave written notice to the LWDA of the Labor Code violations Defendant is alleged to have violated ("PAGA Letter").

27. On July 20, 2020, Plaintiff filed a class action complaint alleging the following eight (8) causes of action: (1) Unpaid Overtime; (2) Unpaid Meal Period Premiums; (3) Unpaid Rest Period Premiums; (4) Unpaid Minimum Wages; (5) Final Wages Not Timely Paid; (6) Failure to Provide Accurate Itemized Wage Statements; (7) Failure to Reimburse Business Expenses; and (8) Unfair Business Practices (California Business and Professions Code § 17200) with the Riverside County Superior Court. On August 3, 2020, after fully exhausting PAGA's mandatory 65-day notice period, Plaintiff filed his First Amended Complaint adding a cause of action for violation of Labor Code § 2698, *et seq.* ("PAGA").

28. Shortly thereafter, Defendant filed a motion to compel arbitration based on a purported arbitration agreement and moved to stay Plaintiff's claims. On October 14, 2020, the Riverside Court granted Defendant's motion to compel arbitration of Plaintiff's individual claims and dismissed the class claims but denied Defendant's request to stay Plaintiff's claims under the PAGA. As such, this matter has proceeded with the Riverside Court as PAGA only.

29. On September 9, 2021, the Parties in the Action participated in a full day of mediation before an experienced employment and class/representative action mediator, Deborah Crandall Saxe, which resulted in a settlement of the PAGA (the "Mediation").

30. Throughout the Action, Defendant has denied, and continues to deny, any wrongdoing in regard to the alleged violations.

1           31.     The Settlement described in this Settlement Agreement represents a compromise  
2 and settlement of highly disputed claims. Nothing in this Settlement is intended or will be  
3 construed as an admission by Defendant that Plaintiff's claims in the Action have any merit or  
4 that it has any liability to Plaintiff, PAGA Members, or the State on those claims, or as an  
5 admission by Plaintiff that Defendant's defenses in Action have any merit. This Settlement is  
6 intended to fully, finally, and forever compromise, release, resolve, discharge, and settle the  
7 released claims subject to the terms and conditions set forth in this Settlement.

8           32.     Based on its own thorough, independent investigation and evaluation of this case,  
9 Plaintiff's Counsel is of the opinion that the Settlement of the Action with Defendant for the  
10 consideration and on the terms set forth in this Settlement is fair, reasonable, adequate, and in the  
11 best interest of PAGA Members in light of all known facts and circumstances, including the risk  
12 of significant costs and delay, the defenses asserted by Defendant including the risks of adverse  
13 determinations on the merits, and numerous potential appellate issues. Although Defendant  
14 contends that it has no liability in the Action, Defense Counsel shares Plaintiff's Counsel's belief  
15 that the Settlement represents a fair and adequate settlement given the respective risks associated  
16 with the case.

17           33.     Based on the foregoing Recitals, the Parties agree as follows:

18                   **PROCEDURE FOR APPROVING SETTLEMENT**

19           34.     Submission of Amended PAGA Notice to the LWDA: Plaintiff shall submit an  
20 Amended PAGA Notice to the LWDA for LWDA Case No. LWDA-CM-791738-20, *Jacinto*  
21 *Maldonado v. P&K Investment Co., LLC*. The Amended PAGA Notice will provide the PAGA  
22 Period and add claims for violation of Labor Code §§ 204, 226, 351, 353 and 2802 via the  
23 "breaker" and "silverware roller" fees.

24           35.     Motion for Approval of Settlement: Plaintiff will obtain a hearing before the Court  
25 to request Motion for Approval of the PAGA Settlement ("Motion for Approval"). In conjunction  
26 with the Motion for Approval hearing, Plaintiff will submit this Agreement, which sets forth the  
27 terms of the Settlement, and will include the proposed PAGA Notice attached as Exhibit A.  
28 Defendant agrees that it will not oppose Plaintiff's Motion for Approval. Any failure by the Court

1 to fully and completely approve the Agreement as to the Action will result in this Settlement  
2 Agreement entered into by the Parties, and all obligations under this Settlement Agreement being  
3 nullified and voided.

4 36. Final Order and Judgment: Upon approval of the Settlement by the Court, the  
5 Parties will present for the Superior Court's approval and entry a Proposed Final Order and  
6 Judgment.

7 37. Notice: After the Court enters its Order granting approval of the PAGA Settlement,  
8 every PAGA member will be provided with the PAGA Notice (in English and Spanish). Each  
9 Notice will provide: (a) information regarding the nature of the Action; (b) a summary of the  
10 Settlement's principal terms; (c) the PAGA Members definition; (d) the dates which comprise the  
11 PAGA Period; (e) the total pay periods during the PAGA Period each respective PAGA Member  
12 worked for Defendant; and (f) each PAGA Member's PAGA Payment Share.

13 38. Delivery of the Aggrieved Employee List: Within fourteen (14) calendar days after  
14 the Court enters its order granting approval of the PAGA Settlement, Defendant will provide the  
15 Aggrieved Employee List to the Settlement Administrator. This is a material term of the  
16 Agreement, and if Defendant fails to comply, Plaintiff shall have the right to void the Settlement.

17 39. Confirmation of Contact Information in the Aggrieved Employee List: Prior to  
18 mailing, the Settlement Administrator will perform a search based on the National Change of  
19 Address Database for information to update and correct for any known or identifiable address  
20 changes. Any Notice returned to the Settlement Administrator as non-deliverable will be sent  
21 promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the  
22 Settlement Administrator will indicate the date of such re-mailing on the Notice. If no forwarding  
23 address is provided, the Settlement Administrator will promptly attempt to determine the correct  
24 address using a skip-trace, or other search using the name, address and/or Social Security number  
25 of the PAGA Member involved, and will then perform a single re-mailing. If any notice sent to a  
26 PAGA Member by the Settlement Administrator is returned as undeliverable to a current  
27 employee, then Defendant shall make all reasonable efforts to obtain the current address from the  
28 PAGA Member and provide the same within five (5) calendar days of notice from the Settlement

1 Administrator.

2 40. Funding of the Gross Settlement Amount: Within ninety (90) calendar days of the  
3 Effective Date, Defendant will deposit the first installment payment of \$100,000 into a Qualified  
4 Settlement Fund (“QSF”) to be established by the Settlement Administrator. Within one hundred twenty  
5 (120) calendar days of the Effective Date, Defendant will deposit the second installment payment of  
6 \$100,000. Within one hundred fifty (150) calendar days of the Effective Date, Defendant will deposit the  
7 third installment payment of \$100,000.

8 41. Payment of PAGA Payment Shares: The Settlement Administrator shall pay to  
9 each PAGA Member his or her PAGA Payment Share by sending a check in the appropriate  
10 amount to the PAGA Member at the address indicated in the Aggrieved Employee List. Such  
11 payment, with the PAGA Notice, shall be sent by the Settlement Administrator via U.S. Mail  
12 within fourteen (14) calendar days of its receipt of the Gross Settlement Amount from Defendant.

13 42. Uncashed PAGA Payment Share Checks: Any checks issued by the Settlement  
14 Administrator to PAGA Members will be negotiable for at least one hundred eighty (180)  
15 calendar days. If a PAGA Member does not cash his or her PAGA Payment Share check within  
16 180 days, the uncashed funds, subject to Court approval, shall be distributed to the Controller of  
17 the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code  
18 § 1500, *et. seq.* for the benefit of those PAGA Members who did not cash their checks until such  
19 time that they claim their property. The Parties agree that this disposition results in no “unpaid  
20 residue” under California Civil Procedure Code § 384, as the entire Net Settlement Amount will  
21 be paid out to the LWDA and PAGA Members, whether or not all PAGA Members cash their  
22 settlement checks. Therefore, Defendant will not be required to pay any interest on such amounts.  
23 The Individual Settlement Payments provided to PAGA Members shall prominently state the  
24 expiration date or a statement that the PAGA Payment Share Check will expire in one hundred  
25 eighty (180) days, or alternatively, such a statement may be made in a letter accompanying the  
26 PAGA Payment Share. Expired PAGA Payment Share checks will not be reissued, except for  
27 good cause and as mutually agreed by the Parties in writing. The parties agree no unclaimed funds  
28 will result from the settlement. A PAGA Member who fails to receive his or her PAGA Payment

Share check despite the procedures described above shall nevertheless remain bound by the Settlement and the releases contained herein.

### **SETTLEMENT TERMS AND CONDITIONS**

43. PAGA Payment Shares: Subject to the terms and conditions of this Settlement, the Settlement Administrator will calculate the PAGA Payment Shares for each PAGA Member within ten (10) calendar days after Defendant provide the Settlement Administrator with the Aggrieved Employee List. The PAGA Payment Share for each PAGA Member will be calculated as follows, understanding that the formulas below do not constitute an admission by either Party, and are intended only to provide a practical means to simplify and administer the claims process:

- a) Number of PAGA Members and Pay Periods: Defendant shall determine the total number of PAGA Members and the aggregate number of Pay Periods for those PAGA Members during the PAGA Period. This information shall be provided to the Settlement Administrator along with the Aggrieved Employee List as described above.
- b) Calculation of the Pay Period Value: The Settlement Administrator shall determine the value of a Pay Period ("Pay Period Value") by taking the PAGA Payment amount (*i.e.*, 25% of the Net Settlement Amount) and dividing it by the sum of all PAGA Members' Pay Periods.
- c) Calculation of PAGA Payment Shares: The Settlement Administrator shall assign to each PAGA Member a PAGA Payment Share which shall be equal to the Pay Period Value multiplied by each PAGA Member's Individual Pay Periods. Upon calculation of the PAGA Members' PAGA Payment Shares, the Settlement Administrator shall furnish to Plaintiff's Counsel and Defense Counsel a worksheet containing a list of employee identification numbers for the PAGA Members with their corresponding Individual Pay Periods and PAGA Payment Shares.

44. Taxes and Withholdings: Each PAGA Payment Share is intended to settle the PAGA Members' claims for civil penalties arising under PAGA. Accordingly, one hundred

percent (100%) of each PAGA Payment Share shall represent civil penalties. The PAGA Payment Share shall be paid to the PAGA Member in full without deductions or withholdings, and the Settlement Administrator shall issue an IRS Form 1099 to each PAGA Member for that amount. Each PAGA Member shall be individually responsible for their own share of applicable income tax withholdings and deductions for his or her PAGA Payment Share.

45. Payments to Plaintiff, Plaintiff's Counsel and Others: Subject to the terms and conditions of this Settlement, the Settlement Administrator will make the following payments out of the Gross Settlement Amount as follows:

a) Plaintiff's Representative Enhancement Payment: Defendant agrees not to oppose or object to any application or motion by Plaintiff for Plaintiff's Representative Enhancement Payment of Five Thousand Dollars (\$5,000.00) for Plaintiff Jacinto Maldonado. The Plaintiff's Representative Enhancement Payment is in exchange for his time, effort and risk in bringing and prosecuting the Action. Any portion of the requested Plaintiff's Representative Enhancement Payment that is not awarded to the Plaintiff Representative shall be reallocated to the Net Settlement Amount and distributed to the PAGA Members as provided in this Agreement.

b) Attorneys' Fees and Costs: Defendant agrees not to oppose any application or motion by Plaintiff's Counsel for attorneys' fees of not more than One Hundred and Five Thousand Dollars (\$105,000.00) plus the reimbursement of costs and expenses associated with the litigation and settlement of the Action, in an amount not to exceed Thirty-Five Thousand Dollars (\$35,000.00), both of which will be paid from the Gross Settlement Amount. Any portion of the requested fees or costs that is not awarded to Plaintiff's Counsel shall be reallocated to the Net Settlement Amount and distributed to the PAGA Members as provided in this Agreement.

c) Settlement Administration Costs: The Settlement Administrator will be paid for the reasonable costs of administration of the Settlement and distribution of

1 payments from the Gross Settlement Amount as further set forth in this  
2 Agreement. Settlement Administration Costs shall not exceed Four Thousand  
3 Dollars (\$4,000.00).

- 4 d) Distribution of the Net Settlement Amount: Seventy-five percent (75%) of the  
5 Net Settlement Amount shall be distributed to the LWDA ("LWDA  
6 Payment"). The remaining 25% of the Net Settlement Amount shall be  
7 distributed to the PAGA Members on a *pro rata* basis based upon the number  
8 of pay periods worked by each PAGA Member ("PAGA Payment").

9 46. Appointment of Settlement Administrator: The Parties have agreed to, and  
10 Plaintiff will move to appoint Phoenix Settlement Administrators, a qualified and experienced  
11 settlement administrator based in California where the Action is venued, to serve as the Settlement  
12 Administrator, which, as a condition of appointment, will agree to be bound by this Settlement  
13 Agreement with respect to the performance of its duties and its compensation. The Settlement  
14 Administrator's duties will include (i) calculating PAGA Payment Shares; (ii) preparing,  
15 translating, printing, and mailing the PAGA Notice to all PAGA Members; (iii) using reasonable  
16 measures to contact all PAGA Members, including conducting a National Change of Address  
17 search on all PAGA Members before mailing the PAGA Notice to each PAGA Member's address;  
18 (iv) re-mailing the PAGA Notice to the PAGA Member's new address for those PAGA Members  
19 whose address had changed; (v) issuing the checks to effectuate the payments due under the  
20 Settlement; (vi) using reasonable measures to deliver issued checks to PAGA Members, including  
21 use of a "skip-trace" for undeliverable checks; and (vii) otherwise administering the Settlement  
22 pursuant to this Settlement Agreement. The Settlement Administrator will have the final authority  
23 to resolve all disputes concerning the calculation of a PAGA Member's PAGA Payment Share,  
24 subject to the terms set forth in this Settlement Agreement. The Settlement Administrator's  
25 reasonable fees and expenses are estimated to not exceed Four Thousand Dollars (\$4,000.00) and  
26 will be paid out of the Gross Settlement Amount, as set forth herein, subject to Court approval.

27 47. Settlement Consideration: Defendant shall fund the Gross Settlement Amount  
28 following approval of the Motion for Approval by the Court and the occurrence of the Effective

1 Date. The following will be paid out of the Gross Settlement Amount: Plaintiff's Representative  
2 Enhancement Payment, Plaintiff's Counsel's Fees and Costs, the PAGA Payment, and the  
3 Settlement Administration Costs, as specified in this Agreement. Defendant shall not be required  
4 to pay more than the Gross Settlement Amount. The Gross Settlement Amount is non-  
5 reversionary; no portion of the Gross Settlement Amount will revert to Defendant.

6 48. Released Claims: Upon the Effective Date, PAGA Members, without the need to  
7 manually sign a release document, in exchange for the consideration recited in this Settlement  
8 Agreement, on behalf of himself or herself, shall and does hereby fully and finally release  
9 Defendant as named by Plaintiff in the operative complaint, and the Released Parties, from any  
10 and all claims for the recovery for civil penalties, attorneys' fees and costs permissible under  
11 PAGA which Plaintiff and/or the PAGA Members had, or may claim to have, against Defendant  
12 and the Released Parties, arising out of the violations alleged in the Action, including unpaid  
13 straight and overtime wages (including any work off-the-clock), failure to pay employees all  
14 minimum wages and overtime wages owed including by failing to pay all overtime and double  
15 time at the correct regular rate of pay, failure to provide compliant meal and rest breaks, failure  
16 to pay them all premium wages owed for short, late or missed meal and rest periods, failure to  
17 pay all wages owed at discharge or resignation; failure to timely pay wages within the times  
18 permissible under Labor Code section 204; failure to provide complete and accurate wage  
19 statements; failure to keep complete and accurate payroll records; failure to reimburse necessary  
20 business-related expenses; violations of Labor Code Sections 201, 202, 203, 204, 226(a), 226.2,  
21 226.3, 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802 (the "Released  
22 Claims"). Following the funding of the Gross Settlement Amount, all PAGA Members will  
23 release the Released Parties from the Released Claims that accrued during the PAGA Period.  
24 PAGA Members cannot opt out of or object to the Release. The State of California and the LWDA  
25 will also release Released Parties from the Released Claims that accrued during the PAGA Period.

26 49. The Released Claims expressly exclude all claims made by PAGA Members for  
27 individual wage claims, vested benefits, wrongful termination, unemployment insurance,  
28 disability, social security, workers' compensation, claims while classified as exempt, and claims

1 outside of the PAGA Period.

2 50. Neutral Employment Reference: Defendant agrees that it will adopt a neutral  
3 reporting policy regarding any future employment references related to Plaintiff. In the event that  
4 any potential or future employers of Plaintiff request a reference regarding Defendant's  
5 employment of Plaintiff, Defendant shall only provide the requested Plaintiff's dates of  
6 employment and job title(s) during employment. Defendant shall not refer to the Action or this  
7 Settlement.

8 51. No Credit Toward Benefit Plans: The payment of PAGA Payment Shares made to  
9 PAGA Members under this Settlement, as well as any other payments made pursuant to this  
10 Settlement, will not be utilized to calculate any additional benefits under any benefit plans to  
11 which any PAGA Members may be eligible, including, but not limited to profit-sharing plans,  
12 bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and  
13 any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not  
14 affect any rights, contributions, or amounts to which any PAGA Members may be entitled under  
15 any benefit plans.

16 52. No Prior Assignments: The Parties and their counsel represent, covenant, and  
17 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported  
18 to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,  
19 action, cause of action or right herein released and discharged.

20 53. Continued Jurisdiction: After entry of the Judgment, the Court will have  
21 continuing jurisdiction solely for purposes of addressing: (a) the interpretation and enforcement  
22 of the terms of the Settlement, (b) Settlement administration matters, and (c) such post-Judgment  
23 matters as may be appropriate under court rules or as set forth in this Settlement pursuant to the  
24 Code Civil Procedure section 664.6. Except as provided to the contrary herein, any dispute or  
25 controversies arising with or with respect to the interpretation, enforcement, or implementation  
26 of the Settlement Agreement shall be presented to the Court for resolution.

27 54. Exhibits Incorporated by Reference: The terms of this Settlement include the terms  
28 set forth in any attached Exhibits, which are incorporated by this reference as though fully set

1 forth herein. Any Exhibits to this Settlement are an integral part of the Settlement.

2 55. Entire Agreement: This Settlement Agreement and any attached Exhibits  
3 constitute the entirety of the Parties' settlement terms. No other prior or contemporaneous written  
4 or oral agreements may be deemed binding on the Parties.

5 56. Amendment or Modification: This Settlement Agreement may be amended or  
6 modified only by a written instrument signed by counsel for all Parties or their successors-in-  
7 interest.

8 57. Waiver of Certain Appeals: The Parties agree to waive appeals; except, however,  
9 that either party may appeal any court order that materially alters the Settlement Agreement's  
10 terms.

11 58. Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant  
12 and represent they are expressly authorized by the Parties whom they represent to negotiate this  
13 Settlement Agreement and to take all appropriate action required or permitted to be taken by such  
14 Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other  
15 documents required to effectuate the terms of this Settlement Agreement. The Parties and their  
16 counsel will cooperate with each other and use their best efforts to affect the implementation of  
17 the Settlement. If the Parties are unable to reach agreement on the form or content of any  
18 document needed to implement the Settlement, or on any supplemental provisions that may  
19 become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance  
20 of the Court to resolve such disagreement.

21 59. Binding on Successors and Assigns: This Settlement Agreement will be binding  
22 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously  
23 defined.

24 60. California Law Governs: All terms of this Settlement Agreement and Exhibits  
25 hereto will be governed by and interpreted according to the laws of the State of California.

26 61. Execution and Counterparts: This Settlement Agreement is subject only to the  
27 execution of all Parties. However, the Settlement Agreement may be executed in one or more  
28 counterparts. All executed counterparts and each of them, including facsimile and scanned copies

of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

62. Acknowledgement that the Settlement is Fair and Reasonable: The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into account all relevant factors, present and potential. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

63. Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

64. Captions: The captions and section numbers in this Agreement are inserted for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the provisions of this Agreement.

65. Waiver: No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

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

67. Mutual Preparation: The Parties have had a full opportunity to negotiate the terms and conditions of this Agreement. Accordingly, this Agreement will not be construed more strictly against one Party than another merely by virtue of the fact that it may have been prepared

by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

68. Representation By Counsel: The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Agreement, and that this Agreement has been executed with the consent and advice of counsel and reviewed in full. Further, Plaintiff and Plaintiff's Counsel warrant and represent that there are no liens on the Agreement.

69. Cooperation and Execution of Necessary Documents: The Parties agree to cooperate to promote participation in the Settlement, and in seeking court approval of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

Should the Court fail to approve this Settlement for any reason, the Parties agree that they will return to and attend mediation with a mutually agreed Mediator in an effort to reach a settlement that may be approved by the Court.

70. Voluntary Agreement: The Parties acknowledge that they have entered into this Settlement Agreement voluntarily, on the basis of their own judgment and without coercion, duress, or undue influence of any Party, and not in reliance on any promises, representations, or statements made by the other Parties other than those contained in this Settlement Agreement. Each of the Parties hereto expressly waives any right he/they might ever have to claim that this Settlement Agreement was in any way induced by fraud.

71. Binding Agreement: The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any settlement confidentiality provisions that otherwise might apply under federal or state law.

72. Non-Admission of Liability: The Parties enter into this Agreement to resolve the

dispute that has arisen between them and to avoid the burden, expense and risk of continued litigation. In entering into this Agreement, Defendant does not admit, and specifically denies, it has violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to their employees. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Defendant of any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Agreement, this Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendant or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local or other applicable law.

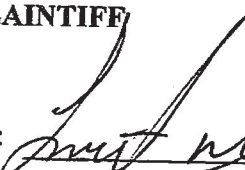
73. Confidentiality: Plaintiff and Plaintiff's Counsel agree that they have not and will not publish the Settlement in any form of media. Plaintiff's Counsel shall not report the settlement in any medium or in any publication, shall not post or report anything regarding the claims of Plaintiff or the Settlement on their website, and shall not contact any reporters or media regarding the Settlement. However, Plaintiff's Counsel is authorized to make disclosures to the Court and the LWDA, the PAGA Members, the Settlement Administrator, and for any other reason necessary to effectuate obtaining the approval of the Settlement or the administration thereof. Notwithstanding the foregoing, Plaintiff's Counsel may include the Settlement (and/or a summary of the Settlement) in future declarations filed in support of Plaintiff's Counsel's experience and/or adequacy in PAGA representative actions and/or class actions. Nothing in the provision is intended to violate California Rules of Professional Conduct Rule 5.6.

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1 Dated: 2-26-2022

2 PLAINTIFF

3 By: 

4 Jacinto Maldonado

5 PROTECTION LAW GROUP, LLP

6 Dated: March 4, 2022

7 By: 

8 Heather Davis, Esq.  
9 Attorneys for Plaintiff

10 Dated: 03/21/2022

11 DEFENDANT

12 P&K INVESTMENTS CO, LLC

13 By: Gerald Zelker

14 Name: Gerald Kelly

15 Title: mgr

16 Dated: 3/23/22

17 ROBINSON Di LANDO

18 By: 

19 Orion Robinson  
20 Attorneys for Defendant