

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT AGREEMENT AND RELEASE

This Labor Code Private Attorneys General Act Settlement Agreement and Release (“Agreement”) is made by and between the Defendant El Pollo Loco (“EPL”) and Plaintiff Kenneth Reising (“Plaintiff”), as private attorney general and representative for the Labor Workforce Development Agency in collecting civil penalties on behalf of alleged Labor Code violations against other aggrieved employees (the “Aggrieved Employees,” as described below). The settlement settles claims under the Private Attorneys General Act (“PAGA”), Labor Code Section 2699, et seq. Plaintiff and EPL are collectively referred to herein as “the Parties.”

This Agreement, and the settlement of claims for civil penalties embodied herein, shall be binding on Plaintiff, the Aggrieved Employees he represents, the LWDA, and EPL subject to the approval of the Court.

WHEREAS, on June 19, 2020, Plaintiff timely sent notice to the Labor and Workforce Development Agency (“LWDA”) of his intent to pursue a representative action pursuant to PAGA, on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees (the “PAGA Notice”) that included all EPL’s non-exempt employees in California during the PAGA statute of limitations period.

WHEREAS, on November 9, 2020 Plaintiff filed a PAGA action (“the Lawsuit”) against EPL in Los Angeles Superior Court, which was assigned Case No. BC 20STCV42951. The complaint asserted one PAGA cause of action based on theories of liability arising under the Labor Code, including claims arising under Sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, and 2802 as well as claims under the IWC Wage orders for such items as failure to provide suitable seating and failure to provide adequate resting facilities.

WHEREAS, Plaintiff sent a supplemental notice to the LWDA on July 19, 2021 where he identified additional claims on behalf of the same aggrieved employees for failure to pay sick pay at the proper rate under Labor Code Section 246. The LWDA did not respond to this notice within 65 days, thus granting Plaintiff authority to settle PAGA claims on that theory as well.

WHEREAS, on September 24, 2021, the Parties attended a mediation with experienced wage-and-hour mediator Steven J. Rottman, Esq. At the mediation, the Parties agreed to settle Plaintiff’s Representative PAGA claims in light of all known facts and circumstances – including potential defenses asserted by EPL, the uncertainty associated with litigation, the risks of significant delay, and numerous potential appellate issues.

WHEREAS, for purposes of this Settlement, the Aggrieved Employees are defined as: “All individuals who worked for EPL as non-exempt employees in California between September 6, 2019 and September 30, 2021.” The period from September 6, 2019 to September 30, 2021 is referred to as “the PAGA Period.”

WHEREAS, the Parties understand, acknowledge, and agree that this PAGA settlement constitutes a compromise of Plaintiff’s Representative PAGA Claims, and that it is the desire and

intention of the Parties to effect a final and complete resolution of the Representative PAGA Claims that Plaintiff and the Aggrieved Employees have against EPL and EPL's past or present parents, subsidiaries, and affiliates, and/or any officers, directors, employees, partners, agents, insurers, and/or any other individual or entity that could be liable for the acts of omissions of EPL. The Parties further acknowledge that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission by EPL of any wrongdoing or liability. Specifically, EPL denies any liability or wrongdoing of any kind associated with the claims alleged in the Complaint. EPL, among other things, contends that it has complied at all times with the California Labor Code, the governing IWC Wage Orders, and all applicable California laws.

WHEREAS, the Parties believe and agree that this Agreement provides for a fair, adequate, and reasonable resolution of the Representative PAGA Claims, and have arrived at the settlement in extensive, arms-length negotiations, taking into account all relevant factors, present and potential.

WHEREAS, California Labor Code § 2699(1)(2) requires Court review and approval of any settlement of a civil action filed pursuant to PAGA.

WHEREAS, based on their own independent investigations and evaluations, EPL and Plaintiff and their respective counsel are of the opinion that the amount and terms of the Settlement are fair, reasonable, and adequate and are in the best interests of the Plaintiff, the Aggrieved Employees, and EPL in light of all known facts and circumstances and the risks inherent in litigation, including the potential appellate issues. Further, counsel for Plaintiff, the Law Offices of Scott Ernest Wheeler and The Wand Law Firm, PC, believe that the settlement entered into is in the best interests of the LWDA and the Aggrieved Employees and that the overall settlement for the agreed level of civil penalties here is fair, reasonable, and adequate, given, *inter alia*, EPL's factual and legal defenses and the inherent risk of litigation.

WHEREAS, the Parties: (1) believe and agree that this Agreement provides for a fair, adequate, and reasonable resolution of the Representative PAGA Claims, (2) have investigated the facts relevant to this settlement and this Agreement, and all matters pertaining thereto, to the full extent that each Party deems necessary, and (3) have arrived at the settlement in extensive, arms-length negotiations, taking into account all relevant factors, present and potential.

WHEREAS, the Parties recognize that in accordance with Labor Code § 2699(1), Court approval is required in the event of a settlement of a PAGA action on a representative basis. However, as explained in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), the Parties are not obligated to follow the class action procedural rules in PAGA cases and therefore need not obtain approval of the PAGA settlement through a motion for preliminary or final approval. *See also Mendoza v. Nordstrom, Inc.*, 2 Cal. 5th 1074 (2017) ("PAGA authorizes a representative action without the need for class certification."); *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1123 (9th Cir. 2014) ("a PAGA suit is fundamentally different than a class action" in that PAGA has no notice requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA action); *Williams v. Sup. Ct.*, 3 Cal. 5th 531, 546-47 (2017) ("PAGA does not make other potentially aggrieved employees parties or clients of

plaintiff's counsel, does not impose on a plaintiff or counsel any express fiduciary obligations, and does not subject a plaintiff or counsel to scrutiny with respect to the ability to represent a large class.”).

Therefore, in consideration of the promises and agreements contained herein, and to avoid the uncertainty, risks, costs, and delays associated with further litigation, the Parties agree and covenant as follows:

1. **Effective Date.** The effective date (“Effective Date”) of this Agreement shall mean the last of the following dates: (a) the date of service of notice of entry of the order approving this Agreement and the PAGA Settlement if no objections are filed to this settlement or if all objections are withdrawn prior to the Court ruling on them; or, (b) sixty-one (61) days after the date of service of notice of entry of the settlement approval order if objections are filed and overruled and no appeal is taken from the order approving the settlement; or (c) if a timely appeal is made, ten (10) business days after the final resolution of that appeal if the appeal is rejected, the settlement is upheld, and the settlement approval order is no longer subject to further judicial review.

2. **Released Claims/Effect of Judgment on Aggrieved Employees and LWDA**
The Parties agree and acknowledge that, to the maximum extent permitted by law, the final judgment, attached hereto as **Exhibit A**, entered pursuant to this settlement will bind all those who would be bound by a judgment if the action had been brought by the California Labor & Workforce Development Agency (“LWDA”), including Plaintiff, the LWDA, and the Aggrieved Employees, with respect to any claim for the recovery of civil penalties under the California Private Attorneys General Act, California Labor Code § 2698, *et. seq.* only, against EPL and its past or present parents, subsidiaries, and affiliates, officers, directors, employees, partners, agents, insurers, and/or any other individual or entity that could be liable for the acts or omissions of EPL (“Released Parties”). It is expressly understood and agreed that this settlement includes a release of PAGA claims based on violations of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 1174, 1194, 1197, and 2802 and the IWC Wage Order provisions cited in Plaintiff’s letters to the LWDA (including but not limited to failure to provide suitable seating (section 14(a), (b)) and failure to provide adequate resting facilities (section 13(a), (b))). The release shall be effective as of the Effective Date, and it shall apply to claims within the above scope impacting Aggrieved Employees arising within the PAGA Period. This settlement agreement shall not impact any Aggrieved Employee’s ability to assert Labor Code claims other than PAGA claims (i.e., a claim brought under California Labor Code § 2698, *et. seq.*).

3. **Notice to LWDA.** Pursuant to California Labor Code § 2699(1)(2), the Parties shall submit to the LWDA a copy of this Agreement at the same time that the Parties submit it to the Court for approval.

4. **Total Settlement Amount.** EPL agrees to pay, in accordance with the terms set forth herein, the total sum of \$495,000 (the “Gross Settlement Amount”) in full settlement of this Lawsuit. The Gross Settlement Amount is non-reversionary, meaning no portion of it will return to EPL under any circumstances. The Gross Settlement Amount will be allocated as follows:

- a. Plaintiff's counsel will request that the Court approve an award of attorney's fees in an aggregate amount not to exceed one-third (1/3rd) of the Gross Settlement Amount, ONE HUNDRED SIXTY FIVE THOUSAND DOLLARS (\$165,000) and a separate request for reasonable litigation costs in the amount of \$15,033.43 actually incurred in this matter. EPL will not oppose these requests.
- b. Administration costs in the amount of \$25,000.00 to be paid to Phoenix Settlement Administrators, the Settlement Administrator ("Administration Costs"); and
- c. An enhancement payment of \$5,000 to Plaintiff Kenneth Reising for his role in bringing the action and assisting in its prosecution on behalf of the LWDA, and as further consideration to support a general release of claims to which he has agreed. Plaintiff Kenneth Reising is agreeing to a broad general release of all of his individual claims against EPL, including a waiver of Cal. Civ. Code section 1542.
- d. The remainder of the Gross Settlement Amount (the "PAGA Fund") after deducting items (a) through (c) is approximately \$210,033.43, and shall be designated as PAGA Penalties to be allocated between the LWDA and the Aggrieved Employees pursuant to Labor Code section 2699(i), with 75% paid to the LWDA (the "LWDA PAGA Portion"), and 25% paid to the Aggrieved Employees (the "Aggrieved Employees' PAGA Portion") proportionally on a points awarded basis.
- e. One point shall be awarded for each pay period where an Aggrieved Employee worked at least one day during the PAGA Period, and the 25% will be distributed to the aggrieved employees proportional to each Aggrieved Employee's respective point total as compared to the total points awarded to the entire set of Aggrieved Employees.
- f. To the extent that the Court approves less than the amounts stated in paragraph 4(a), (b), or (c), any reduced amount shall be allocated to the settlement fund for the LWDA and Aggrieved Employees.

5. Tax Treatment of Settlement Amounts. With regard to settlement payments to Aggrieved Employees, IRS Form 1099s will be issued, if applicable. IRS Form 1099s are used **only** for payments of miscellaneous income of \$600 or more that is not considered wages such as the penalty payments at issue in this Settlement. Nothing in this Settlement is intended to constitute legal advice regarding federal, state, and/or local tax obligations. Plaintiff acknowledges that he has obtained no tax advice from EPL and that neither EPL nor its attorneys have made any representation concerning the tax consequences, if any, of the Settlement Amount in this Agreement or any payment to be made pursuant to this Agreement. To the extent that this Settlement or any of its attachments is interpreted to contain or constitute advice regarding any state or federal tax issue, such advice is not intended or written to be used,

and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code. EPL is not responsible for any employee tax obligations regarding the allocation of the settlement payments. Payment of the portion allocated to Plaintiff counsel's fees and costs will be reflected in a Form 1099 to counsel who shall assume full responsibility and liability for the payment of taxes due on such payments.

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

7. PAGA Settlement Payment Procedures.

- a. Within 30 days of the Effective Date, EPL shall deposit the Gross Settlement Amount of \$495,000 with the Settlement Administrator. At the same time, EPL shall also provide the Settlement Administrator with a list of all Aggrieved Employees with each listed employee's full name, last known mailing address, social security number, dates of employment as an Aggrieved Employee, and calculation of each person's points. The Settlement Administrator shall run all the addresses of the Aggrieved Employees through the United States Postal Service NCOA database to obtain current address information

Within seven calendar days from the date when the Gross Settlement Amount has been fully funded, the Settlement Administrator shall, consistent with an order of the Court:

- i. Remit a total of Twenty-Five percent (25%) of the PAGA Fund to the Aggrieved Employees, along with the employee letter in English and Spanish (attached hereto as **Exhibit B**). Aggrieved Employees shall not be required to make claims, but shall simply be delivered a check for their share of the PAGA Settlement. The payment checks shall be sent to each Aggrieved Employee by U.S. First Class mail to the Aggrieved Employee's address with directions to the Postmaster to forward the payment checks and return all undeliverable payment checks to the Settlement Administrator. It will be conclusively presumed that an Aggrieved Employee's Individual Settlement Payment check was received if the payment check has not been returned within thirty (30) days of the original mailing of the payment check.
 - ii. Remit a total of Seventy-Five percent (75%) of the PAGA Fund to the LWDA.
 - iii. Remit Administration Costs to the Settlement Administrator.
 - iv. Remit the enhancement payment to Plaintiff Kenneth Reising.
 - v. Remit Plaintiff's Counsel's Fees and Costs.
- b. Settlement Checks issued to Aggrieved Employees pursuant to this Agreement will expire one hundred and eighty (180) days from the date they are mailed by the Settlement Administrator. If any Aggrieved Employees Employee's check is not cashed or negotiated within this timeframe, the check will be voided and a stop-payment will be issued. All settlement checks that are not negotiated within this 180-day period shall be sent to the California State Controller's Unclaimed Property division.
 - c. Neither EPL nor Plaintiff shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

8. Settlement Administrator. The Settlement Administrator shall be responsible for sending notices and for calculating Settlement Shares and preparing all checks and mailings and comply with all requirements set forth in Paragraph 7. EPL is not liable or responsible for any errors made by the Settlement Administrator in the administration of the settlement.

9. Duties of the Parties Prior to Approval. Promptly upon execution of this Settlement, Plaintiff shall apply to the Court for approval of the proposed Settlement. This can be either through a stipulation that EPL will execute or a noticed motion that EPL will not oppose. Plaintiff shall apply to the Court for the entry of an order approving this Settlement as

required by Labor Code section 2699(l), attached hereto as **Exhibit C**. The Approval Stipulation will request Court approval of the following: (1) the terms of this Agreement, (2) the amount of fees and costs to Plaintiff's counsel, and (3) final Judgment. In conjunction with the Motion /Stipulation for Approval, Plaintiff shall submit a proposed Final Judgment requesting the entry of judgment.

10. Non-Admission of Wrongdoing. The Parties agree that this Agreement does not constitute an admission by EPL or any Released Party, of any of the matters alleged in the Lawsuit or of any violation by any of them of any federal, state or local law, ordinance or regulation, or of any violation of any policy or procedure, or of any liability or wrongdoing whatsoever. Neither this Agreement nor anything in this Agreement shall be construed to be or shall be admissible in any proceeding as evidence of liability or wrongdoing by Plaintiff, EPL, or EPL's parents, subsidiaries, divisions, affiliated corporations, trustees, directors, officers, shareholders, agents, attorneys, insurers, or employees.

11. Nondisclosure and Nonpublication. Plaintiff agrees not to publicize the Agreement, the fact of the Agreement, its terms or contents, and the negotiations underlying the Agreement, in any manner or form, directly or indirectly, to any person or entity, beyond filing the Agreement with the Court and submitting a copy to the LWDA, or except as reasonably necessary to comply with the terms of this settlement. This includes a prohibition on publicizing the settlement on the Plaintiff's counsel's website or in advertising materials.

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

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

To Defendant El Pollo Loco, Inc.: Thomas Kaufman and Paul Berkowitz, Sheppard Mullin Richter & Hampton LLP, 1901 Avenue of the Stars Suite 1600, Los Angeles, CA 90067; tkaufman@sheppardmullin.com and pberkowitz@sheppardmullin.com.

To Plaintiff: The Law Office of Scott Ernest Wheeler, Scott E. Wheeler, 250 West First Street, Suite 216, Claremont, CA 91711; sew@scottwheelerlawoffice.com; Aubry Wand, The Wand Law Firm, PC, 400 Corporate Pointe, Ste. 300, Culver City, California 90230; awand@wandlawfirm.com.

14. Entire Agreement. This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts and writings prior to the date hereof relating to the subject matters hereof. Any representation, promise or agreement not specifically included in this Agreement shall not be binding upon or enforceable against either

Party. This is a fully integrated agreement. No other promises or agreements shall be binding or shall modify this Agreement unless in writing and signed by the Parties.

15. Severability. If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of the Settlement Agreement which can be given effect without the invalid provisions or application and to this end the provisions of this Agreement are declared to be severable. Notwithstanding the foregoing, no portion of any release contained herein may be deemed severed or deleted from this Agreement, except upon waiver in writing by the applicable Released Party.

16. No Construction Against the Drafter. Each Party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any Party on the basis that the Party was the drafter.

17. Choice of Law. This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of California without regard to principles of conflict of laws.

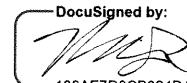
18. Counterparts. This Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

19. Cooperation. Each Party, on behalf of themselves, and their respective business entities, heirs, executors, and assigns, agrees that they will abide by this Agreement and will do all such acts, and prepare, execute, and deliver all such documents, as may be reasonably required to carry out the stated objectives of this Agreement.

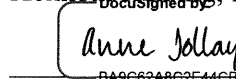
20. DocuSign Signatures Allowed. The Parties agree that they can execute this agreement by DocuSign and that the DocuSign signature will be deemed an equivalent of a hand signature.

Dated: October __, 2021
10/6/2021

Dated: October __, 2021
10/4/2021

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Kenneth Reising, Plaintiff

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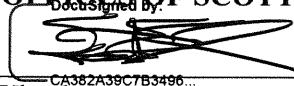
El Pollo Loco, Inc.

By: Anne Jollay
Its: Chief Legal Officer

APPROVED AS TO FORM AND PARAGRAPH 11:

Dated: October __, 2021
10/6/2021

LAW OFFICES OF SCOTT ERNEST WHEELER

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Scott Wheeler
Attorneys for Plaintiff Kenneth Reising
and Aggrieved Employees

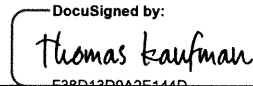
Dated: October __, 2021

THE WAND LAW FIRM, P.C.

Aubry Wand
Attorneys for Plaintiff Kenneth Reising
and Aggrieved Employees

Dated: October __, 2021
10/4/2021

SHEPPARD MULLIN RICHTER & HAMPTON LLP

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Thomas R. Kaufman, Esq.
Attorneys for Defendant
El Pollo Loco, Inc.

APPROVED AS TO FORM AND PARAGRAPH 11:

Dated: October __, 2021

LAW OFFICES OF SCOTT ERNEST WHEELER

Scott Wheeler
Attorneys for Plaintiff Kenneth Reising
and Aggrieved Employees

Dated: October 5, 2021

THE WAND LAW FIRM, P.C.



Aubry Wand
Attorneys for Plaintiff Kenneth Reising
and Aggrieved Employees

Dated: October __, 2021

SHEPPARD MULLIN RICHTER & HAMPTON LLP

Thomas R. Kaufman, Esq.
Attorneys for Defendant
El Pollo Loco, Inc.