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Humberto Romero, on behalf of himself
and all others similarly situated

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Attorneys for Respondent
ROCKER BROS. MEAT & PROVISION, INC.

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

HUMBERTO ROMERO, an Individual,

Plaintiffs,

vs.

ROCKER BROS. MEAT & PROVISION,
INC., a California Corporation and DOES 1
through 100, inclusive,

Defendants

CASE NO.: 20TRCV00802

Assigned for All Purposes to
Judge Gary Y. Tanaka (Dept. B)

JOINT STIPULATION FOR ORDER
APPROVING PROPOSED PAGA
SETTLEMENT; DECLARATION OF
HEATHER K. COX; AND [**PROPOSED**]
ORDER

Complaint filed: November 9, 2020

FILED
Superior Court of California
County of Los Angeles
06/18/2021
Sherri R. Carter, Executive Officer / Clerk of Court
By: J. Ahn Deputy

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I. INTRODUCTION

II. PROCEDURAL HISTORY OF THE CASE

Prior to submitting notice to the LWDA, Plaintiff requested and received his employment records from Defendant. The Parties further exchanged information regarding Plaintiff's individual claims which were pursued in arbitration and the PAGA allegations. As a result, Plaintiff was completely prepared to negotiate capably and in good faith and the Parties reached

1 agreement as to the terms of a mutually acceptable proposed settlement of the PAGA claims.

2 Counsel for the Parties thoroughly investigated the facts relating to the claims alleged in
3 this action and have made a thorough study of the legal principles applicable to the claims
4 asserted against Defendant. Based on their investigation and evaluation of this case, all Counsel
5 concluded that the settlement was fair, reasonable, and adequate in light of all known facts and
6 circumstances, including the defenses asserted by Defendant, potential adverse findings regarding
7 liability, and numerous potential appellate issues. The Parties now jointly submit the proposed
8 settlement and stipulation to the Court for approval and have provided simultaneous notice to the
9 LWDA of the proposed settlement pursuant to Labor Code section 2699(1)(2).

10 **III. SETTLEMENT RESULTS**

11 **A. THE AGGRIEVED PAGA EMPLOYEES/PAGA SETTLEMENT**
12 **MEMBERS**

13 There are One Hundred Seventeen (117) "Settlement Group Members," defined as all
14 current and former employees of Defendant in California who were paid wages at any time during
15 the period from July 29, 2019 to the date the Court approves this settlement (the "Covered
16 Period") while classified as hourly, non-exempt employees.

17 **B. SETTLEMENT PAYMENT**

18 Subject to Court approval, the maximum amount that Defendant will be obligated to pay
19 in connection with the settlement is Seventy Thousand Dollars and Zero cents (\$70,000.00) (the
20 "Total Settlement Amount"). The Parties agree that Forty-Five Thousand Eight Hundred Sixty-
21 Six Dollars and Sixty-Seven Cents (\$45,866.67) of the Total Settlement Amount will be allocated
22 to civil penalties under the PAGA with Thirty-Four Thousand Four Hundred Dollars and Zero
23 Cents (\$34,400.) being paid to the California Workforce Development Agency (the "LWDA
24 Payment") and Eleven Thousand Four Hundred Sixty-Six Dollars and Sixty-Seven Cents
25 (\$11,466.67) being distributed to the Settlement Group Members by Defendant (the "Settlement
26 Group Payment") according to the number of pay periods worked by the Settlement Group
27 Member during the Covered Period. Twenty-Four Thousand One Hundred Thirty Dollars and
28 Thirty-Three Cents (\$24,133.33) of the Total Settlement Amount will be allocated to Plaintiffs'

1 attorneys' fees and costs (the Plaintiff's Counsel Fees and Expenses Payment), which Defendant
2 does not oppose. The Parties agree that the Total Settlement Amount will cover civil penalties
3 under the PAGA, the LWDA Payment, the Plaintiffs' Counsel Fees and Expenses Payment.
4 Defendant's counsel further represented that the policies and practices that formed the bases of
5 Plaintiffs' complaint (e.g., auto-deduct for meal breaks) were no longer at issue, therefore
6 eliminating the causes of the alleged liability.

7 **C. SETTLEMENT ADMINISTRATION**

8 Within thirty (30) days after the Court grants approval of this settlement, Defendant shall
9 undertake mailing the PAGA penalty payments together with a cover letter to each Settlement
10 Group Member at their last known address.

11 **IV. ARGUMENT**

12 Because PAGA is a rather new statute, there is limited case law to rely upon to guide the
13 Court in connection with this stipulation. Instead, the statute and its legislative history must be
14 interpreted for this purpose. As noted above, the statute itself requires Court approval of only the
15 penalties.

16 **A. PAGA & CIVIL PENALTIES v. STATUTORY PENALTIES**

17 The State's labor law enforcement agencies — the LWDA and its constituent departments
18 and divisions — are authorized to assess and collect civil penalties for specified violations of the
19 Labor Code committed by an employer. With a stated goal of improving enforcement of existing
20 Labor Code obligations, the Legislature adopted the Labor Code Private Attorneys General Act of
21 2004 (PAGA) (Labor Code § 2698 et seq.), permitting, as an alternative, an aggrieved employee
22 to initiate a private civil action. The PAGA statute permits a trial court to "exercise its discretion
23 to award lesser penalties based on the enumerated considerations." *Thurman v. Bayshore Transit*
24 *Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135; see also Cal. Lab. Code § 2699 (e)(2)
25 (providing that "a court may award a lesser amount than the maximum civil penalty amount
26 specified by this part if, based on the facts and circumstances of the particular case, to do
27 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory").

28 The penalties collected in these private civil actions are to be distributed 75 percent to the

1 State and 25 percent to the aggrieved employees. Before an employee may file an action seeking
2 to recover civil penalties for violations of any of the Labor Code provisions enumerated
3 in section 2699.5, however, he or she must comply with the Act's administrative procedures
4 as set forth in section 2699.3, subdivision (a), which include providing notice to the LWDA
5 and the employer and waiting a prescribed period of time to permit the LWDA to investigate and
6 to decide whether to cite the employer for the alleged violations. *Caliber Bodyworks,*
7 *Inc. v. Superior Court* (2005) 134 Cal.App.4th 365, 370. *See also Dunlap v. Superior Court*
8 (2006) 142 Cal.App.4th 330.

9 **V. STANDARDS FOR APPROVAL**

10 **A. SECTION 2699(1)**

11 The superior court shall review and approve any penalties sought as part of a proposed
12 settlement agreement pursuant to this part. Cal. Labor Code § 2699 (1).

13 **B. SENATOR DUNN LETTER**

14 The Senate Daily Journal for the 2003-2004 Regular Session, pages 4754-55, contained
15 the following letter dated July 29, 2004, from Senator Joseph L. Dunn, regarding the intent of
16 Stats. 2004, c. 221 (S.B. 1809):

17
18 Senator John Burton
19 President pro Tempore

20 Dear President Burton:

21 I respectfully request permission to clarify the intent of subdivision (I) contained in Senate Bill
22 1809. This is in response to an issue raised by the Judicial Council of California.

23 The purpose of the court review of penalties in subdivision (1) is to ensure that settlements
24 involving penalties arising under Labor Code Section 2699 do not undercut the dual statutory
25 purposes of punishment and deterrence, or result in unjust, arbitrary and oppressive, or confiscatory
26 settlements.

25 Very truly yours,
26 JOSEPH L. DUNN
27 Senator, 34th District

28 ///

1 **C. LEGISLATIVE FINDINGS**

2 The Legislature finds and declares all of the following:

3 (a) Adequate financing of essential labor law enforcement functions is necessary to
4 achieve maximum compliance with state labor laws in the underground economy and
5 to ensure an effective disincentive for employers to engage in unlawful and
6 anticompetitive business practices.

7 (b) Although innovative labor law education programs and self-policing efforts by
8 industry watchdog groups may have some success in educating some employers about
9 their obligations under state labor laws, in other cases the only meaningful deterrent to
10 unlawful conduct is the vigorous assessment and collection of civil penalties as provided
11 in the Labor Code.

12 (c) Staffing levels for state labor law enforcement agencies have, in general, declined
13 over the last decade and are likely to fail to keep up with the growth of the labor market
14 in the future.

15 (d) It is therefore in the public interest to provide that civil penalties for violations of the
16 Labor Code may also be assessed and collected by aggrieved employees acting as private
17 attorneys general, while also ensuring that state labor law enforcement agencies'
18 enforcement actions have primacy over any private enforcement efforts undertaken
19 pursuant to this act. *Stets 2003 ch 906, Legislative Notes to California Labor Code §*
20 *2698.*

21 **VI. FINAL SETTLEMENT APPROVAL IS APPROPRIATE**

22 As noted above, the terms reached for the PAGA employees are fair and just under the
23 circumstances. As such, approval is appropriate.

24 **A. THE SETTLEMENT IS ENTITLED TO A PRESUMPTION OF FAIRNESS.**

25 A presumption of fairness exists where: 1) The settlement is reached through arm's length
26 bargaining; 2) Investigation and discovery are sufficient to allow counsel and the Court to
27 act intelligently; 3) Counsel is experienced in similar litigation; and 4) the percentage of objectors
28 is small. *Dunk v. Ford Motor Company* supra, 48 Cal.App.4th at 1802. Although the *Dunk*
 case deals with a Class Action case and the criteria to examine the fairness of a settlement, in the
 absence of numerous PAGA cases, such an analysis seems appropriate.

1 **B. THE SETTLEMENT WAS REACHED THROUGH ARM'S-LENGTH**
2 **NEGOTIATIONS.**

3 This settlement was a result of numerous arm's length negotiations. The settlement that
4 has been reached, subject to this Court's approval, is the product of effort, and great expense by
5 the Parties and their counsel. Plaintiffs' attorney and the Plaintiff has conducted extensive pre-
6 litigation investigation and engaged in informal discovery with Defendant allowing the Parties to
7 evaluate the real issues involved and the realistic chances for success by either party. (Cox Decl.
8 ¶3).

9 The settlement amount is, of course, a compromise figure. Plaintiff took into account the
10 risks related to proof of the claims, and the strengths and weaknesses of Defendant's other
11 defenses. Plaintiff also took into account the possibility that if a settlement were reached after
12 additional years of litigation, the great expenses and attorneys' fees of litigation would reduce
13 the amount of funds available for settlement. Defendant, at all times, denied each and every
14 claim and contention alleged in the PAGA claim and has always maintained that it never
15 engaged in any unlawful acts regarding any of the matters alleged in the Action, thereby
16 creating the necessity to undergo a multitude of individualized assessments if the case
17 progressed to trial. Furthermore, Plaintiff also took into consideration the time delay and
18 financial repercussions of trial and the possibility of an appeal by Defendant. (Cox Decl. ¶ 4)

19 **C. SUFFICIENT INVESTIGATION AND DISCOVERY HAS BEEN**
20 **COMPLETE TO WARRANT A SETTLEMENT AT THIS TIME.**

21 The stage of the proceedings and the amount of investigation completed is an important
22 factor which the Courts consider in determining the fairness, reasonableness, and adequacy of
23 settlement. *In re Warner Communications Sec. Litig.*, 618 F.Supp.735, 741 (S. D.N.Y. 1985)
24 affid., 198 F.2d 35 (2d Cir. 1986); *Ellis v. Naval Air Rework Facility*, 87 F.R.D.15, 18 (N.D Cal
25 1980), affid, 661 F.2d 939 (9th Cir. 1981); *Boyd v. Bechtel Corp*, 485 F.Supp.610, 616-17 (N.D
26 Cal.1979). Plaintiff's counsel conducted meaningful discovery. The pre-litigation discovery
27 reached a stage where "the parties certainly have a clear view of the strengths and weaknesses of
28 their cases." *Warner*, supra, 618 F.Supp. at 745; *Ellis*, supra, 87 F.R.D. at 18; *Boyd*, supra, 485

1 F.Supp. at 616-17.

2 Counsel for the Parties have investigated the law as applied to the facts discovered
3 regarding the alleged claims and potential defenses thereto, and the damages Plaintiff claimed on
4 behalf of the other Settlement Group Members. Discovery and investigation included the
5 exchange of pertinent documents and information. Counsel for the parties engaged in multiple
6 meet and confer sessions over Defendant's records and practices, which shed light on the relative
7 merits of Plaintiffs' PAGA claims and whether any of the PAGA related civil penalties claimed
8 had traction. (Cox Decl. ¶ 3).

9 The legal theories of all claims and defenses and the evidence supporting them are
10 intimately familiar to Plaintiff's counsel. (Cox Decl. ¶ 3-4). The parties were thus able to
11 evaluate settlement versus trial and lengthy appeals on a fully informed basis after completion of
12 the pertinent discovery. All legal and factual issues were evaluated, and all alternatives were
13 considered in reaching the settlement decision.

14 **D. PLAINTIFF'S COUNSEL IS EXPERIENCED AND ENDORSES THE**
15 **SETTLEMENT.**

16 Experienced counsel, operating at arm's length, have weighed all of the foregoing factors
17 and endorse the proposed settlement. Plaintiff's Counsel has experience in PAGA actions and
18 employment litigation, and specifically in wage and hour litigation. (Cox Decl. ¶ 5-7) Plaintiff's
19 Counsel is experienced and qualified to evaluate the PAGA claims and viability of the defenses.
20 The recovery is substantial, given the limited amount of wages at issue, the risks inherent in
21 litigation and the defenses asserted. This settlement is fair, adequate and reasonable and in the
22 best interests of the PAGA employees. (Cox Decl. ¶ 9.)

23 **VII. CONCLUSION**

24 For all of the foregoing reasons, the Parties respectfully request that the Court grant final
25 approval to the proposed settlement.
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1 DATED: May 27 2021

Respectfully Submitted,
BARKHORDARIAN LAW FIRM, PLC

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4 Gregory P. Wong
5 Heather K. Cox
6 Attorneys for Plaintiff
7 Humberto Romero, on behalf of himself
8 and all others similarly situated

9 DATED: May 27, 2021

Respectfully Submitted,
PETTIT KOHN INGRASSIA LUTZ & DOLIN
PC

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13 Tristan A. Mullis
14 Sevada Hakopian
15 Attorneys for Defendant Rocker Bros.
16 Meat & Provision Inc.
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1. I have personal first-hand knowledge of the following facts and if called upon to testify, could competently do so.

3. I have conducted extensive pre-litigation investigation and engaged in informal discovery with Defendant allowing the Parties to evaluate the real issues involved and the realistic chances for success by either party. Defendant explained their meal break policy and other information about their wage payment practices. Thus, this case presented strongly on the technical merits, but, from a practical perspective, also only represented a limited amount of actual lost wages and individual assessment of each employee.

4. In evaluating the fairness and acceptability of the proposed settlement, Plaintiff took into account the risks related to proof of the claims, and the strengths and weaknesses of Defendant's other defenses. Plaintiff also took into account the possibility that if a settlement were reached after additional years of litigation, the great expenses and attorneys' fees of litigation would reduce the amount of funds available for settlement. Defendant, at all times, also denied each and every claim and contention alleged in the PAGA claim and has always maintained that it never engaged in any unlawful acts regarding any of the matters alleged in the Action, thereby creating the necessity to undergo a multitude of individualized assessments if the case progressed to trial. Furthermore, Plaintiff also took into consideration the time delay and financial repercussions of trial and the possibility of an appeal by Defendant. Finally, Plaintiff was cognizant of the fact that the Court has discretion to reduce PAGA penalties, and that there was a risk that the Court would do just that in light of the fact that the theoretical penalties exceeded the actual lost wages by an order of magnitude.

1 5. I received my law degree from The University of San Francisco and was admitted
2 to the California bar in 2011. I have practiced labor and employment law almost exclusively
3 throughout my career, primarily on the plaintiff's side. Between 2012 and 2013, I worked at
4 Initiative Legal Group and then Capstone Law Group as an associate and my job duties included
5 obtaining class data and class member declarations to support motions for class certifications.

6 6. Between 2014 and 2019, I was an associate with the labor and employment law
7 firm Carlin and Buchsbaum, LLP and continued to work on class actions and expanded my
8 practice to include individual labor and employment claims and representative actions, including
9 the Private Attorney General Action matters. While employed at Carlin and Buchsbaum, LLP, I
10 served as named co-counsel on approximately 15 class and/or representative actions in both state
11 and federal court. I gained substantial experience in various phases of litigating wage and hour
12 class action matters. This includes developing case strategy, participating in and overseeing
13 discovery, and participating in mediations. I was employed at Zaller Law Group in 2020 and
14 practiced employment law from the defense side.

15 7. I joined the Barkhordarian Law Firm in April 2020. My practice has continued to
16 focus on the representation of workers in employment law matters.

17 8. There has been no opposition to the settlement. The LWDA decided not to
18 investigate this matter after being given proper notice. My office notified LWDA of this
19 application and the proposed settlement. I am informed and believe that the LWDA does not
20 engage in the analysis nor gives an opinion with regards to the settlement achieved.

21 9. In my opinion, the amount of penalties negotiated under the terms of the
22 settlement reached by the parties is fair and represents a good recovery for the State of California
23 and the PAGA Settlement Members aggrieved employees. I believe that litigation of this case
24 would have produced only marginally better results, if any, at the cost of significant litigation
25 expenses to all parties.

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2 I declare under penalty of perjury under the laws of the state of California that the foregoing is
3 true and correct. Executed this 27 day of May, 2021 at Culver City, California.
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6 Heather K. Cox
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[PROPOSED] ORDER

1. The Joint Stipulation for Order Approving PAGA Settlement is GRANTED;
2. Defendant shall effectuate payment in the total amount of \$70,000.00, comprising the entirety of the LWDA Payment, the Settlement Group Payment, and the Plaintiff's Counsel Fees and Expenses Payment, within the time frame and pursuant to the terms set forth in the Parties' Joint Stipulation for Order Approving PAGA Settlement.
3. Defendant shall have no further liability for penalties arising out of the claims brought by Plaintiff pursuant to the Private Attorneys General Action in this Action.

IT IS SO ORDERED.

Dated: 06/18/2021



Gary Y. Tanaka

Gary Y. Tanaka / Judge

Hon. Gary Y. Tanaka

Judge of the Superior Court

GREGORY P. WONG (SBN: 204502)
HEATHER K. COX (SBN: 278898)
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Attorneys for Plaintiff
Humberto Romero on behalf of himself
and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

HUMBERTO ROMERO, an Individual,

Plaintiffs,

vs.

ROCKER BROS. MEAT & PROVISION,
INC., a California Corporation and DOES 1
through 100, inclusive,

Defendants

CASE NO.: 20TRCV00802

Assigned for All Purposes to
Judge Gary Y. Tanaka (Dept. B)

PROOF OF SERVICE

1 PROOF OF SERVICE
2 (CCP §§ 1013(A) AND 2015.5)

3 State of California,

4 County of Los Angeles

5 I am employed in the County of Los Angeles, State of California. I am over the age of 18
6 and am not a party to the within action; my business address is 6047 Bristol Parkway, Culver City,
7 CA 90230.

8 On June 1, 2021, I served the foregoing document described as:

- 9 - **JOINT STIPULATION FOR ORDER APPROVING PROPOSED PAGA
10 SETTLEMENT; DECLARATION OF HEATHER K. COX; AND [PROPOSED]
11 ORDER**

12 on the interested parties in this action by placing the same in a sealed envelope, as follows:

13 Tristan A. Mullis, Esq., SBN 266558
14 Sevada Hakopian, Esq., SBN 330602
15 **PETTIT KOHN INGRASSIA LUTZ & DOLIN PC**
16 5901 W. Century Blvd., Suite 1100
17 Los Angeles, CA 90045
18 E-mail: tmullis@pettitkohn.com
19 shakopian@pettitkohn.com

20 ☒ **(BY MAIL)** – I caused such envelope(s) with postage thereon fully prepaid to be placed
21 in the United States mail in Culver City, California. I am “readily familiar” with the firm’s
22 practice of collection and processing correspondence for mailing. Under that practice, it
23 would be deposited with the U.S. Postal Service on the same day with postage thereon
24 fully prepaid at Culver City, California, in the ordinary course of business. I am fully
25 aware that on motion of the party served, service is presumed invalid if the postal
26 cancellation date or postage meter date is more than one day after the date of deposit for
27 mailing an affidavit.

28 ☒ **(BY E-MAIL)** – Based on a Court order or an agreement by the parties to accept service
by e-mail or electronic transmission. I caused the documents described above to be sent by
e-mail to the persons at the e-mail addresses listed above. I did not receive, within a
reasonable amount of time after transmission, any electronic message or other indication
that the transmission was unsuccessful.

☐ **(BY FACSIMILE)** – I caused the above-described document(s) to be transmitted to the
offices of the interested parties at the facsimile number(s) indicated on the attached Service
List and the activity report(s) generated by facsimile number (310) 215.3416 indicating on
all pages that they were transmitted.

☐ **(BY CASEANYWHERE)** – Pursuant to the Court’s Order Electronic Service, I effected
electronic Service via Case Anywhere.

☒ **(STATE)** – I declare under penalty of perjury under the laws of the State of California that
the above is true and correct.

27 /s/ Yesli Ramirez

28 Yesli Ramirez