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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

CESAR TORRES, individually, on a
representative basis, and on behalf of all
others similarly situated; and MARK
EURICH, individually, on a representative
basis, and on behalf of all others similarly
situated;

Plaintiff,

vs.

EPAC LOS ANGELES, LLC, a Delaware
Limited Liability Company; EPAC
NORCAL, LLC, a Delaware Limited
Liability Company; EPAC HOLDINGS,
LLC, a Delaware Limited Liability
Company; EPAC, LLC, a Delaware
Limited Liability Company; and DOES 1
through 20, inclusive;

Defendants.

Case No.: CIVDS2017140
*[Assigned to Hon. Judge David Cohn, Dept. S26,
for all purposes]*

**DECLARATION OF BRIAN MANKIN IN
SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL**

Hearing

Date: December 6, 2021
Time: 10:00 a.m.
Dept.: S26

Complaint filed: August 24, 2020

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I represent Plaintiff Mark Eurich in this action and I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

1 **COUNSEL’S EXPERIENCE**

2 2. I have been a member, in good standing, of the State Bar of California since 2001.
3 I am admitted to practice in the United States District Courts for the Central and Southern
4 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
5 courts in California.

6 3. I have handled approximately 400 to 500 employee vs. employer litigation
7 matters during my 20 years in practice. Over the last 15 years, my practice has almost entirely
8 consisted of representing employees, the majority of which has included class action and
9 representative action wage and hour matters. In total, I have handled over 200 class action and
10 representative action wage/hour cases, and have been appointed by the court as class counsel and
11 have received final court approval and judgment in over half of those actions to date, and
12 anticipate receiving final approval in many more of those in the future.

13 4. As part of these settlements and judgments, I have recovered in excess of \$250
14 million in damages for my clients and the class members (who often work as nurses, ambulance
15 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
16 countless other trades). My team and I once held the record for the largest known PAGA-only
17 case in California’s history as of the end of 2018 - a \$12.5 million-dollar court approved
18 settlement, which followed extensive litigation, summary adjudication and writs to the CA
19 Supreme Court against a Fortune 50 company (*Garcia v. Macy’s*, San Bernardino Superior
20 Court).

21 5. I have tried two major class and PAGA cases against Fortune 100 companies. In
22 2018, I was lead counsel in a PAGA case that my firm tried to the bench in the Orange County
23 Superior Court and received a \$425,000 judgment. In 2019, I was co-counsel in a class action
24 case against Walmart that we tried to the jury in District Court, wherein the jury awarded
25 Plaintiff over \$6 million. Both cases were appealed.

26 6. Over the last few years, I have been consecutively selected by my peers as a
27 “Super Lawyer” in Employment Litigation.
28

BRIEF SUMMARY OF THE SETTLEMENT

7. Through a contested but productive mediation, Plaintiff Mark Eurich and Defendants ePac Los Angeles, LLC, ePac Norcal, LLC, ePac Holdings, LLC and ePac, LLC (“Defendants” or “ePac”) (collectively, the “Parties”) entered into a Class Action Settlement Agreement and Release of Claims resolving the wage and hour claims of the putative class (the “Settlement Agreement”), which is attached hereto as **Exhibit 1**. The Settlement Agreement seeks to fully release and discharge Defendants from the claims brought against it in this matter in exchange for Defendants’ agreement to pay a Gross Settlement Amount of \$120,000 on a non-reversionary, non-claims made basis (each Class Member will receive his/her share of the Net Settlement Amount without having to submit a claim form or taking action, except for those who opt-out). Plaintiff seeks to represent a class of similarly situated individuals defined as: “All current and former non-exempt employees employed by Defendants in California at any time during the Class Period”, which is August 24, 2016, through July 24, 2021 (the “Class” or “Class Members”), who have not previously released his/her Released Claims against Defendants.

8. Under the terms of the Settlement Agreement, Defendants will not oppose Class Counsel’s application for a reasonable award of attorneys’ fees not to exceed one-third of the Settlement Amount, Class Counsel’s litigation expenses not to exceed \$10,000, settlement administrator costs not to exceed \$4,000, PAGA penalties of \$10,000 (of which \$7,500 or 75% will be paid to the LWDA and the remaining \$2,500 or 25% will be paid pro-rata to the Aggrieved Employees), and a Service Payment not to exceed \$2,500 for Mark Eurich. After subtracting the agreed-upon deductions from the Gross Settlement Amount, it is estimated that \$53,500 will be available to the Class Members who do not opt-out of the settlement, as follows:

	Total Amount
<i>Gross Settlement Amount</i>	\$ 120,000.00
Attorneys’ Fees (1/3)	\$ 40,000.00
Litigation Costs	\$ 10,000.00
Administrator Costs	\$ 4,000.00
PAGA Penalties	\$ 10,000.00
Class Representative’s Service Award	\$ 2,500.00
<i>Net Settlement Amount</i>	\$ 53,500

1 9. Assuming a class size of approximately 60 Class Members, the average payment
2 to each class member will be approximately \$891.67 each (\$53,500 / 60). Of course, the actual
3 payment will be calculated on a pro-rata basis according to the number of Workweeks Worked
4 by each Class Member. Assuming an estimated 2,500 weeks worked, each Workweek will have
5 a value of approximately \$21.40 on average. In addition, Aggrieved Employees (*i.e.*, Class
6 Members that worked during the PAGA Period) will receive a pro rata share of the \$2,500 PAGA
7 Penalties (accounting for 25% of the total \$10,000 allocation).

8 10. Each Class Member will receive the Class Notice, explaining the nature of the
9 case, and the process for participating, objecting and opting-out, and advising of his/her estimated
10 settlement payment and the number of Work Weeks he/she is credited with working during the
11 Class and PAGA Periods (attached hereto as **Exhibit 2**).

12 **PROCEDURAL BACKGROUND**

13 11. My office has performed considerable work and diligently investigated and
14 prosecuted this case to a successful conclusion. Our work has resulted in the creation of a
15 significant settlement fund for the benefit of the Class. We efficiently communicated and
16 exchanged information informally with Defense counsel which enabled the parties to
17 successfully settle the case at mediation. Because of the risks involved in litigating the case and
18 the contested legal and factual issues, Plaintiff's Counsel believe this settlement to be fair,
19 reasonable, and adequate.

20 12. Cesar Torres initially retained my office to investigate potential claims against
21 Defendants. On June 30, 2020, my office sent a letter to Defendants requesting the production of
22 Mr. Torres' personnel and timekeeping records in order to further evaluate his wage and hour
23 claims. Upon receipt of the records and discovering apparent wage and hour claims, Mr. Torres
24 further retained my office to bring a class and representative action complaint. Thereafter,
25 Torres filed a putative class action complaint on August 24, 2020, alleging claims arising out of
26 Defendants' alleged: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages,
27 (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Breaks; (5) Failure to Pay Vested
28 Vacation Wages; (6) Failure to Timely Pay Wages; (7) Failure to Provide Accurate Itemized

1 Wage Statements; and (8) Unfair and Unlawful Competition.

2 13. My office then submitted an August 31, 2020, letter to the California Labor
3 Workforce Development Agency (the “LWDA”) for civil penalties under the Private Attorney
4 General Act of 2004 (the “PAGA”), which is attached hereto as **Exhibit 3**. The LWDA declined
5 to assert jurisdiction over Plaintiff’s PAGA claims, so Plaintiff filed a First Amended Complaint
6 that added PAGA claims on about November 13, 2021.

7 14. At some point during the Action, Torres unceremoniously settled directly with
8 Defendants without the knowledge of my office. We learned of the settlement shortly after the
9 initial CMC, which prompted a series of ex parte applications and motions seeking various type
10 of curative relief, including substituting Torres as the named Plaintiff. In turn, Defendants filed a
11 motion to dismiss the action for lack of a Plaintiff. However, while numerous motions were
12 pending, the parties agreed to explore resolution through mediation. In preparation for
13 mediation, the Parties agreed to an informal discovery process where information was exchanged
14 relating to the applicable policies and procedures, payroll and time keeping records, size of the
15 class, and potential value of the case. The sampling included employee wage statements,
16 timekeeping records, and payroll data that enabled my office and our expert to fully evaluate the
17 potential claims and extrapolate the data to the entire class. During this process, my office
18 analyzed, researched, and investigated the potential claims of all similarly situated employees.

19 15. On May 18, 2021, the Parties participated in a full-day mediation with Hon.
20 Jonathan Cannon (Ret.), who is a full-time mediator with extensive experience in employment
21 matters. At the conclusion of the mediation, Judge Cannon issued a mediator’s proposal calling
22 for a class-wide settlement for \$120,000 that included an agreement to substitute the named
23 Plaintiff. The Parties accepted the mediator’s proposal, and memorialized the terms of the
24 settlement in a long-form Settlement Agreement. The Parties now seek the Court’s preliminary
25 approval of the Settlement.

26 **THE WAGE AND HOUR CLAIMS AND CLASS COUNSEL’S INVESTIGATION**

27 16. The putative Class in this case consists of approximately 60 similarly situated
28 individuals. Plaintiff alleged numerous wage and hour violations on behalf of the Class

1 Members, with a particular emphasis on two alleged violations. However, Defendants
2 vigorously contested and denied each of Plaintiff's material allegations on the merits and as to
3 the propriety of a class action or PAGA representative action.

4 17. First, Plaintiff claimed that Defendants failed to pay proper minimum and
5 overtime wages due to two unpaid wage violations. During the relevant period, Defendants used
6 a "rounding" policy that only paid in quarter-hour increments (*i.e.*, Class Members were paid for
7 .00 / .25 / .50 / .75 hours but never other fractions of time). Plaintiff alleged that this practice
8 routinely undercompensated the Class Members, in violation of California law. Additionally,
9 Plaintiff alleged that Defendants' payroll policy failed to pay mandated doubletime on occasions
10 that Class Members worked shifts in excess of 12 hours. Plaintiff argued that these distinct
11 violations resulted in unpaid minimum wages and overtime, as well as waiting time penalties
12 under Labor Code § 203 and other derivative penalties. However, Defendants opposed these
13 claims, argued that the rounding policy was neutral both on its face and in application, and that it
14 properly paid all overtime and doubletime owed.

15 18. Second, Plaintiff argued that the Class members were often denied compliant
16 meal and rest breaks due to the nature of the work. However, ePac argued that it provided and
17 made available meal and rest breaks to all employees, and any employee who did not take a meal
18 or rest break did so entirely of his or her own volition. As such, Defendants argued that these
19 claims were without merit because, for each violation, a fact-finder would have to determine why
20 a break was noncompliant/nonexistent, because if it was by the employee's choice, no liability
21 attaches to the Defendant.

22 19. Plaintiff also claimed, among other things, that Defendants failed to timely pay
23 final wages, failed to provide accurate itemized wage statements, and alleged various PAGA
24 claims arising out of the claimed violations mentioned above. However, Defendants argued that
25 claims for wage statements, waiting time penalties and PAGA penalties were derivative of other
26 claims, which it argued have no merit.

27 20. Despite that each of the claims were disputed, the Parties concluded that further
28 litigation of the Action would be protracted and expensive, and that it is desirable that the Action

1 be fully and finally settled in order to limit further risk, expense and protracted litigation.

2 **THE SETTLEMENT IS FAIR, JUST, AND REASONABLE**

3 21. The settlement was the product of extensive arm's length negotiations, facilitated
4 by an experienced mediator. Though cordial and professional, the settlement negotiations were
5 adversarial and non-collusive in nature. The settlement reached is the product of substantial
6 effort by the parties and their counsel. Although we believed that there was a possibility of
7 certifying the claims, we recognized the potential risk, expense, and complexity posed by
8 litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or
9 on the damages awarded, and/or on an appeal that can take several more years to litigate.

10 22. The settlement will result in a fair payment to each class member based on the
11 number of Weeks Worked by each Class Member. As set forth hereinabove, Plaintiffs and their
12 counsel have diligently investigated the claims and defenses on behalf of the class members and
13 worked to achieve a resolution of the claims to maximize the recovery by avoiding further
14 expenditure of attorneys' fees and costs. After evaluating the significant risks attendant with
15 further litigation described above and weighing them against the benefits of a known
16 compromise and settlement as set forth in the Settlement Agreement, settlement on the terms
17 agreed to is believed to be in the best interest of Plaintiffs and the Class, and is a fair and
18 reasonable resolution of the claims alleged.

19 23. Plaintiff's counsel brought to bear a great deal of experience in negotiating the
20 settlement of this case, especially in a situation where our client settled directly with Defendants
21 behind our backs. Despite this fact, we applied the correct pressure on the company and
22 thereafter engaged in the necessary discovery and investigation, making it possible to exercise
23 informed judgment throughout the settlement process, including significant document review
24 (e.g. documents pertaining to Defendants' policies and procedures, personnel documents, among
25 others), and conducted an extensive analysis of the detailed class-wide data provided by
26 Defendants.

27 24. Based on my experience in other cases, including wage and hour matters, I
28 believe I am qualified to evaluate the class claims and viability of defenses in this class action.

1 In this case, the recovery for each class member is reasonable, fair, and adequate, and a
2 settlement at this time is in the best interests of the class. The settlement provides each class
3 member with compensation for the alleged violations when viewed in relation to the costs and
4 risks inherent in obtaining class certification and proceeding to trial.

5 25. Plaintiff's counsel, as well as Defendants' counsel, fully endorse the terms and
6 conditions of the settlement as set forth in the abovementioned Settlement Agreement.

7 26. Of course, the settlement amount represents a compromise figure, taking into
8 account the various risks surrounding class certification and the merits of Defendants' asserted
9 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
10 members, with no reversion to Defendants.

11 **PLAINTIFF'S REQUESTED ENHANCEMENT PAYMENTS**

12 27. We seek an enhancement payment of \$2,500 for Mark Eurich for coming forward
13 and agreeing to serve as the named Plaintiff, which I believe is fair and warranted given the time
14 and effort he devoted to this case and the fact that he had to put his name in the public domain
15 for the benefit of the Class.

16 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF**
17 **THE REQUESTED FEES AND COSTS**

18 28. As set forth above, I have handled over 200 class and representative actions, have
19 been appointed as class counsel and have successfully resolved over half of those class actions,
20 and many others remain pending and will successfully resolve in the future.

21 29. When this case was taken on a contingency fee basis, with my firm agreeing to
22 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
23 course of this litigation, my firm paid all costs including filing fees, court costs, research fees,
24 and mediation costs. There was never a guarantee that my firm would recoup those expenditures.

25 30. It is my experience that attorney fee awards of one-third of a common fund
26 settlement is the standard in California. In this case, Plaintiff's counsel agreed to seek one-third
27 of the Settlement Amount for attorneys' fees. Defendants do not oppose this fee request. The fee
28 is further warranted because it is within the range of reasonableness typically awarded in class

1 actions. My firm's costs are reasonably capped at \$10,000 and will be based on the actual
2 amount of costs incurred at the time of final approval.

3 **SETTLEMENT ADMINISTRATOR**

4 31. The parties request that the Court appoint Simpluris to serve as the Settlement
5 Administrator. Simpluris is experienced in administering class action settlements, and has
6 provided a flat-fee proposal to administer this settlement for \$4,000.

7 **CONCLUSION**

8 32. Plaintiff has concurrently submitted the settlement to the LWDA in accordance
9 with Labor Code § 2699(1)(2). The proof of submission is attached hereto as **Exhibit 4**.

10 33. For the foregoing reasons, it is respectfully requested that the Court grant
11 preliminary approval of the settlement as being fair, reasonable, and in the best interests of the
12 class, as well as preliminarily approve the requested attorneys' fees, costs, and enhancement
13 payment to the Class Representative.

14 I declare under penalty of perjury under the laws of the State of California that the
15 foregoing is true and correct. Executed on September 20, 2021, at Riverside, California.

16
17 By: 
18 Brian J. Mankin, Esq.

EXHIBIT “1”

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Attorneys for Defendants ePac Los Angeles, LLC, ePac Norcal, LLC, ePac Holdings, LLC and ePac, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

CESAR TORRES, on a representative basis
and on behalf of all others similarly situated;

Plaintiff,

vs.

EPAC LOS ANGELES, LLC, a Delaware
Limited Liability Company; EPAC
NORCAL, LLC, a Delaware Limited Liability
Company; EPAC HOLDINGS, LLC, a
Delaware Limited Liability Company; EPAC,
LLC, a Delaware Limited Liability Company;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: CIVDS2017140
[Assigned to Hon. Judge David Cohn, Dept.
S26, for all purposes]

**CLASS ACTION SETTLEMENT
AGREEMENT AND RELEASE OF
CLAIMS**

1 This Class Action Settlement Agreement and Release of Claims is entered into by and
2 between Plaintiff Mark Eurich, individually, and on behalf of all others similarly situated, and on
3 behalf of the State of California as a Private Attorney General, and Defendants ePac Los
4 Angeles, LLC, ePac Norcal, LLC, ePac Holdings, LLC and ePac, LLC, and is approved by their
5 respective counsel of record, subject to the terms and conditions hereof and the Court's approval.

6 **A. Definitions**

7 1. "Action" or "Lawsuit" means and refers to the case entitled *Torres v. ePac Los*
8 *Angeles, LLC, et al.*, San Bernardino County Superior Court, Case No. CIVDS2017140.

9 2. "Aggrieved Employee(s)" means all current and former non-exempt employees
10 employed by Defendants in California at any time during the PAGA Period, who have not
11 previously released his/her PAGA Released Claims.

12 3. "Agreement" or "Settlement Agreement" or "Settlement" shall mean this Class
13 Action Settlement Agreement and Release of Claims.

14 4. "Class Counsel" refers to Brian Mankin and Peter Carlson of Lauby Mankin
15 Lauby LLP.

16 5. "Class Data" means a complete list that Defendants will diligently and in good
17 faith compile from their records and provide to the Settlement Administrator on one spreadsheet
18 which shall include, for each Settlement Class Member, the individual's full name; last known
19 address; telephone number; Social Security Number; total Weeks Worked during the PAGA
20 Period; and the total Weeks Worked during the Class Period.

21 6. "Class Period" is deemed to be any time during the period of August 24, 2016,
22 through the Preliminary Approval Date or July 24, 2021, whichever occurs sooner.

23 7. "Class Representative" or "Plaintiff" means and refers to Mark Eurich. (Cesar
24 Torres is specifically excluded from this Settlement and Agreement as a Plaintiff, Class
25 Representative, Class Member and Aggrieved Employee, pursuant to his direct settlement with
26 Defendants and the Court's order.)

27 8. "Complaint" refers to the operative complaint on file in the Action at the time the
28 Preliminary Approval Order is granted, alleging class and representative PAGA claims. By way

of background, the complaint was originally filed on August 24, 2020, amended to allege PAGA claims on November 13, 2021. Additionally, the complaint will be further amended prior to the filing of the motion for preliminary approval to substitute Mark Eurich as the named Plaintiff and therein remove Cesar Torres from the Action.

9. “Court” (or “Judge”) means the California Superior Court, County of San Bernardino.

10. “Defendants” means and refers to ePac Los Angeles, LLC, ePac Norcal, LLC, ePac Holdings, LLC and ePac, LLC.

11. “Defendants’ Counsel” or “Defense Counsel” means and refers to Travis Jang Busby of Gordon Rees Scully Mansukhani, LLP.

12. “Effective Date” means the latest of the following dates: (i) if no Class Member objects, timely and properly intervenes, or files a motion to vacate the judgment approving the Settlement Agreement under Code of Civil Procedure § 663, then the date of the Notice of Entry of Order regarding Final Approval of the Settlement; (ii) if a Class Member objects, intervenes, or files a motion to vacate the judgment approving the Settlement Agreement, then sixty-one (61) calendar days following the date the Court enters an order granting Final Approval, assuming no appeal is filed; or (iii) if a timely appeal is filed, the date of final resolution of that appeal (including any requests for rehearing and/or petitions for *certiorari*), resulting in final judicial approval of the Settlement.

13. “Final Approval and Judgment” refers to the order of the Court granting final approval of this Settlement Agreement and entering a judgment approving this Agreement on substantially the terms provided herein or as may be modified by subsequent agreement of the Parties.

14. “Final Settlement Class” means, collectively, all Settlement Class Members who have not opted out of the Settlement Class by submitting timely Requests for Exclusion.

15. “Individual Settlement Payment” shall have the meaning ascribed to it in Paragraph 47(c) below.

///

1 16. “Maximum Settlement Amount” shall have the meaning ascribed to it in
2 Paragraph 47(a) below.

3 17. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 47(b)
4 below.

5 18. “Notice” means the notice of settlement of class action that will be sent to the
6 Settlement Class Members substantially in form as set forth in Exhibit “A.”

7 19. “Notice Response Deadline” is 30 calendar days from the date the Notice is
8 mailed to the Settlement Class Members.

9 20. “Objecting Settlement Class Member” means a Settlement Class Member, other
10 than Plaintiff, who submits a valid and timely objection to the terms of this Agreement, pursuant
11 to Paragraph 64(c) below.

12 21. “PAGA Penalties” means the amount that the Parties have agreed to pay to the
13 Labor and Workforce Development Agency (“LWDA”) in connection with the California Labor
14 Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”), as well
15 as the individual PAGA payment allocated to each Aggrieved Employee.

16 22. “PAGA Period” is deemed to be any time during the period of August 24, 2019,
17 through the Preliminary Approval Date or July 24, 2021, whichever occurs sooner.

18 23. “PAGA Released Claims” by the Aggrieved Employees upon Final Approval of
19 the Settlement means any and all PAGA claims that Plaintiff alleged against the Released
20 Parties, on behalf of Aggrieved Employees and State of California, based on the facts stated in
21 the operative Complaint in the Action and in the LWDA notice letter(s), including all PAGA
22 claims seeking civil penalties that is premised upon (1) failure to pay minimum wages, (2) failure
23 to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5)
24 failure to pay vested vacation, (6) failure to timely pay wages each period and upon separation of
25 employment, (7) failure to provide accurate itemized wage statements, and (8) all other claims
26 for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 *et*
27 *seq.* that could have been alleged based on the facts or claims alleged in the Complaint. The time
28 period governing the PAGA Released Claims shall be any time during the PAGA Period. The

1 PAGA Released Claims do not release any Aggrieved Employee’s claims for wages or statutory
2 penalties.

3 24. “Participating Class Member” means any and all Settlement Class Members who
4 are deemed to participate and receive an Individual Settlement Payment and do not opt-out by
5 submitting timely valid Requests for Exclusion.

6 25. “Parties” or “Settling Parties” mean Plaintiff, the Settlement Class, and
7 Defendants, collectively.

8 26. “Preliminary Approval Date” means the date the Court approves the Settlement
9 Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

10 27. “Preliminary Approval Order” means the judicial Order to be entered by the
11 Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement
12 and providing for the issuance of the Notice to the Settlement Class, an opportunity to opt out of
13 the Settlement, an opportunity to submit timely objections to the Settlement, and setting a
14 hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees and
15 costs. Defendants will not object to Plaintiff’s motion for preliminary approval, but will be
16 provided with an opportunity to review and comment upon the motion at least five court days
17 before it is filed.

18 28. “QSF” means the Qualified Settlement Fund set up by the Settlement
19 Administrator for the benefit of the Final Settlement Class, and from which the settlement
20 payments shall be made, and which is intended to be a fund that qualifies under Internal Revenue
21 Code Sec. 468.

22 29. “Released Claims” by the Participating Class Members upon Final Approval of
23 the Settlement will include any and all claims stated in the operative Complaint and those that
24 could have been made based solely upon the facts alleged in the operative Complaint in the
25 Action, including: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3)
26 failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to pay vested
27 vacation, (6) failure to timely pay wages each period and upon separation of employment, (7)
28 failure to provide accurate itemized wage statements, (8) unfair and unlawful competition, (9) all

1 other claims for statutory penalties based on the facts or claims alleged in the Complaint; and (10)
2 attorneys' fees and costs of litigation associated with this Action.

3 30. "Released Parties" means Defendants and their past and present officers,
4 directors, shareholders, employees, agents, principals, heirs, representatives, accountants,
5 auditors, consultants, insurers and reinsurers, and their respective parent corporations,
6 subsidiaries, divisions, affiliates, attorneys, successors and assigns.

7 31. "Release Period" shall be the time period governing the Released Claims which
8 shall be the same as the Class Period.

9 32. "Release" shall mean the release and discharge of the Released Claims by
10 Plaintiff and all of the Participating Class Members. The *res judicata* effect of the Judgment will
11 be the same as that of the Release.

12 33. "Request for Exclusion" shall have the meaning ascribed to it in Paragraph 65(a)
13 below.

14 34. "Service Payment" or "Service Award" means the amount approved by the Court
15 to be paid to Class Representative Mark Eurich in addition to his Individual Settlement Payment
16 as a Participating Class Member and individual PAGA payment as an Aggrieved Employee.

17 35. "Settlement Administrator" means and refers to Simpluris, the third-party class
18 action settlement administrator agreed to by the Parties, that will provide the Notice to the Class
19 Members and distribute the settlement amounts as described in this Agreement.

20 36. "Settlement Administration Costs" means the costs payable from the Maximum
21 Settlement Amount to the Settlement Administrator for administering this Settlement, including,
22 but not limited to, printing, distributing, and tracking documents for this Settlement, tax
23 reporting, and deposit of the employee and employer share of payroll taxes, unclaimed property
24 due diligence, reporting and remittance obligations, distributing the Maximum Settlement
25 Amount, and providing necessary reports and declarations, as requested by the Parties. The
26 Settlement Administration Costs shall be paid from the Settlement Amount, including, if
27 necessary, any such costs in excess of the amount represented by the Settlement Administrator as
28 being the maximum costs necessary to administer the Settlement.

1 37. “Settlement Class” or “Covered Position” consists of all current and former non-
2 exempt employees employed by Defendants in California at any time during the Class Period,
3 who have not previously released his/her Released Claims against Defendants.

4 38. “Settlement Class Member” or “Class Member(s)” refers to individual members
5 of the Settlement Class. Defendants represent that there are 58 Settlement Class Members.

6 39. “Work Weeks” or “Weeks Worked” for each Settlement Class Members means
7 any and all weeks during the Class Period in which the Settlement Class Member was employed
8 by Defendants in California and worked at least one shift during the week.

9 **B. General Terms**

10 40. Former Plaintiff Cesar Torres filed a class and representative PAGA action
11 complaint in the Court on August 24, 2020 against Defendants and Does 1 through 10, and then
12 subsequently amended the complaint on November 13, 2021 to add PAGA claims. At some
13 point during the Action, Torres settled directly with Defendants. After extensive motion
14 practice, a mediation occurred which resulted in an agreement to substitute the named Plaintiff
15 and settled all claims in principal. Accordingly, pursuant to the settlement and the naming of a
16 substitute Plaintiff and Class Representative, the operative second amended Complaint alleges
17 class and representative PAGA claims, on behalf of Plaintiff Mark Eurich, and the following
18 causes of action: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure
19 to provide meal periods, (4) failure to provide rest breaks, (5) failure to pay vested vacation, (6)
20 failure to timely pay wages each period and upon separation of employment, (7) failure to
21 provide accurate itemized wage statements, (8) unfair and unlawful competition, and (9) related
22 claims under PAGA.

23 41. Defendants deny Plaintiff’s claims and allegations and contend that the Action is
24 not suitable for class certification or manageable as a class or representative action.

25 42. The Class Representative believes he can proceed with the representative and
26 class claims, that the Action is meritorious, and that class certification is appropriate.

27 43. The Parties have conducted a thorough investigation into the facts of the Action.
28 This includes conducting an extensive exchange of informal discovery, including Defendants’

1 written policies and practices and the production of a sampling of payroll and timekeeping
2 records for Settlement Class Members. Class Counsel is both knowledgeable about and has done
3 extensive research with respect to the applicable law and potential defenses to the claims of the
4 Settlement Class. Class Counsel has diligently pursued an investigation of the Class Members'
5 claims against Defendants. Based on the foregoing data and on their own independent
6 investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendants
7 for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable,
8 and adequate and is in the best interest of the Class Members in light of all known facts and
9 circumstances, including the risk of significant delay and uncertainty associated with litigation,
10 various defenses asserted by Defendants, the fact that the former plaintiff settled directly with
11 Defendants and without Class Counsel's knowledge, and numerous potential appellate issues.

12 44. On May 18, 2021, Class Counsel, Defense Counsel and Defendants participated
13 in mediation before Hon. Jonathan Cannon (ret.), a retired judge and highly experienced wage
14 and hour class action mediator. The matter resolved at mediation pursuant to a mediator's
15 recommendation.

16 45. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
17 to be performed or judgments to be entered pursuant to the terms of the Settlement and
18 Agreement, shall be construed as an admission by Defendants of any wrongdoing or violation of
19 any statute or law or liability on the claims or allegations in the Action. The Parties further agree
20 that this Agreement, the fact of this Settlement, any of the terms of this Agreement, and any
21 documents filed in connection with the Settlement shall not constitute, or be offered, received,
22 claimed, construed, or deemed as a finding, or evidence of: (i) any wrongdoing by any Released
23 Parties, (ii) any violation of any statute or law by Released Parties, (iii) any liability on the
24 claims or allegations in the Action on the part of any Released Parties, (iv) any waiver of rights
25 relating to the defense of the Action, or (v) the propriety of certifying a class or pursuing
26 representative relief under the PAGA in the Action or any other civil or administrative
27 proceeding; and this Agreement shall not be used by any person for any purpose whatsoever in
28 any administrative or legal proceeding, including but not limited to arbitrations, other than a

proceeding to enforce the terms of the Agreement.

46. Stipulation for Class Certification. For settlement purposes only, Defendants will stipulate that the Settlement Class Members described herein who do not submit a Request for Exclusion from the Settlement Class may be conditionally certified as a Settlement Class. This stipulation to certification is in no way an admission that class action certification is proper and shall not be admissible in this or in any other action except for the sole purposes of enforcing this Agreement. Should, for whatever reason, the Court fail to issue Final Approval, the Parties' stipulation to class certification as part of the Settlement shall become null and void *ab initio* and shall have no bearing on, and shall not be admissible in connection with, the issue of whether or not certification would be appropriate in a non-settlement context. Defendants expressly reserve their rights and declare that they would continue to oppose class certification and the substantive merits of the case should the Court decline to issue Final Approval. Plaintiff expressly reserves his rights.

C. Terms of Settlement

47. The financial terms of the Settlement are as follows:

(a) Maximum Settlement Amount: The Parties agree to settle this Action for One Hundred and Twenty Thousand Dollars (\$120,000) ("the Maximum Settlement Amount"). The Maximum Settlement Amount is the maximum amount that will be paid, and includes Individual Settlement Payments, Attorneys' Fees and Costs Award, the Service Payment to the Class Representative, all Settlement Administration Costs, and PAGA Penalties. Defendants shall separately pay the employers' share of their payroll tax obligations, which shall be reported through the Settlement Administrator. Other than the employer's share of payroll tax, under no circumstance will Defendants be required to pay more than the Maximum Settlement Amount.

(b) Net Settlement Amount: The "Net Settlement Amount" is defined as the Maximum Settlement Amount less the Attorneys' Fees and Costs Award, the Service Payments to the Class Representatives as awarded by the Court, the Settlement Administration Costs, and PAGA Penalties. If the Court reduces the Attorneys' Fees and Costs Award, Service Awards, or Settlement Administrator Costs, the difference shall be placed in the Net Settlement Amount and

1 allocated to the Settlement Class.

2 (c) Individual Settlement Payments for the Settlement Class: Individual
3 Settlement Payments will be calculated and apportioned from the Net Settlement Amount based
4 on the number of Work Weeks a Settlement Class Member worked during the Class Period.
5 Specific calculations of Individual Settlement Payments will be made as follows:

- 6 • Defendants will calculate the total number of Work Weeks worked by each
7 Settlement Class Member during the Class Period and the aggregate total
8 number of Work Weeks worked by all Settlement Class Members during the
9 Class Period.
- 10 • To determine each Settlement Class Member's estimated Individual
11 Settlement Payment, the Settlement Administrator will use the following
12 formula: The Net Settlement Amount will be divided by the aggregate total
13 number of Work Weeks, resulting in the "Work Week Value." Each
14 Settlement Class Member's Individual Settlement Payment will be calculated
15 by multiplying his or her total number of Work Weeks during the Class Period
16 by the Work Week Value.
- 17 • Individual Settlement Payments will be reduced by any required deductions
18 for each Participating Class Member as specifically set forth herein, including
19 employee-side tax withholdings or deductions.
- 20 • The entire Net Settlement Amount will be disbursed to all Participating Class
21 Members. If there are any valid and timely Requests for Exclusion, the
22 Settlement Administrator shall proportionally increase the Individual
23 Settlement Payment for each Participating Class Member according to the
24 number of Work Weeks worked, so that the amount actually distributed to the
25 Settlement Class equals 100% of the Net Settlement Amount.

26 (d) Allocation of Individual Settlement Payments: The Individual Settlement
27 Payments will be allocated based on the allegations in the Action as follows: one-third (33.34%)
28 will be allocated as wages subject to withholding of all applicable local, state and federal taxes;

1 and the remaining two-thirds (66.66%) will be allocated equally between interest (33.33%) and
2 as penalties (33.33%) (pursuant to, e.g., California Labor Code sections 203, 210, 226, 2699)
3 from which no taxes will be withheld. The Settlement Administrator will issue to each
4 Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms
5 with respect to the wage allocation and a Form 1099 with respect to the penalties and interest
6 allocations.

7 (e) Service Payment to Class Representative: The amount, if any, awarded to
8 the Class Representative as a Service Payment will be set by the Court in its discretion, not to
9 exceed \$2,500, in exchange for the service that Plaintiff performed on behalf of the Class.
10 Defendants agree not to oppose this request. The Service Payment to Plaintiff will be paid out of
11 the Maximum Settlement Amount. The Class Representative will be issued IRS Form 1099 in
12 connection with this payment. Plaintiff shall be solely and legally responsible to pay any and all
13 applicable taxes on this payment. The Parties agree that any amount awarded as the Service
14 Payment to Plaintiff less than the requested amount shall not be a basis for Class Counsel to void
15 this Settlement Agreement. Should the Court approve a lesser amount for the Service Payment,
16 the difference shall be added to the Net Settlement Amount to be distributed to the Participating
17 Class Members.

18 (f) Attorneys' Fees and Costs Award: Defendants agree to not oppose a
19 request by Class Counsel to the Court for an award of attorneys' fees of one-third of the
20 Maximum Settlement Amount (\$40,000.00), plus reasonable litigation costs not to exceed
21 \$10,000 ("Attorney's Fees and Cost Award"). Defendants agree not to oppose any contention by
22 Class Counsel that attorneys' fees should be based on the common fund theory. The Attorney's
23 Fee and Cost Award shall be paid from the Maximum Settlement Amount, and except for this
24 award, Defendants shall have no further obligation to pay any attorneys' fees, costs or expenses
25 to Class Counsel. Should the Court approve a lesser amount than what is sought by Class
26 Counsel, the difference shall be added to the Net Settlement Amount to be distributed to the
27 Participating Class Members. Any Court order awarding less than the amount sought by Class
28 Counsel shall not be grounds to rescind the Settlement Agreement or otherwise void the

1 Settlement. The Settlement Administrator shall issue to Class Counsel an IRS Form 1099
2 reflecting the amount of attorneys' fees and costs awarded by the Court.

3 (g) Settlement Administration Costs: The fees and other charges of the
4 Settlement Administrator will be paid from the Maximum Settlement Amount, not to exceed
5 \$4,000 unless approved by all Parties and the Court.

6 (h) PAGA Penalties: The Parties agree that \$10,000 is allocated to PAGA
7 Penalties, and is to be paid from the Maximum Settlement Amount, subject to Court approval.
8 Of this amount, \$7,500 (75%) shall be paid to the LWDA in satisfaction of civil penalties under
9 the Private Attorney General Act of 2004 ("PAGA") and \$2,500 (25%) will be paid to the
10 Aggrieved Employees on a Work Week basis, which will be treated entirely as civil penalties
11 and shall be reported as required on an IRS Form 1099. Class Counsel shall give proper notice
12 to the LWDA of the Settlement.

13 (i) Tax Liability: Class Counsel and Defendants make no representations as
14 to the tax treatment or legal effect of settlement amounts called for hereunder, and Plaintiff and
15 the Settlement Class Members are not relying on any statement or representation by Class
16 Counsel or Defendants in this regard. Plaintiff and Participating Class Members understand and
17 agree that they will be solely responsible for the payment of any taxes and penalties assessed on
18 their respective Settlement Amounts described herein. The amount of federal income tax
19 withholding will be based upon a flat withholding rate for supplemental wage payments in
20 accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax
21 withholding will also be made pursuant to applicable state and/or local withholding codes or
22 regulations. Forms W-2 and/or Forms 1099 will be distributed at times and in the manner
23 required by the Internal Revenue Code of 1986 (the "Code") and consistent with this Agreement.
24 If the Code, the regulations promulgated thereunder, or other applicable tax law, is changed after
25 the date of this Agreement, the processes set forth in this Section may be modified in a manner to
26 bring Defendants into compliance with any such changes. Plaintiff and Participating Class
27 Members understand and agree that they will be solely responsible for the payment of any taxes
28 and penalties assessed on their respective payments described herein.

(j) 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 COUNSEL 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.

48. No Credit Toward Benefit Plans. The Individual Settlement Payments made to Participating Class Members under this Agreement, as well as any other payments made pursuant to this Agreement, shall not be utilized to calculate any additional benefits under any benefit plans to which any Settlement Class Members may be eligible, including, but not limited

1 to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase or other types of equity plans,
2 vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties'
3 intention that this Settlement will not affect any rights, contributions, or amounts to which any
4 Settlement Class Members may be entitled under any benefit plans. The Parties agree that the
5 amounts paid pursuant to this Settlement are not for days or hours worked, and are not included
6 toward any regular rate of pay calculation, or any benefit vesting or accrual purpose.

7 49. “Non-Reversionary” Settlement. This is a “non-reversionary” settlement. Under
8 no circumstances will any portion of the Maximum Settlement Amount revert to Defendants.
9 Participating Class Members will not have to make a claim in order to receive an Individual
10 Settlement Payment. Distributions, in the form of Individual Settlement Payments and the
11 portion of the PAGA Penalties payable to the Aggrieved Employees, will be made directly to
12 each Participating Class Member and Aggrieved Employee. The Settlement Administrator shall
13 be responsible for accurately and timely reporting and remittance obligations with respect to
14 unclaimed funds as a result of a Participating Class Member and/or Aggrieved Employee not
15 cashing any checks delivered pursuant to the Settlement by the check cashing deadline, as set
16 forth herein.

17 50. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable, and
18 adequate, and will so represent same to the Court.

19 **D. Release by Plaintiff, the Aggrieved Employees, and the Settlement Class**

20 51. Upon entry of the Final Approval Order and Defendants funding of the Maximum
21 Settlement Amount, and except as to such rights or claims as may be created by this Settlement
22 Agreement, the Participating Class Members will forever completely release and discharge the
23 Released Parties from the Released Claims for the Release Period.

24 52. Upon entry of the Final Approval Order and Defendants funding of the Settlement
25 Amount, the State of California and Aggrieved Employees shall completely release and
26 discharge the Released Parties from the PAGA Released Claims for the PAGA Period.

27 53. Each Settlement Class Member will be deemed to have made the foregoing
28 Release as if by manually signing it.

1 54. Plaintiff and Defendants intend that the Settlement described in this Agreement
2 will release and preclude any further claim, whether by lawsuit, administrative claim or action,
3 arbitration, demand, or other action of any kind, by each and all of the Participating Class
4 Members to obtain a recovery based on, arising out of, and/or related to any and all of the
5 Released Claims. The Class Members shall be so notified in the Notice. This paragraph does not
6 apply to any Class Member who timely and validly opts out of the Settlement.

7 55. Regardless of submitting a valid Request for Exclusion, no Class Member shall
8 have the right to opt-out or otherwise exclude themselves from releasing the PAGA Released
9 Claims.

10 56. Class Representative, on behalf of himself and the Settlement Class, acknowledge
11 and agree that the claims for unpaid wages and unreimbursed expenses in the Action, and
12 untimely payment of wages in the Action, are disputed, and that the payments set forth herein
13 constitute payment of all sums allegedly due to them. Class Representative, on behalf of himself
14 and the Settlement Class, acknowledge and agree that California Labor Code Section 206.5 are
15 not applicable to the Parties hereto. Section 206.5 provides in pertinent part as follows:

16 An employer shall not require the execution of any release of any claim or
17 right on account of wages due, or to become due, or made as an advance
18 on wages to be earned, unless payment of those wages has been made.

19 **F. Interim Stay of Proceedings**

20 57. Pending completion of all of the prerequisites necessary to effectuate this
21 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action
22 except such as are necessary to effectuate the Settlement.

23 **G. Notice Process**

24 58. Appointment of Settlement Administrator. The Parties have agreed to the
25 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
26 including mailing the Notice, using standard devices to obtain forwarding addresses,
27 independently reviewing and verifying documentation associated with any claims or opt-out
28 requests, resolving any disputes regarding the calculation or application of the formula for

1 determining the Individual Settlement Payments and the portion of the PAGA Penalties owed to
2 the Aggrieved Employees, drafting and mailing the settlement checks to Participating Class
3 Members and to the Aggrieved Employees, issuing W-2 and 1099 Tax Forms, unclaimed funds
4 due diligence, reporting and remittance obligations, and performing such other tasks as set forth
5 herein or as the Parties mutually agree or that the Court orders.

6 59. Disputes Regarding Settlement Administration. Any and all disputes relating to
7 administration of the Settlement by the Settlement Administrator (except for disputes regarding
8 Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction
9 over the terms and conditions of this Settlement Agreement, until Plaintiff and Defendants notify
10 the Court that all payments and obligations contemplated by this Settlement Agreement have
11 been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will
12 confer in good faith to resolve the dispute without the necessity of Court intervention. The
13 Settlement Administrator shall also be responsible for issuing to Plaintiff, Settlement Class
14 Members, and Class Counsel any W-2, 1099, or other Tax Forms as may be required by law for
15 all amounts paid pursuant to this Agreement. The Settlement Administrator shall also be
16 responsible for setting up all necessary tax accounts and forwarding all payroll taxes and
17 penalties to the appropriate government authorities.

18 60. Class Data. Within ten (10) days after entry of the Preliminary Approval Order,
19 Defendants shall provide the Class Data to the Settlement Administrator. The Settlement
20 Administrator will run a check of the Class Members' addresses against those on file with the
21 U.S. Postal Service's National Change of Address List. The Class Data provided to the
22 Settlement Administrator will remain confidential, shall be used solely to administer the
23 Settlement, and will not be used or disclosed to anyone, except as required by applicable tax
24 authorities, pursuant to Defendants' express written consent, or by order of the Court. Although
25 Class Counsel will not be provided with the list of Class Data, nothing herein shall prevent Class
26 Counsel from communicating with Class Members regarding the Action and Settlement.

27 61. Notice. The Notice, in a form as agreed to by the parties in Exhibit A and as
28 approved by the Court, shall be sent by the Settlement Administrator to the Settlement Class

Members, by first class mail, in English, within ten (10) calendar days following the Settlement Administrator's receipt of the Class Data. The Settlement Administrator shall use standard devices, including a skip trace, to obtain forwarding addresses of Settlement Class Members if any envelopes are returned.

62. Returned Notices. The Settlement Administrator will take steps to ensure that the Notice is received by all Settlement Class Members, including utilization of the National Change of Address Database maintained by the United States Postal Service to review the accuracy of and, if possible, update a mailing address. Notices will be re-mailed to any Class Member for whom an updated address is located within ten (10) calendar days following both the Settlement Administrator learning of the failed mailing and its receipt of the updated address. The Notice shall be identical to the original Notice, except that it shall notify the Class Member that the exclusion (opt-out) request or objection must be returned by the later of the Notice Response Deadline or fifteen (15) days after the remailing of the Notice.

63. Disputes Regarding Information on Notices. Class Members are deemed to participate in the Settlement, unless they opt-out. The Notice will inform Class Members of his/her estimated Individual Settlement Payment and the number of Weeks Worked during the Class Period. Class Members may dispute their Weeks Worked if they feel they should be credited with more Work Weeks than Defendants' records show by timely submitting evidence to the Settlement Administrator. Defendants' records will be presumed determinative absent reliable evidence to rebut Defendants' records, but the Settlement Administrator will evaluate the evidence submitted by the Class Member and provide the evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in good faith about the evidence to determine the Class Member's actual number of Work Weeks and estimated Individual Settlement Payment. If Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the Settlement Administrator to render a final decision. Class Members will have until the Notice Response Deadline to dispute Weeks Worked, object or opt out, unless extended by the Court. In the event that the Settlement Administrator increases the number of Weeks Worked for any Settlement Class Member, then the Settlement Administrator will recalculate the

Individual Settlement Payments; accordingly, in no event will Defendants be required to increase the Maximum Settlement Amount.

64. Declaration of Due Diligence. The Settlement Administrator shall provide counsel for the Parties, at least twenty-five (25) calendar days prior to the final approval hearing, a declaration of due diligence and proof of mailing with regard to the mailing of the Notice.

65. Settlement Class Members' Rights. Each Settlement Class Member will be fully advised of the Settlement, the ability to object to the settlement, and the ability to opt-out or request exclusion from the Settlement. The Notice will inform the Settlement Class Members of the Court-established deadlines for filing objections or requesting exclusion from the Settlement in accordance with the following guidelines:

(a) Requests for Exclusion from Settlement Class. Any Settlement Class Member, other than Plaintiff, may request to be excluded from the Settlement Class by submitting a "Request for Exclusion" to the Settlement Administrator, postmarked on or before the Notice Response Deadline. The Request for Exclusion should state:

"I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE EPAC LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT."

To be valid, any Request for Exclusion must include the full name, address, telephone number, last four digits of the social security number or date of birth, and signature of the Settlement Class Member requesting exclusion. The Request for Exclusion must be returned by mail to the Settlement Administrator at the specified address. Any such Request must be made in accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only if postmarked by the Notice Response Deadline, unless the Parties otherwise agree in writing. Any Settlement Class Member who timely requests exclusion in compliance with these requirements: (i) will not have any rights under this Agreement, including the right to object, appeal or comment on the Settlement; (ii) will not be entitled to receive any payments under this Agreement; and (iii) will not be bound by this Agreement, or the Judgment. Any Aggrieved

1 Employee who requests timely exclusion will still be subject to the PAGA Released Claims to
2 the fullest extent permitted by law and receive a share of PAGA Penalties.

3 All Parties and their counsel, including Defendants' respective owners, officers and
4 managers, shall not encourage or solicit opt-outs or objections, directly or indirectly, through any
5 means.

6 (b) Binding Effect on Final Settlement Class Members. Except for those
7 Settlement Class Members who exclude themselves in compliance with the procedures set forth
8 above, all Settlement Class Members will: (i) be deemed to be Participating Class Members for
9 all purposes under this Agreement; (ii) will be bound by the terms and conditions of this
10 Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise
11 provided herein, will be deemed to have waived all objections and oppositions to the fairness,
12 reasonableness, and adequacy of the Settlement.

13 (c) Objections to Settlement. Any Settlement Class Member, other than
14 Plaintiff, may object to the terms of this Agreement. To object, a Settlement Class Member shall
15 inform the Settlement Administrator, in writing, of his or her objection which must be
16 postmarked by the Notice Response Deadline at the address set forth in the Notice. Such
17 objection shall include the objecting Settlement Class Member's full name, address, telephone
18 number, and dates of employment with Defendants, the case name and number, the basis for the
19 objection, including any legal support and each specific reason in support of the objection, as
20 well as any documentation or evidence in support thereof, and, if the Objecting Settlement Class
21 Member is represented by counsel, the name and address of his or her counsel. The Settlement
22 Administrator shall provide objections, if any, to Class Counsel and Defense Counsel within
23 three (3) calendar days of receipt, and the Settlement Administrator shall attach the same to its
24 declaration of due diligence and file with the Court prior to the Final Approval Hearing. Any
25 Participating Class Member who files an objection remains eligible to receive monetary
26 compensation from the Settlement. Plaintiff and Defendants shall not be responsible for any
27 fees, costs, or expenses incurred by any Class Member and/or his or her counsel related to any
28 objections to the Settlement. Submitting an objection does not preserve the right to appeal a

1 final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely
2 and properly intervening or filing a motion to vacate the judgment under Code of Civil
3 Procedure § 663.

4 (d) Failure to Object. Any Settlement Class Member who desires to object
5 but fails to timely submit a written objection or in person objection at the Final Approval
6 Hearing waives any right to object and will be foreclosed from making any objection to this
7 Settlement. Any Settlement Class Member who does not timely and properly become a party of
8 record by intervening or filing a motion to vacate the judgment waives any and all rights to
9 appeal from the Judgment, including all rights to any post-judgment proceeding and appellate
10 proceeding, such as a motion to vacate judgment, motion for new trial, a motion under California
11 Code of Civil Procedure section 473, and extraordinary writs.

12 (e) Responses to Objections. Counsel for the Parties may file a response to
13 any objections submitted by objecting Settlement Class Members at least five (5) court days
14 before the date of the Final Approval Hearing.

15 (f) Deadlines and Reports. Settlement Class Members will have until the
16 Notice Response Deadline to object or submit a Request for Exclusion to the Settlement
17 Administrator by U.S. Mail. The Settlement Administrator shall disclose jointly to Class
18 Counsel and Defendants' counsel what objections or Requests for Exclusion were timely
19 submitted on a weekly basis, and upon the request of Class Counsel or Defense Counsel.

20 (g) Defective Submissions. If a Settlement Class Member's Request for
21 Exclusion or objection is defective as to the requirements listed herein, that Settlement Class
22 Member will be given an opportunity to cure the defect(s). The Settlement Administrator will
23 mail the Settlement Class Member a cure letter within three (3) business days of receiving the
24 defective submission to advise the Settlement Class Member that his or her submission is
25 defective and that the defect must be cured to render the Request for Exclusion or objection
26 valid. The Settlement Class Member will have the later of (i) the Notice Response Deadline or
27 (ii) 15 calendar days from the date of the cure letter to postmark or fax a revised Request for
28 Exclusion or objection. If the revised Request for Exclusion or objection is not postmarked or

received by fax within that period, it will be deemed untimely.

66. Funding of the Settlement Amount. Defendants shall make a one-time deposit into the QSF of the Maximum Settlement Amount (plus the employers' share of the payroll taxes) by no later than fifteen (15) calendar days after the Effective Date. Once Defendants have complied with their obligation set forth in this paragraph, they shall be deemed to have satisfied all of the payment terms and conditions of this Agreement, shall be entitled to all the protections afforded it under the Agreement. The Settlement Administrator (and not Defendants) shall issue the applicable W-2s and IRS Form 1099 reflecting all payments to the Class Members.

67. Distribution of Funds. No later than ten (10) calendar days after the deposit of the payment into the QSF, the Settlement Administrator will mail the Individual Settlement Payments to the Participating Class Members, the payment to Class Counsel for the Attorneys' Fees and Costs Award, any Service Payment to the Class Representative, the payment to the LWDA for PAGA Penalties, mail to the Aggrieved Employees their portion of the PAGA Penalties, and will pay itself the Settlement Administration Costs.

68. Deadline for Cashing Settlement Checks. Participating Class Members and Aggrieved Employees shall have 180 calendar days after mailing by the Settlement Administrator to cash their settlement checks. If any Participating Class Member or Aggrieved Employee's check is not cashed within that period, the check will be void and a stop-payment will be issued, and the Settlement Administrator shall issue the unclaimed funds to the California State Controller's Office in the name of the Class Member and/or Aggrieved Employee. The release will be binding upon all Participating Class Members who do not cash their checks within the 180-day period. In the event that any settlement check is returned to the Settlement Administrator within 180 days of mailing, the Settlement Administrator will, within five (5) business days of receipt of the returned settlement check, perform a skip trace to locate the individual, and notify Defense Counsel and Class Counsel of the results. If a new address is located by these means, the Administrator will have ten (10) business days to re-issue the check. Neither Defendants, Defense Counsel, Class Counsel, Plaintiff, nor the Settlement Administrator will have any liability for lost or stolen settlement checks, forged signatures on settlement

1 checks, or unauthorized negotiation of settlement checks. Without limiting the foregoing, in the
2 event a Participating Class Member and/or Aggrieved Employee notifies the Settlement
3 Administrator that he or she believes that a settlement check has been lost or stolen, the
4 Settlement Administrator shall immediately stop payment on such check. If the check in
5 question has not been negotiated prior to the stop payment order, the Settlement Administrator
6 will issue a replacement check.

7 69. No person shall have any claim against Defendants (or their designees),
8 Defendants' Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on
9 mailings, distributions, payments or reports made in accordance with or pursuant to this
10 Agreement. This provision does not, however, prevent a Party from seeking enforcement of this
11 Agreement.

12 **H. Duties of the Parties Prior to the Court's Approval**

13 70. Promptly after execution of this Settlement Agreement, Plaintiff will move the
14 Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order
15 as approved by counsel for both Parties, and set forth in Exhibit "B," accomplishing the
16 following:

17 (a) Scheduling the Final Approval Hearing on the issue of whether this
18 Settlement should be finally approved as fair, reasonable and adequate as to the Class Members
19 and a hearing on fees, costs and the Service Payment;

20 (b) Approving as to form and content the proposed Notice;

21 (c) Directing the mailing of the Notice by first class mail to the Settlement
22 Class Members;

23 (d) Preliminarily approving this Settlement;

24 (e) Preliminarily certifying the class for purposes of this Settlement

25 (f) Preliminarily appointing Plaintiff as representative of the proposed
26 Settlement Class;

27 (g) Preliminarily approving Class Counsel to represent the Settlement Class;

28 ///

(h) Appointing Simpluris as the Settlement Administrator, and order the Settlement Administrator to provide notice of the Settlement as outlined;

(i) Staying all litigation of the Action pending the Final Approval Hearing, except as necessary to implement and effectuate the Settlement; and

(j) Ordering that the preliminary approval of the Settlement, conditional certification of the Settlement Class, and all actions associated with them, are undertaken on the condition that they shall be vacated if the Settlement Agreement is disapproved in whole or in part by the Court, or any appellate court and/or other court of review in which event the Settlement Agreement and the fact that it was entered into shall not be offered, received, or construed as an admission or as evidence for any purpose, including but not limited to an admission by any Party of liability or non-liability or of the certifiability of a litigation class or the appropriateness of maintaining a representative action.

I. Duties of the Parties Following Court's Final Approval

71. In connection with the Final Approval Hearing provided for in this Settlement Agreement, Class Counsel shall submit a proposed Final Approval Order. At least 5 days prior to filing the proposed Final Approval Order, Class Counsel will provide to Defendant's Counsel a copy of the proposed order for approval. The parties must agree on the Final Approval Order before it is filed. The Final Approval Order shall contain terms:

(a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;

(b) Approving Class Counsel's Award of Attorneys' Fees Costs and expenses, the Service Payment to the Class Representative, and the payment to the Settlement Administrator for costs of administering the settlement;

(c) Holding the Settlement Administrator has fulfilled its initial notice and reporting duties under the Settlement and that the Class Notice (i) constituted the best practicable notice; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action, and their right to exclude themselves from or object to the proposed Settlement and to appear at the Final Approval Hearing; (iii) was

1 reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive
2 notice; and (iv) met all applicable requirements of due process, and any other applicable rules or
3 law;

4 (d) Holding Plaintiff and Class Counsel may adequately represent the
5 Settlement Class for the purpose of entering into and implementing the Agreement;

6 (e) Holding that without affecting the finality of the Final Approval and Final
7 Judgment, the Court retains continuing jurisdiction over Plaintiff, Defendants, and Settlement
8 Class Members, as to all matters concerning the administration, consummation, and enforcement
9 of this Settlement Agreement;

10 (f) Holding that as of the Effective Date of the Release, Plaintiff and
11 Settlement Class Members compromised, settled, discharged, and provided the release of the
12 Released Claims, during the Class Period, against Defendants and the Released Parties, and are
13 bound by the provisions of this Settlement Agreement;

14 (g) Holding that notwithstanding the submission of a timely Request for
15 Exclusion, Class Members are still bound by the PAGA Release portion of the Settlement and
16 the State's claims for civil penalties pursuant to PAGA is extinguished;

17 (h) Holding this Settlement Agreement and the Final Approval order and
18 Final Judgment are binding on, and have *res judicata* and preclusive effect in, all pending and
19 future lawsuits or other proceedings that encompass Plaintiff's and Settlement Class Members'
20 claims released herein, and that are maintained by or on behalf of Plaintiff and Settlement Class
21 Members;

22 (i) Holding the Settlement provided for herein, and any proceedings
23 undertaken pursuant thereto, are not, and should not in any event be offered, received, or
24 construed as evidence of, a presumption, concession, or an admission by any Party of liability or
25 non-liability or of the certifiability or non-certifiability of a litigation class or collective, or that
26 PAGA representative claims may validly be pursued; and

27 (j) Entering judgment approving settlement, thereby permanently barring all
28 Settlement Class Members from prosecuting any Released Claims against any of the Released

Parties.

72. Final Judgment. Class Counsel shall provide the Settlement Administrator with a copy of the Final Judgment once it is entered by the Court, and the Settlement Administrator shall mail a postcard setting forth the terms of the Final Judgment as requested by the Parties.

J. Voiding the Agreement

73. If the Settlement is voided or fails for any reason, Plaintiff and Defendants will have no further obligations under the Settlement, including any obligation by Defendants to pay the Maximum Settlement Amount, or any amounts that otherwise would have been owed under this Settlement.

74. If the Settlement is voided or fails for any reason, any costs incurred by the Settlement Administrator shall be borne equally by Defendants and Plaintiff, unless otherwise specified in this Agreement.

K. Other Terms

75. Waiver. The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

76. Parties' Authority. The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

77. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendants and Defendants' Counsel, take all necessary steps to secure the Court's preliminary and final approval of the settlement, and the final entry of judgment. Class Counsel shall provide

1 Defendants' Counsel with copies of the Preliminary Approval Motion and Final Approval
2 Motion for review at least three business days prior to the filing deadline.

3 78. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
4 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
5 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
6 cause of action or rights released and discharged by this Settlement Agreement.

7 79. No Admission. Defendants deny any and all liability to Plaintiff and/or any
8 Settlement Class Member in this Action, as to any and all causes of action that were asserted or
9 that might have been asserted in this Action. Nonetheless, Defendants wish to settle and
10 compromise the matters at issue in the Action to avoid further substantial expense and the
11 inconvenience and distraction of protracted and burdensome litigation. Defendants also have
12 taken into account the uncertainty and risks inherent in litigation, and without conceding any
13 infirmity in the defenses that they have asserted or could assert against Plaintiff, have determined
14 that it is desirable and beneficial that Plaintiff's claims be settled in the manner and upon the
15 terms and conditions set forth in this Agreement.

16 80. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
17 Order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be
18 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
19 of Defendants or any of the other Released Parties. Each of the Parties hereto has entered into
20 this Settlement Agreement with the intention of avoiding further disputes and litigation with the
21 attendant inconvenience and expenses. This Settlement Agreement is a settlement document,
22 and it, along with all related documents such as the notices, and motions for preliminary and
23 final approval, shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of
24 Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to
25 approve the settlement, and/or interpret or enforce this Settlement Agreement. The stipulation
26 for class certification as part of this Settlement Agreement is for settlement purposes only and if,
27 for any reason the settlement is not approved, the stipulation will be of no force or effect.

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1 81. Notices. Unless otherwise specifically provided herein, all notices, demands or
2 other communications given hereunder shall be in writing and shall be deemed to have been duly
3 given as of the third business day after mailing by United States registered or certified mail,
4 return receipt requested, addressed:

5 To the Settlement Class:

6 Brian Mankin
7 **brian@LMLfirm.com**
8 Lauby, Mankin & Lauby LLP
9 4590 Allstate Drive
 Riverside, CA 92501
 Tel: (951) 320-1444 | Fax: (951) 320-1445

10 To Defendants:

11 Travis Jang-Busby
12 **tjang-busby@grsm.com**
13 Gordon Rees Scully Mansukhani, LLP
14 633 West Fifth Street, 52nd floor
15 Los Angeles, CA 90071
 Telephone: (213) 270-7868 | Fax: (213) 680-4470

16 82. Construction. The Parties hereto agree that the terms and conditions of this
17 Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the
18 Parties and that this Settlement Agreement shall not be construed in favor of or against any Party
19 by reason of the extent to which any Party or her or its counsel participated in the drafting of this
20 Settlement Agreement. Plaintiff and Defendants expressly waive the common-law and statutory
21 rule of construction that ambiguities should be construed against the drafter of an agreement and
22 further agree, covenant, and represent that the language in all parts of this Agreement shall be in
23 all cases construed as a whole, according to its fair meaning.

24 83. Captions and Interpretations. Paragraph titles or captions contained herein are
25 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
26 describe the scope of this Settlement Agreement or any provision hereof. Each term of this
27 Settlement Agreement is contractual and not merely a recital.

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1 84. Modification. This Settlement Agreement may not be changed, altered, or
2 modified, except in writing and signed by the Parties hereto, and approved by the Court. This
3 Settlement Agreement may not be discharged except by performance in accordance with its
4 terms or by a writing signed by all of the Parties hereto.

5 85. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
6 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall
7 provide written notice to the other Party and allow an opportunity to cure the alleged
8 deficiencies, and Plaintiff and Defendants agree to seek the help of the mediator to resolve any
9 dispute they are unable to resolve informally. During this period, the Parties shall bear their own
10 attorneys' fees and costs. This provision shall not apply to any legal action or other proceeding
11 instituted by any person or entity other than Plaintiff or Defendants.

12 86. Choice of Law. This Settlement Agreement shall be governed by and construed,
13 enforced and administered in accordance with the laws of the State of California.

14 87. Integration Clause. This Settlement Agreement contains the entire agreement
15 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
16 or contemporaneous agreements, understandings, representations, and statements, whether oral
17 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
18 hereunder may be waived except in writing.

19 88. Binding On Assigns. This Settlement Agreement shall be binding upon and inure
20 to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
21 successors and assigns.

22 89. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
23 because the members of the Settlement Class are numerous, it is impossible or impractical to
24 have each Class member execute this Settlement Agreement. The Notice will advise all
25 Settlement Class Members of the binding nature of the release provided herein and such shall
26 have the same force and effect as if this Settlement Agreement were executed by each Settlement
27 Class Member.

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

5 91. Counterparts. This Settlement Agreement may be executed in counterparts, and
6 when each Party has signed and delivered at least one such counterpart, each counterpart shall be
7 deemed an original, and, when taken together with other signed counterparts, shall constitute one
8 fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties.
9 Electronic signatures shall have the same force and effect as an original.

10 92. Delivery to LWDA. Plaintiffs shall submit this Settlement Agreement and
11 proposed settlement to the LWDA as required by Labor Code Section 2699(l)(2) at the same
12 time that it is submitted to the Court for preliminary approval.

13 93. Confidentiality. The Parties and their counsel agree to keep the terms of the
14 Settlement confidential until the filing of Plaintiff's motion for preliminary approval. Plaintiff,
15 Class Counsel, Defendants and their counsel agree that they will not issue any press releases,
16 initiate any contact with the press, respond to any press inquiry or have any communication with
17 the press about the fact, amount or terms of the Settlement Agreement. Nothing in this
18 Settlement Agreement shall limit Defendants' ability to fulfill disclosure obligations reasonably
19 required by law or in furtherance of business purposes, including the fulfillment of obligations
20 stated in this Settlement Agreement or limit Class Counsel's communications with the Class
21 Members in furtherance of approval of this Settlement.

22 Dated: July 15, 2021

PLAINTIFF AND CLASS REPRESENTATIVE:



Mark Eurich (Jul 15, 2021 20:52 PDT)

Mark Eurich

25 Dated: July 16, 2021

CLASS COUNSEL:

LAUBY, MANKIN & LAUBY LLP



Brian J. Mankin
Attorneys for Plaintiff

1 Dated: ^{August} July 2, 2021

DEFENDANTS:

EPAC LOS ANGELES, LLC, EPAC NORCAL, LLC,
EPAC HOLDINGS, LLC, AND EPAC, LLC

2
3
4 By:  Travis K. Jang-Busby

5 Title: Chief Financial Officer EPAC Holdings LLC,
6 Member of EPAC Los Angeles, EPAC NORCAL and
7 EPAC LLC

8 Dated: August 2, 2021

DEFENDANTS' COUNSEL:

GORDON REES SCULLY MANSUKHANI, LLP

9 
10 Travis K. Jang-Busby, Esq.
11 Attorneys for Defendants

12 END OF DOCUMENT
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EXHIBIT “2”

NOTICE OF SETTLEMENT OF CLASS ACTION

Torres v. ePac, LLC, et al.

**Superior Court of the State of California, County of San Bernardino
Case No. CIVDS2017140**

To: all current and former non-exempt employees employed by ePac in California at any time between August 24, 2016 and July 24, 2021 (the “Class”):

THIS NOTICE is of a proposed settlement of a class action lawsuit, and an announcement of a court hearing that you may choose to attend. Your rights may be affected by the legal proceedings in this action. The Court will conduct a hearing on [REDACTED], 2021 to address whether the proposed settlement should be approved (the “Final Approval Hearing”). You may be entitled to receive a payment under the terms of this class action settlement contained in the Settlement Agreement.

[IDENTIFYING INFORMATION]

You have been identified as a Class Member and/or Aggrieved Employee in the above lawsuit. Under the terms of the proposed settlement you are estimated to receive approximately \$**INSERT AMOUNT** as your share of the Net Settlement Amount should the Court grant the settlement in full. Please note that this is only an estimate. Your actual share of the Net Settlement Amount may be more or less than this estimate. Your estimate is based on the number of eligible weeks you worked at ePac (including ePac Los Angeles, LLC, ePac Norcal, LLC, ePac Holdings, LLC and ePac, LLC) in California between August 24, 2016 and July 24, 2021 (the “Class Period”). Your options and eligibility requirements for receiving payments are described below.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	If you want to receive your settlement payment, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Claims described in Section IV.
EXCLUDE YOURSELF	If you do not wish to participate in the settlement, you may “opt-out” of the settlement. If you choose to opt-out, you must submit a Request for Exclusion by [REDACTED], 2021 (see Section V for more details on how to opt-out). If you opt-out, you will no longer be a Class Member, and you will (1) <u>not</u> receive any settlement payment, but you will preserve your right to pursue the Released Claims described in Section IV subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement.
OBJECT	If you decide to object to the settlement because you find it unfair or unreasonable, you must submit an objection stating why you object to the settlement by [REDACTED], 2021 (see Section V for more details on how to object).
DISPUTE YOUR NUMBER OF WORK WEEKS	If you believe that your number of Work Weeks listed above is incorrect, you may contact the Settlement Administrator to dispute your Work Week calculation (see Section IV for more details on how to dispute your Work Weeks). ePac’s records will be presumed correct, but you may provide evidence to the Settlement Administrator showing that your Work Week calculation is inaccurate.

I. Why should I read this Notice?

The Court has granted preliminary approval of a proposed settlement (the “Settlement”) in *Torres et al. v. ePac Los Angeles, LLC, ePac Norcal, LLC, ePac Holdings, LLC and ePac, LLC*, San Bernardino County Superior Court Case No. CIVDS2017140 (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

ePac's records show that you were employed in California as a non-exempt employee (meaning you were paid hourly or otherwise eligible for overtime pay) at some point between August 24, 2016 and July 24, 2021 ("Class Period"). The Court ordered this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights. Note: this Settlement excludes persons who have previously entered into release agreement with ePac for the claims alleged in this Lawsuit.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you were employed by ePac as a non-exempt employee in California at any time during the Class Period, you are automatically included in the Settlement and do not need to take any further action to receive a payment.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the proposed Settlement, and to discuss your rights and options in connection with the Lawsuit and the Settlement.

II. What is this lawsuit about?

On August 24, 2020, a class and representative action complaint was brought against ePac for alleged wage and hour violations on behalf of all current and former non-exempt employees who were employed by ePac in California at any time since August 24, 2016. The Lawsuit was initially brought by Cesar Torres, but he is no longer involved in the case, and Mark Eurich has been substituted as the lead Plaintiff and Class Representative. The operative complaint alleges that ePac violated various Labor Code sections by failing to pay wages for all hours worked, provide all required meal and rest breaks, timely pay final wages, provide accurate and complete wage statements, and other related claims.

ePac has denied, and continues to deny, the factual and legal allegations in the Lawsuit and believes that it has valid defenses to the claims. By agreeing to settle, ePac is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action. ePac has agreed to settle the case as part of a compromise with Plaintiff and the Class Members.

The Court has not ruled on the merits of Plaintiff's claims. And, by approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case if it went to trial. However, to avoid additional expense, inconvenience, and risks of continued litigation, the Parties have concluded that it is in their respective best interests and the interests of the Settlement Class to settle the Lawsuit on the terms summarized in this Notice. After providing extensive information to Class Counsel, the Settlement was reached following an arm's length mediation. In these negotiations, both sides recognized the substantial risk of the Court deciding against them at trial and determined that the Proposed Settlement was a good option to resolve the disputed claims.

The Class Representative and Class Counsel support this Settlement. Among the reasons for their support are the defenses to liability potentially available to ePac, the risk of denial of class certification, the inherent risk of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still employed by ePac, this Settlement will not affect your employment. California law strictly prohibits unlawful retaliation. Further, ePac will not take any adverse action against or otherwise target, retaliate, or discriminate against any Class Member because of the Class Member's participation or decision not to participate in this Settlement. If a Class Member does not participate, his/her share will be paid to those who do participate.

III. Who are the Class Members' attorneys?

Attorneys for the Class Members:

Brian Mankin, Esq.
brian@LMLfirm.com
Peter Carlson, Esq.
peter@LMLfirm.com
Lauby, Mankin & Lauby LLP
4590 Allstate Drive
Riverside, CA 92501
Tel: (951) 320-1444

IV. What are the terms of the Settlement?

On [PA DATE], the Court certified a class, for settlement purposes only, of all non-exempt employees employed by ePac in California at any time between August 24, 2016 and July 24, 2021 (the “Settlement Class”). Individuals who do not opt out of the Settlement Class, pursuant to the procedures set forth in this Notice, will become “Participating Class Members” and will be mailed Settlement checks in exchange for being bound by the Settlement and release of certain wage and penalty claims against ePac.

Without admitting any wrongdoing, ePac has agreed to pay \$120,000 (the “Maximum Settlement Amount”) to fully resolve all claims in the Lawsuit. The Parties agreed to the following payments from the Maximum Settlement Amount:

Settlement Administration Costs. The Court has approved Simpluris to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. Under the Settlement, a maximum of \$4,000 will be paid from the Maximum Settlement Amount to pay the Settlement Administration Costs.

Penalties to the California Labor Workforce and Development Agency. The Labor Code Private Attorneys General Act (PAGA) authorizes employees to file lawsuits to attempt to recover civil penalties on behalf of other Aggrieved Employees and the State of California for alleged Labor Code violations. Under the Settlement, \$10,000 of the Maximum Settlement Amount will be allocated to Plaintiff’s claim under the Private Attorneys General Act of 2004 (“PAGA”). Of this amount, \$7,500 will be paid to the LWDA in satisfaction of the claims for penalties under PAGA, and the remaining \$2,500 will be divided between all Aggrieved Employees on a Workweek basis. Aggrieved Employees includes “all current and former non-exempt employees of ePac and who worked in California at any time during the period of August 24, 2019 through July 24, 2021.” Review the information below to determine if you are an Aggrieved Employee and eligible to receive a share of the \$2,500 allocation:

Aggrieved Employee?	Weeks Worked as Aggrieved Employee?	Your Share of PAGA Penalties
YES/NO	INSERT	\$INSERT

Service Payment to Class Representatives. Class Counsel will ask the Court to award Class Representative a Service Payment in the amount of \$2,500 to compensate them for his service and extra work provided on behalf of the Class Members. The Class Representative also may receive a share of the Settlement as a Class Member.

Attorneys’ Fees and Costs. Class Counsel have been prosecuting the Lawsuit on behalf of the Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Maximum Settlement Amount. Class Members are not personally responsible for any of Class Counsel’s attorneys’ fees or costs. Class Counsel will ask for fees of one-third (\$40,000) of the common fund Maximum Settlement Amount as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through finalization of the Settlement. Class Counsel also will ask for reimbursement of up to \$10,000 for the costs Class Counsel incurred in connection with the Lawsuit.

Calculation of Individual Settlement Payments to Class Members. After deducting the amounts above from the Maximum Settlement Amount, the balance will form the Net Settlement Amount for distribution to Participating Class Members (who are Class Members who do not opt-out). The Net Settlement Amount will total approximately \$ [REDACTED]. Compensable work weeks will be all Work Weeks that a Settlement Class Member worked for ePac in California during the Class Period. A Work Week includes any week in which a Class Member worked at least one shift/day during the week. To calculate each Individual Settlement Payment, the Settlement Administrator will divide the total Work Weeks of all Settlement Class Members into the Net Settlement Amount to determine a per “Work Week Value”. The Workweek Value will be multiplied by the number of Work Weeks worked by each Settlement Class Member during the Class Period to determine the Individual Settlement Payment, prior to legal deductions, for each Settlement Class Member. If any Settlement Class Member opts-out of the Settlement, his/her Individual Settlement Payment will be distributed to all Participating Class Members (i.e., those who do not opt-out).

For each Settlement Class Member, the Weeks Worked for ePac in California during the Class Period will be calculated from ePac’s records. ePac’s records indicate that you worked for [TOTAL WORK WEEKS] Work Weeks in California during the Class Period of August 24, 2016, through July 24, 2021. If you disagree with this number, you may submit evidence to the Settlement Administrator on or before [REDACTED], 2021, with documentation to establish the number of weeks you claim to have actually worked for ePac in California between August 24, 2016 and July 24, 2021 (excluding any

leaves of absence). **DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS.** The Settlement Administrator will render a final decision.

Payments to Class Members and Aggrieved Employees. After the Court grants Final Approval of the Settlement and Judgment is entered, settlement checks will be mailed to all Participating Class Members who did not timely request to be excluded. Aggrieved Employees will receive checks regardless of a timely request to be excluded. Participating Class Members and/or Aggrieved Employees will have 180 days from the issuance of the last check to cash all of the checks. In the event that any Participating Class Member and/or Aggrieved Employee fails to timely cash a settlement check, a stop payment will be placed on the check and the funds will be paid to the California State Controller's Office in the name of the Participating Class Member, so that the Participating Class Member can attempt to collect the funds at a later date.

Allocation and Taxes. One-third (33.34%) of the Individual Settlement Payment distributed to each Participating Class Member will be considered and reported as wages (Form W-2 reporting). The remaining two-thirds (66.66%) will be considered and reported as interest and penalties (Form 1099 reporting). The Settlement Administrator shall take all usual and customary deductions from the Individual Settlement Payments that are distributed as wages, including, but not limited to, state and federal tax withholding, disability premiums, and unemployment insurance premiums. There will be no deduction taken from the interest and penalty distribution; however, it will be reported on IRS Form 1099 as income. Participating Class Members and Aggrieved Employees are responsible for the proper income tax treatment of the Individual Settlement Payments. The Settlement Administrator, ePac and its counsel, and Class Counsel cannot provide tax advice and make no representations as to the tax treatment or legal effect of the Individual Settlement Payments. Participating Class Members and Aggrieved Employees will be solely responsible for the payment of any taxes and penalties assessed on their Individual Settlement Payments. Accordingly, Participating Class Members and Aggrieved Employees should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. Once the Court approves the proposed Settlement, enters Judgment, and ePac funds the Settlement, then the Settlement Agreement will bind all Class Members who have not opted out of the Settlement, and will bar them from bringing certain claims against ePac. Specifically, the Participating Class Members will fully release and discharge the Defendants and their past and present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective parent corporations, subsidiaries, divisions, affiliates, attorneys, successors and assigns, of all claims stated in the Complaint and those based solely upon the facts in the Complaint, including: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to pay vested vacation, (6) failure to timely pay wages each period and upon separation of employment, (7) failure to provide accurate itemized wage statements, (8) unfair and unlawful competition, and (9) all other claims for statutory penalties based on the facts or claims alleged in the Complaint. These released claims and damages are hereinafter referred to as "Released Claims." The time period governing these Released Claims shall be at any time from August 24, 2016 and July 24, 2021 ("Release Period"). Aggrieved Employees will release all PAGA claims made in the Action or that could have been made based on the facts asserted in the Action regardless of a timely request for exclusion.

Waiver of Labor Code Section 206.5(e). Participating Class Members will be deemed to have acknowledged and agreed that their claims for wages and/or penalties in the Lawsuit are disputed, and that the Individual Settlement Payments constitute payment of all sums allegedly due to them. Participating Class Members will be deemed to have acknowledged and agreed that California Labor Code Section 206.5 is not applicable to the Individual Settlement Payments. That section provides in pertinent part as follows:

"No employer shall require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of such wages has been made."

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of Judgment.

V. What options do I have?

- A. **Do Nothing and Participate in the Settlement.** Under the Settlement, you will automatically receive an Individual Settlement Payment unless you exclude yourself from the settlement by following the opt-out procedure

set forth below. If you disagree with the number of Weeks Worked, as described in this Notice, you may dispute the allocation of the Settlement without excluding yourself or objecting, as described above. It is the responsibility of all Class Members to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or an Individual Settlement Payment.

If you are a current employee, your decision as to whether or not to participate in this Settlement will not be considered by the ePac and ePac will not take any adverse employment action against you based on your participation in the Settlement.

- B. **Exclude Yourself from the Settlement.** If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator a “Request for Exclusion from the Class Action Settlement” letter/card postmarked no later than [REDACTED], 2021 with your full name, address, telephone number, last four digits of your social security number or your date of birth, and signature. The Request for Exclusion should state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE EPAC LAWSUIT.
I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I
WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.”

Send the Request for Exclusion directly to the Settlement Administrator, [ADDRESS], postmarked no later than [REDACTED], 2021. Any person who files a timely Request for Exclusion from the Class Action Settlement, upon receipt: (1) will not have any rights under this Settlement, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive any payments under this Settlement; and (3) will not be bound by this Settlement, or the Judgment.

Because PAGA claims are brought on behalf of the State of California and Aggrieved Employees for civil penalties, you have no right to exclusion from the PAGA claims and will release all PAGA claims for civil penalties made in the Action or that could have been made based on the facts asserted in the Action regardless of a timely request for exclusion.

- C. **Object to Settlement.** You also have the right to object to the terms of the Settlement if you believe they are unfair or unreasonable. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object, you must submit a written objection stating your full name, address, telephone number, dates of employment at ePac, the case name and number, the name and address of your attorney(s) if you are represented, each specific reason in support of your objection, and any legal support for each objection. You must also include any documentation or evidence in support of the objection, if any. Objections must be in writing and mailed to the Settlement Administrator, [ADDRESS], by no later than [REDACTED], 2021. Objections that do not include all required information, or that are not submitted timely, will not be considered. **You need not object to the Settlement if you only dispute the number of Weeks Worked.**

If you choose to object to the Settlement, you may also appear at the Final Approval Hearing scheduled for [REDACTED], 2021, at 10:00 a.m. in Department S26 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415. You have the right to appear either in person or through your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before [REDACTED], 2021. All objections or other correspondence must state the name and number of the case. If you wish to appear at the Final Approval hearing, please contact Class Counsel or the Settlement Administrator in advance of the scheduled hearing to ensure that the hearing has not been continued by the Court.

If you object to the Settlement, you will remain a Class Member, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Participating Class Members who do not object. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

Likewise, since PAGA claims are brought on behalf of the State of California and Aggrieved Employees for civil penalties, Aggrieved Employees have no right to object and will release all PAGA claims for civil penalties made in the Action or that could have been made based on the facts asserted in the Action, regardless of a timely request for exclusion.

VI. What is the effect of the settlement?

Released Rights and Claims. The Settlement is intended to settle all claims against the Released Parties that were asserted or could have been asserted in the Lawsuit regarding the alleged violations of wage and hour laws. If you were employed by ePac in California at any time during the Class Period and do not elect to exclude yourself from the Settlement Class, you will be deemed to have entered into this Release and to have released the above-described Released Claims. If the Settlement is not approved by the Court or does not become final for some other reason, the Lawsuit may continue and the releases will not take effect.

VII. What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement, and Class Counsel's request for attorneys' fees and reimbursement of documented litigation costs and the Service Payment to the Class Representative on [REDACTED], 2021 at 10:00 a.m. in Department S26 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415.

You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

VIII. How can I get additional information?

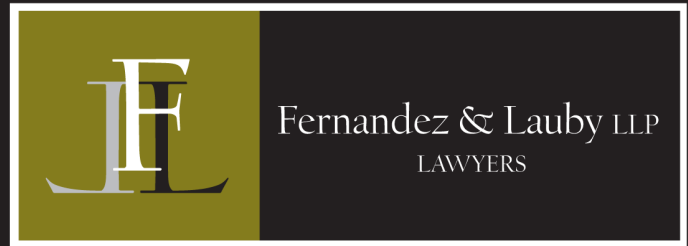
This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Class Action Settlement Agreement (the Settlement Agreement) at Office of the Clerk, San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415, during regular court hours. You may also contact Class Counsel or the Settlement Administrator using the contact information listed above for more information.

IX. Reminder as to time limits.

Class Members do not have to take any further action to participate in the Settlement. The deadline for submitting a Request for Exclusion is [REDACTED], 2021. The deadline for mailing an objection to the Settlement Administrator is [REDACTED], 2021. These deadlines will be strictly enforced.

**PLEASE DO NOT CALL OR WRITE THE COURT
FOR INFORMATION ABOUT THIS SETTLEMENT**

EXHIBIT “3”



August 31, 2020

Sent Via Online Filing to the LWDA

Sent Via U.S. Mail and Certified Mail

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Please see attached Service List

Re: PAGA Civil Penalty Claim
Cesar Torres v. ePac Flexible Packaging and related entities

To the Labor and Workforce Development Agency, ePac Los Angeles, LLC, ePac Norcal, LLC, ePac Holdings, LLC, ePac, LLC, Mr. Jack Knott, and all affiliated entities:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Cesar Torres (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against his former employer(s), ePac Los Angeles, LLC, ePac Norcal, LLC, ePac Holdings, LLC, ePac, LLC, Mr. Jack Knott, and/or any affiliated entities (the “Company”), for violations of Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 227.3, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, among other sections inadvertently omitted, and/or sections of the applicable Industrial Welfare Commission Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately March through May 2020. Claimant alleges that, at all relevant times, he and all other employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations to Claimant was subjected during his employment.

For instance, at all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked. Additionally, the Company failed to pay proper overtime due to three distinct violations. First, at all relevant times, the Company paid Claimant and the Aggrieved Employees on an hourly basis but also paid additional earned compensation and/or bonuses. However, during workweeks where the Aggrieved Employees worked overtime hours and earned additional nondiscretionary compensation and/or bonuses, the Company failed to include the bonuses in the calculations for the regular rate of pay and instead paid overtime at only 1.5 times the base rate of pay – violating the well-established rule that overtime must always be paid at time and one-half the regular rate of pay. Second, at all relevant times, the Company paid Claimant and the Aggrieved

Employees different rates of pay during the same workweek. However, the Company failed to pay proper overtime compensation to Claimant because, when calculating the overtime owed each period, the Company unlawfully utilized the “rate in effect” method to calculate and pay overtime rather than the proper “weighted average” method. Third, the Company failed to pay overtime at the required rate (*i.e.*, time and one-half of the regular rate of pay). As a result of these violations and others, the Company failed to pay proper minimum and overtime wages to Claimant and the Aggrieved Employees.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company’s policies and practices, Claimant was subjected to meal period violations when Claimant was: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company, (3) forced to take a meal period after the 5th hour of work, (4) not provided a mandated first meal period for shifts in excess of 6 hours, and (5) not provided a mandated second meal period on occasions for shifts in excess of 10 hours.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant’s rest breaks, Claimant was unable to leave the premises for breaks, and Claimant was often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by the hectic workload. Furthermore, on occasions when Claimant worked in excess of 10 hours in a shift, the Company failed to authorize and/or permit a third mandated rest break.

Moreover, at all relevant times, the Company utilized a policy and practice through which Claimant and the Aggrieved Employees accrued vacation and/or PTO hours (collectively, “vacation hours”). However, Defendants failed to pay the Aggrieved Employees for these earned wages upon separation of employment and, further, failed to pay them at the “final rate” as required by Labor Code § 227.3.

The Company also failed to comply with the mandates of Labor Code § 204 regarding the timing of the payment of wages to its employees each period, including minimum and overtime wages, as well as meal and rest period premiums. Additionally, the Company failed to pay Claimant and the Aggrieved Employees their final wages within the timeframe required by Labor Code §§ 201 – 203. Finally, during employment with the Company, Claimant and the Aggrieved Employees received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

Claimant alleges that he worked under the joint direction and control of ePac Los Angeles, LLC, ePac Norcal, LLC, ePac Holdings, LLC, ePac, LLC, Mr. Jack Knott and is informed and believes that each of them acted in all respects pertinent to this action as the agent of the others, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each are legally attributable to the others. On information and belief, a unity of interest and ownership between each exists such that ePac Los Angeles, LLC, ePac Norcal, LLC, ePac Holdings, LLC, ePac, LLC, Mr. Jack Knott acted as a single employer of Claimant and the Aggrieved Employees. Furthermore, on information and belief, ePac Los Angeles, LLC, ePac Norcal, LLC, ePac Holdings, LLC, ePac, LLC, Mr. Jack Knott are an integrated enterprise and should be treated as a single employer because ePac Los Angeles, LLC, ePac Norcal, LLC, ePac Holdings, LLC, ePac, LLC, Mr. Jack Knott share an interrelation of operations, with common human resources and personnel policies and shared common offices and facilities. Upon information and belief, ePac Los Angeles,

LLC, ePac Norcal, LLC, ePac Holdings, LLC, ePac, LLC, Mr. Jack Knott share common management, a centralized control of labor operations, and common ownership or financial control.

Furthermore, Claimant alleges that Mr. Jack Knott and others are now and at all material times herein mentioned were the owner(s) of ePac Los Angeles, LLC, ePac Norcal, LLC, ePac Holdings, LLC, ePac, LLC, and are/were Claimant's and the Aggrieved Employees' actual employer or, in the alternative, was an individual employed by the Company as managerial and/or supervisory employees and/or agents. In addition, Claimant alleges that at all relevant times herein Mr. Jack Knott and others had the authority, in the interest of the ePac Los Angeles, LLC, ePac Norcal, LLC, ePac Holdings, LLC, ePac, LLC, to exercise independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other similar actions against Claimant and the Aggrieved Employees, and were in Claimant's chain of command at the time of and direct participants in the wrongful conduct which constitutes the basis of Claimant's complaint herein. Claimant also alleges that ePac Los Angeles, LLC, ePac Norcal, LLC, ePac Holdings, LLC, ePac, LLC, and Mr. Jack Knott are the agents, servants, employees, partners, affiliates, and/or representatives of each other, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each other. Furthermore, in conducting themselves in the manner described herein, ePac Los Angeles, LLC, ePac Norcal, LLC, ePac Holdings, LLC, ePac, LLC, and Mr. Jack Knott, were acting in active concert with on another such that the acts of each were fully attributable to the other in all material respects.

Claimant also alleges that ePac Los Angeles, LLC, ePac Norcal, LLC, ePac Holdings, LLC, ePac, LLC, and Mr. Jack Knott were merely the alter-ego of the others in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and each exercised undue dominance, control, influence, and management over the others. Claimant further alleges that, at all relevant times, ePac Los Angeles, LLC, ePac Norcal, LLC, ePac Holdings, LLC, ePac, LLC, have been inadequately capitalized to conduct business, have failed to follow appropriate corporate formalities, and have simply been a shell and instrumentality through which Mr. Jack Knott and others have conducted their personal affairs. Accordingly, the corporate veil should be pierced, and any liability attached to ePac Los Angeles, LLC, ePac Norcal, LLC, ePac Holdings, LLC, ePac, LLC, should be imposed jointly and severally against Mr. Jack Knott and others. Adherence to the fiction of the separate existence of the corporate entity of ePac Los Angeles, LLC, ePac Norcal, LLC, ePac Holdings, LLC, ePac, LLC, would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice.

Also, in a separate, but not necessarily mutually exclusive, alternative theory of liability, Mr. Jack Knott and others are liable for PAGA civil penalties under Labor Code § 558 as "other person(s)" who caused the violations regarding minimum wage among other claims. *See Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 ("if there is evidence and a finding that a party other than the employer 'violates, or causes to be violated' the overtime laws (§ 558(a)) or 'pays or causes to be paid to any employee' less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer"); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S.Dist.LEXIS 40851 (holding the same)

As a result of these violations, and others described below, Claimant alleges that she and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

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**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees due to the Company's failure to accurately record and compensate for all hours worked as well as the illegal overtime policies described above. As a result, Claimant and the Aggrieved Employees were not paid all earned wages to which they were entitled, including proper overtime for hours worked in excess of 8 and/or 12 hours per day, and/or forty hours per week pursuant to Labor Code §§ 204 and 510 and/or the applicable IWC Wage Order.

Accordingly, Labor Code §§ 210, 558, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.” Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company's policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee's regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

FAILURE TO PAY VESTED VACATION UPON SEPARATION OF EMPLOYMENT

(Labor Code § 227.3)

Pursuant to Labor Code § 227.3, an employer that has implemented a paid vacation, paid time off, or compensated time off policy must, upon an employee's separation from employment, pay to the employee all vested but unused vacation and/or paid time off at his final rate of pay. However, as alleged herein, the Company failed to pay vested vacation upon separation of employment, and further failed to pay such wages at the “final rate” of pay. As a result of these violations, penalties may be assessed pursuant to Labor Code § 2699.

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

As a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled each period as required by Labor Code § 204, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. For example, due to the unpaid wage violations discussed above, Claimant and the Aggrieved Employees were not paid all wages owed upon separation of employment. Moreover, the Company also failed to pay final wages within the time required as evidenced by the fact that Claimant was terminated on or around May 22, 2020, yet he did not receive final wages at that time because the final pay was issued as part of the Company’s normal payroll cycle – in violation of Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code §§ 203, 256.) Labor Code § 2699 also imposes a penalty.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal

entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements to Claimant and all Aggrieved Employees due to the: failure to accurately state gross wages earned; failure to accurately state total hours worked; failure to accurately state all deductions; failure to state the start and end date of the pay period; failure to accurately state net wages earned; failure to state the name and address of the legal entity that is the employer; and failure to accurately state the corresponding number of hours worked at each hourly rate. As one specific example, the Company's wage statements failed to state the accurate overtime rate of pay – Plaintiff was paid \$16.50 per hour and, thus, his base overtime rate was supposed to be \$24.75, yet the Company's wage statements identified the rate as only \$24.7498 per hour. As a result of this violations and others, Labor Code §§ 226.3 and 2699 impose a civil penalty and/or assessment for these violations.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company's violations described herein, the Company is subject to the civil penalties in accordance with Labor Code § 2699.

ATTORNEYS' FEES, INTEREST, AND PENALTIES

(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimants seek the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimants is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees.

Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

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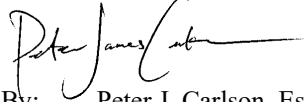
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CONCLUSION

Based on the foregoing, the Company may be liable for penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to his employment and/or other employees of the Company, he reserves the right to add new claims by amending this claim letter. Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Peter J. Carlson", with a long horizontal flourish extending to the right.

By: Peter J. Carlson, Esq.

E-mail: PJC@fernandezlauby.com

www.California-EmploymentLawyers.com

Service List

ePac Los Angeles, LLC
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Los Angeles, CA 90016

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ePac NorCal, LLC
4509 Freidrich Lane, Suite 102
Austin, TX 78744

ePac Holdings, LLC
400 South Ocean Blvd., #205
Delray Beach, FL 33483

Jack Knott
400 South Ocean Blvd., #205
Delray Beach, FL 33483

EXHIBIT “4”