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

10 ALEJANDRO PANUCO; ADRIAN
11 DELGADO ROSALES; NOE SILVA,

12 *Plaintiffs,*

13 vs.

14 BEACON SALES ACQUISITION, INC.
15 and DOES 1 to 25, inclusive,

16 *Defendant(s).*

Case No.: 21STCV18970

**DECLARATION OF HAROUT
MESSRELIAN IN SUPPORT OF
STIPULATION FOR APPROVAL OF PAGA
SETTLEMENT AND RELEASE**

Action filed: 5/19/21

Department: 19, Hon. Stephanie
Bowick

Submitted Herewith Under Separate Cover:

1. Stipulation for Approval of PAGA Settlement and Release; and
2. [Proposed] Order

DECLARATION OF HAROUT MESSRELIAN IN SUPPORT OF
STIPULATION OF SETTLEMENT AND RELEASE

I, HAROUT MESSRELIAN, declare and state as follows:

1. I am an attorney duly licensed to practice before all the Courts of the State of California. I am the managing attorney of Messrelian Law Inc. and the attorney of record for Plaintiffs Alejandro Panuco, Adrian Rosales Delgado, and Noe Silva ("Plaintiff(s)") in their lawsuit against Defendant Beacon Sales Acquisition, Inc. ("Beacon" or "Defendant").

2. I am experienced in handling employment law matters and specifically wage and hour cases, including PAGA claims. I have been practicing law since 2010. In my representation of employees, I have handled hundreds of individual and representative cases on behalf of employees with claims of minimum wages, overtime violations, as well as other wage claims, including meal breaks and rest breaks.

3. Except as otherwise indicated, I have personal knowledge of all matters set forth herein and, if called as a witness, could and would competently testify thereto under oath.

Factual and Procedural Background

4. Defendant Beacon Sales Acquisition, Inc. is a roofing supply company, which provides roofing materials for use in construction projects. Plaintiffs all worked for Defendant for several years and performed the duties of "loaders" or "signal men". All Plaintiffs were classified as hourly, non-exempt employees.

5. Plaintiffs complied with the procedures of Labor Code § 2699.3 for bringing suit under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq. ("PAGA"). On November 4, 2020, Plaintiffs Alejandro Panuco and Adrian Delgado Rosales, on behalf of themselves and Defendant's other California non-exempt hourly employees (hereafter collectively the "Aggrieved Employees") gave written notice by electronic service to the California Labor and Workforce Development Agency ("LWDA") and via certified mail to Defendant of their claims against Defendant. On November 6, 2020, Plaintiff Noe Silva also gave written notice by electronic service to the LWDA and via certified mail to Defendant of his claims against Defendant. In their notices to the LWDA, Plaintiffs asserted on behalf of

1 themselves and the Aggrieved Employees that Defendant (1) failed to compensate for all hours
2 worked and to pay minimum wages (Labor Code Sections 1194, 1197, 1197.1), including failure
3 to pay the prevailing wage (Labor Code Sections 1771, 1774, 1776, 1777.5); (2) failed to pay
4 overtime compensation (Labor Code Section 510); (3) failed to provide rest breaks (Labor Code
5 Section 226.7); (4) failed to provide meal breaks (Labor Code Sections 512, 226.7); (5) failed
6 to timely pay wages due during employment (Labor Code Section 204); (6) failed to provide
7 accurate itemized wage statements (Labor Code Section 226); (7) failed to keep accurate and
8 complete payroll records (Labor Code Section 1174/1174.5); (8) failed to pay wages at the end
9 of employment (Labor Code section 203); and (9) failed to reimburse business expenses (Labor
10 Code Sections 2800, 2802) under Industrial Welfare Commission Wage Orders 16-2001.
11 Plaintiffs filed their initial lawsuit on May 19, 2021 in the Superior Court for the State of
12 California, County of Los Angeles, Case No. 21STCV18970 with one cause of action for
13 penalties under PAGA under the following legal theories: (a) failure to pay all minimum wages
14 owed, including the prevailing wage; (b) failure to pay all overtime wages owed; (c) failure to
15 provide compliant meal periods, or premium pay for non-compliant meal periods; (d) failure to
16 authorize and permit complaint rest periods, or provide premium pay for non-complaint rest
17 periods; (e) failure to provide accurate, itemized wage statements and/or otherwise maintain
18 accurate records; (f) failure to timely pay wages during employment and/or upon separation of
19 employment; and (g) failure to indemnify and/or reimburse for all reasonable and necessary
20 business expenses..

21 6. Through pre-mediation discovery, Defendant produced records and represented
22 that it employed approximately 963 workers falling within Plaintiffs' Aggrieved Employees
23 definition for the period from January 14, 2021 through October 14, 2022, and that there are
24 paychecks issued for a total of approximately 18,560 pay periods worked for that same time
25 period.

26 7. January 14, 2021 was used as the starting date for settlement negotiations due to
27 Defendant having previously settled a PAGA claim brought by a different employee in *Andrade*
28 *v. Beacon Sales Acquisition, Inc.*, Case No. 19-CV-06963-MCS, filed in the United States

1 District Court for the Central District, which covered all current and former employees of
2 Defendant who were employed in the State of California as hourly or non-exempt employees
3 from March 26, 2018 through January 13, 2021. Accordingly, the Settlement Agreement covers
4 PAGA Members, which are Aggrieved Employees employed on or after January 14, 2021,
5 through the date of Settlement Approval.

6 8. Defendant denies any liability or wrongdoing of any kind whatsoever associated
7 with the lawsuit and the Representative PAGA Claim. It is the desire of the Parties to fully,
8 finally, and forever compromise, and discharge all claims known or unknown related to those
9 alleged in Plaintiffs' lawsuit.

10 9. On October 27, 2022, the Parties attended a full day mediation session with
11 experienced wage-and-hour mediator Eleanor Barr, Esq. of Barr Mediation. At the mediation,
12 the Parties agreed to settle the Action. Before agreeing to the terms of the Settlement, the Parties
13 engaged in informal discovery regarding Defendant's policies, practices, operations, time and
14 payroll information and other topics. In advance of mediation, Defendant produced Plaintiffs'
15 personnel files, time and payroll data for Plaintiffs, and time records and payroll records for 178
16 of the 963 workers falling within Plaintiffs' Aggrieved Employees definition for the period from
17 January 14, 2021 through October 14, 2022, which is an 18% sample. Through extensive arm's
18 length negotiations at the mediation and only after discovery and investigation were performed,
19 the Parties agreed to settlement terms. Attached as **Exhibit 1** is a true and accurate copy of the
20 PAGA Settlement Agreement and Stipulation ("Settlement Agreement") and the PAGA notice
21 that will be sent to the PAGA Members covered by the Settlement Agreement.

22 10. The Parties conducted investigation of the facts and law both before and after the
23 lawsuit was filed. Counsel for the Parties have further investigated the applicable law as applied
24 to the facts discovered regarding Plaintiffs' claims, the defenses thereto, and the Labor Code
25 violations claimed by Plaintiffs. Based on their own independent investigations and evaluations,
26 the Parties and their respective counsel are of the opinion that the Settlement for the
27 consideration and on the terms set forth in this Stipulation are fair, reasonable and adequate and
28 are in the best interests of Plaintiffs, the PAGA Members, and Defendant in light of all known

1 facts and circumstances and the risks inherent in litigation, especially in this post-pandemic era
2 when most businesses are still struggling to remain afloat, much less prosper and make a large
3 profit.

4 11. The Parties further recognize that the issues presented in the Action are likely
5 only to be resolved with extensive and costly pretrial and trial proceedings, and that further
6 litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate
7 to the maximum potential benefits, especially in light of the post- pandemic era and the business
8 climate.

9 12. Plaintiffs allege that the strongest claims are that Plaintiffs and other PAGA
10 Members were not provided timely, uninterrupted meal and rest breaks and that there was a
11 rounding issue with the working hours. Defendant vehemently denies that there were any meal
12 and rest break violations especially in light of the fact that Defendant presented evidence that it
13 maintained Labor-Code-compliant meal and rest policies and paid premium wages to PAGA
14 Members for when time records suggested potentially missed, short, or late meal and rest
15 periods. In fact, Plaintiffs' own expert found that Defendants did in fact pay premium wages if
16 there were statutory break violations. Defendant also vehemently denies that there were any
17 rounding issues at all. In terms of Plaintiffs' claims regarding not being paid the prevailing wage
18 rate, Plaintiffs' position is that Plaintiffs and others provided roofing materials to companies
19 who were working on Public Works Projects and so Plaintiffs should have been paid at the
20 prevailing wage rate for those projects. The defense argument on that front was that Plaintiffs
21 did not fall within the scope of the prevailing wage statutes because, in part, they were only
22 delivering roofing supplies that would eventually be incorporated into projects, and as such,
23 Plaintiffs were not actively participating in the projects in terms of the construction work.

24 13. Plaintiffs contends that the civil penalty statutes applicable to the Action arise
25 from violations of the California Labor Code, including, but not limited to, Labor Code §§ 210,
26 226.3, 558, 1174.5, 1197.1, 2802 and 2699(f)(2). Under these civil penalty statutes, an
27 employee who suffers a Labor Code violation, may be awarded a sum of money for each pay
28 period in which he or she was underpaid. However, under Labor Code § 2699(e)(2), the Court

1 can reduce an award of civil penalties if the award is unjust, arbitrary, oppressive, or
2 confiscatory.

3 14. Under the civil penalty formulas applicable under PAGA, Plaintiffs estimated a
4 **maximum** exposure of approximately \$582,200 for civil penalties for Plaintiffs' strongest
5 disputed claims of failure to provide meal and rest periods and failure to provide minimum
6 wages due to the rounding issue. Plaintiffs' analysis, which Defendant vehemently disputes,
7 revealed a 6.1% violation rate for either late, short, or interrupted meal periods. As such, with
8 the 6.1% violation rate, the maximum exposure would be \$56,600, which is calculated as \$50
9 penalty multiplied by 1132 pay periods (6.1% of the 18,560 pay periods). Plaintiffs extrapolated
10 the same 6.1% rate for rest break violations, which would equate to an exposure of \$113,200
11 (\$100 penalty per pay period multiplied by 1132 pay periods). In terms of the rounding issue,
12 Plaintiffs' data expert identified a rounding issue with 47% of shifts having unfavorable
13 rounding, 36% having favorable rounding, and the balance of the shifts being even. At an 11%
14 violation rate due to rounding, the penalties would amount to \$204,200 (11% of the 18,560 pay
15 periods, which is 2042 pay periods multiplied by \$100 per pay period). The same latter formula
16 would also be used for the derivative claim under Labor Code section 204 for failure to pay
17 wages owed every pay period, which would also be \$204,200, for an aggregate maximum
18 exposure amount of \$582,200. Assuming that Plaintiffs' calculations and analysis is accurate,
19 the maximum exposure presumes that the Court will not reduce the penalty award as unjust,
20 arbitrary, oppressive, or confiscatory.

21 15. Moreover, Plaintiffs are aware of no California state courts awarding plaintiffs
22 multiple PAGA penalties for the same violation for the same pay period under different Labor
23 Code provisions. As such, one of the risks Plaintiffs face is that the Court would refuse to "stack"
24 civil penalties arising under the various Labor Code statutes. Furthermore, judges have awarded
25 extremely small sums to PAGA claimants in the past. In addition, Defendant would make an
26 argument that any presumption of meal or rest period violations could be rebutted by evidence
27 and therefore are not a predicate for civil penalties for improper wage statements and untimely
28 final wages under Labor Code secs. 201-203, 226, 226.3, and 2699. Defendant also adamantly

1 disputes all of Plaintiffs' allegations in the operative Complaint.

2 16. The source of penalties available is under PAGA, which allows employees to
3 recover civil penalties for certain violations of the Labor Code so long as the penalties are not
4 unjust, arbitrary, oppressive, or confiscatory. There are no State Court decisions under the
5 PAGA to date with substantial awards of civil penalties. There is a substantial risk that the Court
6 could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiffs' evidence
7 of willful and intentional conduct. The PAGA expressly counsels against such awards. *See Lab.*
8 *Code* § 2699(e)(2) ("...a court may award a lesser amount than the maximum civil penalty
9 amount specified by this part if, based on the facts and circumstances of the particular case, to
10 do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.").
11 Further, although, class certification is not required for a PAGA claim, Defendant could contend
12 that Plaintiffs cannot show that the PAGA claims are manageable.

13 17. As such, Defendant could also convince the Court to dismiss the claims due to
14 unmanageability. *Wesson v. Staples The Office Superstore, LLC* (2021) 68 Cal.App.5th 746
15 ("Wesson"); *Feltz v. Cox Communs. Cal.* (October 21, 2021) 2021 U.S. Dist. LEXIS 207087.
16 On September 9, 2021, the California Court of Appeal issued the significant decision in *Wesson*
17 *v. Staples the Office Superstore, LLC*, holding that courts have authority to ensure that PAGA
18 claims are manageable, and that courts may limit or strike unmanageable PAGA claims.
19 Defendant contends that Plaintiffs' allegations require a host of individualized inquiries which
20 would arguably devolve into a series of mini-trials based on whether each employee voluntarily
21 elected to unilaterally waive a provided meal period or authorized rest break, based on position
22 titles, job duties and the type of work they perform. (*See, e.g., Brinker*, 53 Cal.4th at 1004.) In
23 *Ortiz v. CVS Caremark Corp.*, the court dismissed a PAGA claim because it was unmanageable.
24 2014 WL 1117614, at *3–4 (N.D. Cal. 2014). In *Ortiz v. CVS Caremark Corp.*, the court
25 dismissed a PAGA claim because it was unmanageable. 2014 WL 1117614, at *3–4 (N.D. Cal.
26 2014). The *Ortiz* court cited the "multitude of individualized assessments" that case would have
27 required in ordering dismissal. *Id.* at *4. Several other courts have adopted *Ortiz*, and dismissed
28 PAGA claims where, as here, there are a large number of allegedly aggrieved individuals whose

1 claims require individual assessments. *See, e.g., Litty v. Merrill Lynch & Co.*, 2014 WL
2 5904904, at *3 (C.D. Cal. 2014); *Bowers v. First Student, Inc.*, 2015 WL 1862914, at *4 (C.D.
3 Cal. 2015); *see also Stafford v. Dollar Tree Stores, Inc.*, 2014 WL 6633396, at *2–4 (E.D. Cal.
4 2014) (bifurcating trial of plaintiff’s claim from representative claims: “in light of the number
5 of potential aggrieved employees, judicial economy favors deferring the representative portion
6 of the PAGA claim”); *Amey v. Cinemark USA Inc.*, 2015 WL 2251504, at *16 (N.D. Cal. May
7 13, 2015). DS, ¶ 24. The risk of an unmanageable trial is heightened in a representative PAGA
8 claim because the burden of proof rests with the plaintiff to establish violations of the Labor
9 Code “with respect to each and every individual on whose behalf [they] seek[] to recover civil
10 penalties.” *Molina v. Dollar Tree Stores, Inc.*, 2013 U.S. Dist. LEXIS 138642, at *33-34 (C.D.
11 Cal. Aug. 9, 2013); *Hibbs-Rines v. Seagate Techs, LLC*, 2009 WL 513496, at *4 (N.D. Cal. Mar.
12 2, 2009). Moreover, in a PAGA case the plaintiff must prove liability with respect to “each and
13 every individual” through representative evidence – but without sacrificing the defendant’s due
14 process right to present proof of their affirmative defenses. *Elkins v. Superior Court*, 41 Cal. 4th
15 1337, 1357 (2007); *Walmart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2561 (2011); *Duran v. U.S.*
16 *Bank Nat’l Ass’n*, 59 Cal. 4th 1, 33-34 (2014). Plaintiffs would be required to establish a
17 violation of the Labor Code in each pay period of each and every one of the approximately 963
18 employees. The Court could find that this is an impractical task and require the PAGA Members
19 to bring individual claims instead of a PAGA representative claim.

20 18. The Parties further recognize that the issues presented in the Action are likely
21 only to be resolved with extensive and costly pretrial and trial proceedings, and that further
22 litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate
23 to the maximum potential benefits to the PAGA Members and Plaintiffs from continued
24 litigation.

25 19. The settlement of the Action involves monetary relief to all PAGA Members,
26 Plaintiffs, their attorneys, and the State of California.

27 20. Furthermore, Plaintiff recognizes that continued litigation presents significant
28 risks that support a significant downward departure from Plaintiff’s estimated civil penalties

1 amount. In view of the risks, the Settlement represents a fair, adequate, and reasonable
2 compromise amount for these claims and is in the best interest of Plaintiff and PAGA Members
3 and thus, warrants approval. *See Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir.
4 June 3, 2014) 2014 WL 2465049, * 3. The PAGA settlement and its terms are fair, just,
5 reasonable, adequate, and equitable to Defendant, Plaintiff, and the State, especially in light of
6 the current economic climate, and are the product of good faith, and informed arms-length
7 negotiations between the Parties consistent with public policy and fully comply with applicable
8 provisions of law.

9 21. As such, the settlement of PAGA penalties in the gross sum of \$250,000.00, of
10 which 75% of the net amount after attorney's fees, attorney costs, and settlement administrator
11 fees (\$115,830.50) will be paid to the LWDA and 25% (\$38,610.17) will be distributed to the
12 PAGA Members, is reasonable and appropriate under the circumstances.

13 *Attorneys' Fees and Costs*

14 22. I represent Plaintiffs on a straight contingency basis. My firm's request for
15 \$83,333.33 in attorney fees and \$7,226.00 in litigation costs is fair and reasonable. "Empirical
16 studies show that, regardless of whether the percentage method or the lodestar method is used,
17 fee awards in class actions average around one-third of the recovery. *Chavez v. Netflix, Inc.*
18 (2008) 162 Cal.App.4th 43, 47 fn. 11 (quoting *Shaw v. Toshiba America Information Systems,*
19 *Inc.* (E.D. Tex. 2000) 91 F.Supp.2d 942, 972; *See also Lafitte v. Robert Half Int'l Inc.* (Cal. Aug.
20 11, 2016) 1 Cal.5th 480, 503, 376 P.3d 672, 686 (holding that courts can use the percentage
21 method for the calculation of attorneys' fees). This is also consistent with Plaintiff's Counsel's
22 experience in cases involving PAGA claims. This award is justified here because Plaintiff's
23 counsel achieved a strong result for the PAGA Members and the State while bearing the
24 substantial burdens of contingency representation.

25 23. The litigation costs expended to aid in the representation of the PAGA Members
26 include the following: lawsuit filing fee of \$454.22, PAGA initial filing fees of \$150.00, a
27 mediation fee of \$5,750.00 (for Plaintiffs' portion of the mediation); expert data analysis fee of
28 \$850.00, and miscellaneous court filing fees of \$21.78. All of these costs are documented and

1 reasonably incurred.

2 *Notice of Settlement to the LWDA*

3 24. Pursuant to Lab. Code § 2699(1)(2), my firm submitted a copy of the Settlement
4 with the LWDA at the same time the Settlement is being filed with the Court. True and correct
5 copies of this submission with the LWDA and the confirmation email are collectively attached
6 as **Exhibit 2** to this declaration. My firm will further provide a copy of the Court's Order and
7 Judgment to the LWDA within ten (10) calendar days after entry of said judgment or order as
8 required by Labor Code sections 2699(1)(2)-(3).

9 I declare under the penalty of perjury of the laws of the State of California that the
10 foregoing is true and correct to the best of my knowledge.

11
12 Executed on May 5, 2023, at Glendale, California.

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15 _____
16 HAROUT MESSRELIAN,
17 Declarant
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27
28

EXHIBIT 1

1 Harout Messrelan, Esq., SB# 272020
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24 Attorneys for Defendant
25 BEACON SALES ACQUISITION, INC.

26 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

27 **COUNTY OF LOS ANGELES**

28 ALEJANDRO PANUCO; ADRIAN
DELGADO ROSALES; NOE SILVA,

Plaintiffs,

v.

BEACON SALES ACQUISITION, INC.
and DOES 1 to 25, inclusive,

Defendants.

CASE NO. 21STCV18970

**PAGA SETTLEMENT AGREEMENT AND
STIPULATION**

1 This PAGA Settlement Agreement and Stipulation is entered into between Defendant
2 BEACON SALES ACQUISITION, INC. and Plaintiffs ALEJANDRO PANUCO, ADRIAN
3 DELGADO ROSALES, and NOE SILVA.

4 **DEFINITIONS**

5 The following definitions are applicable to this Settlement Agreement. Definitions contained
6 elsewhere in this Settlement Agreement will also be effective:

7 1. Action. "Action" means the PAGA action lawsuit entitled *Panuco, et al. v.*
8 *Beacon Sales Acquisition, Inc., et al.*, filed in the Superior Court of California, Los Angeles County,
9 as case number 21STCV18970.

10 2. Agreement. "Agreement" or "Settlement Agreement" shall refer to the
11 instant Settlement Agreement and Stipulation.

12 3. Attorneys' Fees and Costs. "Attorneys' Fees and Costs" refers to the amount
13 to be awarded to PAGA Counsel (as defined below) for the work it has performed in furtherance
14 of the Action plus the amount to be reimbursed for PAGA Counsel's litigation costs and expenses,
15 which, pending Court approval, which shall not exceed Ninety Two Thousand Five Hundred
16 Dollars (\$92,500.00).

17 4. Court. "Court" refers to the Superior Court of California, Los Angeles
18 County, or other court, that will approve the Agreement.

19 5. Defendant. "Defendant" means, collectively, Beacon Sales Acquisition, Inc.

20 6. Gross PAGA Settlement Amount. "Gross PAGA Settlement Amount"
21 means a maximum total payment of Two Hundred and Fifty Thousand Dollars (\$250,000), payable
22 by Defendant under this Agreement in full satisfaction of all Settled PAGA Claims. The Gross
23 PAGA Settlement Amount includes all: (1) Individual PAGA Payments to PAGA Members; (2)
24 Attorneys' Fees and Costs; (3) Settlement Administration Costs (as defined below); and (4)
25 LWDA's portion of the PAGA Penalties Fund (i.e., the LWDA Payment). In no event shall
26 Defendant be required to pay any amounts above the Gross PAGA Settlement Amount to effectuate
27 this Agreement. PAGA Members shall remain responsible for paying any taxes due on any
28 payments they are issued under the settlement.

1 7. LWDA. “LWDA” means the California Labor and Workforce Development
2 Agency.

3 8. Parties. “Parties” shall mean Plaintiffs and Defendant.

4 9. PAGA Counsel. “PAGA Counsel” shall mean Harout Messrelian, Esq. of
5 Messrelian Law Inc. and/or any successor(s) thereof.

6 10. PAGA Members. “PAGA Members” means Plaintiffs and all current and
7 former non-exempt employees of Beacon Sales Acquisition, Inc. in the State of California during
8 the PAGA Period.

9 11. PAGA Penalties Fund. “PAGA Penalties Fund” means the amount available
10 for distribution to PAGA Members and the State of California, which is the Gross PAGA
11 Settlement Amount, less the amount that the Court approves for: (1) Attorneys’ Fees and Costs;
12 and (2) Settlement Administration Costs.

13 12. PAGA Period. “PAGA Period” means the period from January 14, 2021
14 through the date of the Settlement Approval.

15 13. Plaintiffs. “Plaintiffs” collectively means Plaintiffs Alejandro Panuco,
16 Adrian Delgado Rosales, and Noe Silva.

17 14. Released Parties. “Released Parties” means Defendant Beacon Sales
18 Acquisition, Inc. and each of its officers, directors, members, partners, owners, shareholders,
19 employees (excluding PAGA Members), former employees, agents, servants, attorneys, assigns,
20 affiliates, independent contractors, volunteers, predecessors, successors, parent companies and
21 organizations, insurers, and any and all other persons, firms and corporations in which Defendant
22 may have an interest.

23 15. Settlement. “Settlement” shall refer to the agreement of the Parties to settle
24 the claims as set forth and embodied in this Agreement.

25 16. Settlement Administrator. “Settlement Administrator” shall mean Phoenix
26 Settlement Administrators, a neutral third party administrator as mutually chosen by the Parties and
27 approved by the Court.

4 18. Settlement Approval. “Settlement Approval” means when the Court has
5 approved this Agreement with respect to the Settled PAGA Claims.

6 19. Settled PAGA Claims. “Settled PAGA Claims” means all claims, charges,
7 complaints, liens, demands, causes of action, obligations, and liabilities, whether known or
8 unknown, against the Released Parties (as defined below) for civil penalties predicated on any of
9 the alleged violations of the California Labor Code, Industrial Welfare Commission Wage Orders,
10 regulations, and/or other provisions of law that were alleged or asserted in the Action or any PAGA
11 notice(s) filed by any of the Plaintiffs, or that could have been asserted in the Action or any PAGA
12 notice(s) filed by any of the Plaintiffs based on any facts or allegations therein, with respect to
13 PAGA Members during the PAGA Period, to the greatest extent permitted by the Court.

14 20. Pay Period. “Pay Period” shall mean any weekly or bi-weekly period for
15 which wages were paid to a PAGA Member in accordance with Defendant’s normal payroll
16 processes.

17 RECITALS

21. Plaintiffs' Complaint for Damages for Private Attorneys General Act ("PAGA") was filed on May 19, 2021 in the Superior Court of California, County of Los Angeles, commencing the Action. The Complaint alleges violations of the California Labor Code and IWC Wage Orders, and seeks penalties under California Labor Code sections California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 1771, 1774, 1776, 1777.5 and 2802.

24 22. Plaintiffs contends that on November 4, 2020, and November 6, 2020,
25 Plaintiff Alejandro Panuco and Plaintiff Adrian Delgado Rosales, and Plaintiff Noe Silva
26 (respectively), provided the Labor and Workforce Development Agency notice of their intent to
27 pursue civil penalties against Defendant under the Private Attorneys General Act for alleged

violations of the California Labor Code and applicable Industrial Welfare Commission Wage Orders (the "PAGA Notice").

23. Defendant and Plaintiffs attended mediation with Eleanor Barr of Barr Mediation on October 27, 2022, wherein the Parties reached the Agreement herein. At mediation, Defendant represented that there were approximately 963 PAGA Members and approximately 18,560 Pay Periods at issue between January 14, 2021 and October 14, 2022. The Parties agree that the terms and conditions of this Agreement are the result of lengthy, intensive arms-length negotiations between the Parties supervised by an experienced employment law mediator. The Parties agree that the Agreement is entered into in good faith as to each PAGA Member, and that the Settlement is fair, reasonable and adequate as to each PAGA Member.

NOW THEREFORE, in consideration of the recitals listed above and the promises and warranties set forth below, and intending to be legally bound and acknowledging the sufficiency of the consideration and undertakings set forth herein, Plaintiffs, individually on behalf of themselves and on behalf of the PAGA Members and the State of California pursuant to the Private Attorneys General Act, on the one hand, and Defendant, on the other hand, agree that the Action shall be and is finally and fully compromised and settled on the following terms and conditions.

TERMS AND CONDITIONS OF SETTLEMENT

24. Gross PAGA Settlement Amount. Defendant will pay the Gross PAGA Settlement Amount to settle the Settled PAGA Claims. No portion of the Gross PAGA Settlement Amount will be retained by, or revert to, Defendant.

25. PAGA Penalties Fund. The PAGA Penalties Fund will be paid to PAGA Members and the LWDA in full satisfaction of the Settled PAGA Claims. Pursuant to PAGA, after deduction of Attorney's Fees and Costs and Settlement Administration Costs, Seventy-Five Percent (75%) of the PAGA Penalties Fund will be paid to the LWDA (i.e., the LWDA Payment), and the remaining Twenty-Five Percent (25%) will be paid to all PAGA Members on a *pro rata* basis based on the number of Pay Periods credited to each PAGA Member during the PAGA Period (i.e., the Individual PAGA Payments to PAGA Members) according to the following formula:

- 1 a. Defendant will calculate: (i) the total number of Pay Periods worked by each
2 PAGA Member during the PAGA Period, and (ii) the total number of Pay
3 Periods worked by all PAGA Members during the PAGA Period.
- 4 b. To determine each Individual PAGA Payment to each PAGA Member, the
5 following formula will be used: Individual PAGA Payment = 25% of PAGA
6 Penalties Fund $\times$ [Pay Periods Worked by individual PAGA Member During
7 the PAGA Period $\div$ Total Pay Periods Worked by all PAGA Members during
8 the PAGA Period].

9 26. Release of Settled PAGA Claims. Upon entry of the Order and Judgment
10 (as defined below), Plaintiffs, individually and as representatives for the State of California, all
11 other PAGA Members, and the State of California with respect to Plaintiffs and all other PAGA
12 Members, shall be deemed to have fully, finally, and forever released, settled, compromised,
13 relinquished, and discharged any and all of the Released Parties of and from any and all Settled
14 PAGA Claims. The Parties agree that it is their intent that the terms set forth in this Agreement
15 will release any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or
16 other action of any kind, by each and every PAGA Member to obtain any recovery based on the
17 Settled PAGA Claims.

18 27. Non-Admission of Liability. The Parties enter into this Agreement to
19 resolve the Action and to avoid the burden, expense, and risk of continued litigation. In entering
20 into this Agreement, Defendant does not admit, and specifically denies, that it has: violated any
21 federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any
22 statute or any other applicable laws, regulations, or legal requirements; breached any contract; or
23 engaged in any other culpable, wrongful or unlawful conduct with respect to its employees or any
24 other person or entity. Neither this Agreement, nor any of its terms or provisions, nor any of the
25 negotiations connected with it or proceedings, payouts, or other events associated with it, shall be
26 construed as an admission or concession by Defendant of any such violation(s) or failure(s) to
27 comply with any applicable law by Defendant or any Released Parties. The Parties intend this
28 Settlement to be contingent upon the Court's Settlement Approval; in the event Settlement

1 Approval is not obtained, the Parties do not waive, and instead expressly reserve, their respective
2 rights to prosecute and defend the Action as if this Agreement never existed. In the event that
3 Settlement Approval is denied by the Court, fails to become effective, or is reversed, withdrawn,
4 or modified by the Court or any other court with jurisdiction over the Action and such modifications
5 are not mutually agreed upon by the Parties, the Agreement shall become null and void *ab initio*
6 and shall have no bearing on, and shall not be admissible in connection with, further proceedings
7 in the Action.

8 28. Calculation of Settlement Payments. Subject to final Court approval and the
9 conditions specified in this Agreement, and in consideration of the mutual covenants and promises
10 set forth herein, Defendant agrees to make a payment or payments as set forth herein totaling an
11 amount of, but not to exceed the Gross PAGA Settlement Amount.

12 29. Attorneys' Fees and Costs. Defendant agrees not to oppose or impede any
13 application or motion by PAGA Counsel for Attorneys' Fees and Costs in an amount not to exceed
14 Ninety Two Thousand Five Hundred Dollars (\$92,500.00), to be paid from the Gross PAGA
15 Settlement Amount. Any portion of the Attorneys' Fees and Costs not awarded to PAGA Counsel
16 will be added to the PAGA Penalties Fund.

17 30. Settlement Administration Costs. The Parties will retain a third-party
18 settlement administrator known as Phoenix Settlement Administrators as the Settlement
19 Administrator. The Settlement Administrator will be responsible for establishing a qualified
20 settlement fund ("QSF") and issuing payments and appropriate tax forms to PAGA Members, the
21 LWDA, and Plaintiffs' Counsel. The Settlement Administration Costs will be paid from the Gross
22 PAGA Settlement Amount.

23 31. Court Approval of the Settlement and Distribution of Settlement Payments.
24 The Parties will present this Settlement Agreement to the Court and request that the Court issue an
25 order and judgment of Settlement Approval, approving and incorporating by reference the terms
26 and conditions of the Settlement Agreement (the "Order and Judgment") to the extent necessary to
27 effectuate this Settlement Agreement. The Parties agree to work cooperatively, in good faith, and
28 providing their best efforts to ensure this Settlement Agreement receives all necessary Court

1 approval, including, but not limited to, filing or defending against any motions, appeals, or orders
2 that would seek to invalidate this Settlement Agreement or any portion thereof.

3 32. Notice to the Labor and Workforce Development Agency. PAGA Counsel
4 is responsible for complying with all requirements of the PAGA governing notice to the LWDA of
5 settlement and/or judgment. Specifically, PAGA Counsel will provide a copy of the this Agreement
6 to the LWDA at the same time that it is submitted to the Court and will further provide a copy of
7 the Court's Order and Judgment to the LWDA within ten (10) calendar days after entry of said
8 judgment or order as required by Labor Code sections 2699(1)(2)-(3).

9 33. List of PAGA Members. Within fourteen (14) calendar days after entry of
10 the Order and Judgment, Defendant will provide the Settlement Administrator a complete list of all
11 PAGA Members ("PAGA Members List"). The PAGA Members List will be formatted in
12 Microsoft Office Excel or other format acceptable to the Settlement Administrator and will include
13 each PAGA Members' full name; most recent mailing address and telephone number known to
14 Defendant; Social Security number; the respective number of Pay Periods for each PAGA Member
15 worked during the PAGA Period; and any other relevant information needed to calculate settlement
16 payment distributions.

17 34. Funding of the Settlement. Within fourteen (14) calendar days after
18 Defendant receives notice of entry of the Order and Judgment, Defendant will deposit the Gross
19 PAGA Settlement Amount into the QSF to be established by the Settlement Administrator. Within
20 fourteen (14) calendar days of the funding of the Settlement, the Settlement Administrator will
21 issue payments, as provided for in this Agreement, to: (a) PAGA Members; (b) the LWDA; (c)
22 Plaintiffs' Counsel; and (d) itself. The Settlement Administrator, and not Defendant, will issue the
23 appropriate tax forms for all payments issued under this Settlement.

24 35. Individual PAGA Payments to PAGA Members. The Settlement
25 Administrator will issue each PAGA Member one check for his or her *pro rata* share of the PAGA
26 Penalties Fund along with an explanatory letter in a form substantially similar to that attached as
27 **Exhibit A.** Prior to mailing, the Settlement Administrator will perform a search based on the
28 National Change of Address Database for information to update and correct for any known or

1 identifiable address changes. Any checks returned as non-deliverable on or before the check
2 cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address
3 affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly
4 attempt to determine the correct address using a skip-trace, or other search using the name, address
5 or Social Security number of the PAGA Member involved, and will then perform a single re-
6 mailing. Checks will remain negotiable for 180 days. Any un-cashed checks which remain
7 outstanding 180 days after the mailing of the Settlement checks by the Settlement Administrator
8 will be tendered to the State Controller's Unclaimed Property Fund. All settlement payments to
9 PAGA Members will be treated as miscellaneous income for which a 1099 will be issued.

10 36. No Right to Exclusion or Objections by Representative Action Members.

11 Because this settlement resolves claims and actions brought pursuant to PAGA by Plaintiffs acting
12 as proxies and as Private Attorneys General of, and for, the State of California and the LWDA, the
13 Parties agree that no PAGA Member has the right to exclude himself or herself from the Settlement.
14 PAGA Members will be bound by the terms of the Settlement Agreement, upon its approval by the
15 Court, regardless of whether he or she cashes any payment received as a result of this Settlement.
16 The Parties also agree that no PAGA Member has the right to object to the terms of the Settlement
17 Agreement.

18 37. No Credit Toward Benefit Plans. Payments to PAGA Members as referenced

19 herein will not be utilized to calculate any additional benefits under any benefit plans to which any
20 PAGA Member may be eligible, including, but not limited to profit-sharing plans, bonus plans,
21 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other
22 benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any
23 rights, contributions, or amounts to which any PAGA Member may be entitled under any benefit
24 plans.

25 38. Nullification of Settlement Agreement. In the event that: (i) the Court does

26 not approve the Settlement as provided herein, except as provided below; or (ii) the Settlement does
27 not become final for any other reason, then this Settlement Agreement, and any documents
28 generated to bring it into effect, will be null and void and the Parties will be returned to their original

1 respective positions. A request by the Court for additional brief, or a preliminary denial pending
2 additional briefing, shall not be deemed to trigger (i), above.

3 39. Judgment and Continued Jurisdiction. After entry of the Order and
4 Judgment, the Court will have continuing jurisdiction solely for purposes of addressing: (i) the
5 interpretation and enforcement of the terms of the Settlement, (ii) settlement administration matters,
6 and (iii) such post-Judgment matters as may be appropriate under court rules or as set forth in this
7 Settlement.

8 40. Acknowledgement that the Settlement is Fair and Reasonable. The Parties
9 believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and
10 have arrived at this Settlement after arm's-length and adversarial negotiations by experienced
11 counsel and with the assistance of a skilled and experienced mediator. The Parties further
12 acknowledge that they are each represented by competent counsel and that they have had an
13 opportunity to consult with their counsel regarding the fairness and reasonableness of this
14 Settlement.

15 41. Entire Agreement. This Settlement Agreement constitutes the entirety of the
16 Parties' settlement terms as to a claim for civil penalties under PAGA. No other prior or
17 contemporaneous written or oral agreements may be deemed binding on the Parties.

18 42. Amendment or Modification. This Settlement Agreement may be amended
19 or modified only by a written instrument, signed by either the Parties or their successors-in-interest
20 or counsel for all Parties.

21 43. No Prior Assignments. The Parties and their counsel represent, covenant,
22 and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported
23 to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,
24 action, cause of action or right herein released and discharged.

25 44. Authorization to Enter Into Settlement Agreement. Counsel for all Parties
26 warrant and represent they are expressly authorized by the Parties whom they represent to negotiate
27 this Settlement Agreement and to take all appropriate action required or permitted to be taken by
28 such Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other

1 documents required to effectuate the terms of this Settlement Agreement. The Parties and their
2 counsel will cooperate with each other and use their best efforts to affect the implementation of the
3 Settlement. If the Parties are unable to reach agreement on the form or content of any document
4 needed to implement the Settlement, or on any supplemental provisions that may become necessary
5 to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve
6 such disagreement.

7 45. Cooperation and Execution of Necessary Documents. All Parties will
8 cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate
9 the terms of this Settlement Agreement.

10 46. Binding on Successors and Assigns. This Settlement Agreement will be
11 binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as
12 previously defined.

13 47. California Law Governs. All terms of this Settlement Agreement will be
14 governed by and interpreted according to the laws of the State of California.

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

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

24 50. Waiver of Certain Appeals. The Parties agree to waive appeals; except,
25 however, that Plaintiffs may appeal any reduction to the Attorneys' Fees and Costs below the
26 amount they request from the Court, and either party may appeal any court order that materially
27 alters the Settlement's terms.

55. Execution and Counterparts. This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including electronic signatures (e.g., DocuSign), facsimiles, and scanned copies of the signature pages, will be deemed to be one and the same instrument.

ALEJANDRO PANUCO

1 Dated: _____, 2022

2 _____
ADRIAN DELGADO ROSALES

3 Dated: _____, 2022

4 _____
NOE SILVA

5 Dated: 1/19/2023, ~~2022~~

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kristin landis

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BEACON SALES ACQUISITION, INC.

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

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

8 53. Mutual Preparation. The Parties have had a full opportunity to negotiate the
9 terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will
10 not be construed more strictly against one party merely by virtue of the fact that it may have been
11 prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length and
12 adversarial negotiations between the Parties, all Parties have contributed to the preparation of this
13 Settlement Agreement.

14 54. Representation By Counsel. The Parties acknowledge that they have been
15 represented by counsel throughout all negotiations that preceded the execution of this Settlement
16 Agreement, and that this Settlement Agreement has been executed with the consent and advice of
17 counsel, and reviewed in full.

18 55. Execution and Counterparts. This Settlement Agreement is subject only to
19 the execution of all Parties. However, the Settlement Agreement may be executed in one or more
20 counterparts. All executed counterparts and each of them, including electronic signatures (e.g.,
21 Docusign), facsimiles, and scanned copies of the signature pages, will be deemed to be one and the
22 same instrument.

23
24 **IT IS SO AGREED:**

25
26 Dated: _____ January 19, 2023

27 Alejandro
ALEJANDRO PANUCO
28 Panuco

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Dated: January 19, 2023

Adrian Delgado-Rosales

ADRIAN DELGADO ROSALES

Dated: _____, 2022

NOE SILVA

Dated: _____, 2022

BEACON SALES ACQUISITION, INC.

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Dated: _____, 2022

ADRIAN DELGADO ROSALES

Dated: January 19, 2023



NOE SILVA

Dated: _____, 2022

BEACON SALES ACQUISITION, INC.

<<DATE>>

<<FIRST_NAME>> <<LAST_NAME>>
<<ADDRESS 1>>
<<ADDRESS 2>>

**Re: Payment From *Panuco, et al. v. Beacon Sales Acquisition, Inc., et al.*
Case No. 21STCV18970 (Los Angeles County Superior Court)**

Dear <<FIRST_NAME>> <<LAST_NAME>>:

Enclosed you will find a check made payable to you. This is your payment from the settlement of the lawsuit entitled *Panuco, et al. v. Beacon Sales Acquisition, Inc., et al.*, Case No. 21STCV18970 (Los Angeles County Superior Court) (the “Action”).

The Action was filed against Defendant Beacon Sales Acquisition, Inc. (“Defendant”) pursuant to the California Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* (called “PAGA”). The Action was brought by three former employees of Defendant on behalf of the State of California and all allegedly “aggrieved employees” of Defendant. You have been identified as one of the allegedly aggrieved employees on whose behalf the case was brought.

The Plaintiffs in the Action claimed that Defendant owed civil penalties recoverable under PAGA for alleged violations of the California Labor Code and California Wage Orders. Defendant denies that it violated the Labor Code or California Wage Orders. In agreeing to this settlement, Defendant does not admit that it is liable in any way for any penalties.

The Court has not ruled on the merits of the Action but it has approved the settlement of PAGA civil penalties, of which 75% will be paid to the California Labor and Workforce Development Agency, and the remaining 25% will be paid to the allegedly aggrieved employees. Pursuant to the settlement, enclosed is a check for your share of a portion of the civil penalties.

The Settlement includes a release of Defendant and other related persons and entities from civil penalties recoverable under PAGA for any violations of the California Labor Code and California Wage Orders that were or could have been alleged in the Action or in any PAGA notice(s) filed with the California Labor and Workforce Development Agency by Plaintiffs based on the facts or allegations therein.

You are not a party to this lawsuit, but you and the government will be bound by the settlement in this matter and the release of claims for civil penalties. If you have any questions, you can contact the settlement administrator (whose contact information is at the top of this letter).

Very Truly Yours,

[Administrator]

EXHIBIT 2