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REPAIR

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

KEVIN JARRELL, on behalf of the individual
and all others similarly situated;

Plaintiff,

vs.

FOLSOM LAKE APPLIANCE, INC. dba LAKE
APPLIANCE REPAIR, a California Corporation;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: 34-2020-00285145

**STIPULATED REQUEST FOR
DISMISSAL OF CLASS CLAIMS
WITHOUT PREJUDICE;
DECLARATION OF MARTIN
SULLIVAN**

Date Filed: September 21, 2020

Trial Date: None Set

STIPULATED REQUEST FOR APPROVAL OF DISMISSAL OF CLASS CLAIMS
WITHOUT PREJUDICE

Plaintiffs Kevin Jarrell, Michael Burton, Alison Spackman, Kristen Pryor, Heather Schwartz, Lori Carroll, Aneury Ventura, Hunter Walsh, Michael Law, Rylee Blouch, Shir Dell, Aaron Lloyd; Adrianne Araham; Ashley Araham, Omara Yost, Rodolfo Garcia Lopez, and Hanna Matei (“Plaintiff”) and Defendant Folsom Lake Appliance, Inc., dba Lake Appliance Repairs (“Defendant”) (together referred to herein as the “Parties”), by and through their attorneys of record, hereby stipulate to dismiss the class claims without prejudice, dismiss the PAGA claims without prejudice, and dismiss the individual claims with prejudice, as follows:

I. THE INSTANT ACTION.

On September 11, 2020, Plaintiff Kevin Jarrell filed this action asserting individual and class claims for: (1) Failure to Pay Overtime Wages (Labor Code §§ 510, 1198); (2) Failure to Provide Complaint Rest Periods to and/or Pay Missed Rest Period Premiums (Labor Code § 226.7, and IWC Wage Order No. 4); (3) Failure to Provide Compliant Meal Periods to and/or Pay Missed Meal Period Premiums (Labor Code §§ 226.7, 512, and IWC Wage Order No. 4); (4) Failure to Reimburse Business Expenses (Labor Code § 2802); (5) Failure to Provide Complete and Accurate Wage Statements (Labor Code § 226(a)); (6) Waiting Time Penalties (Labor Code §§ 201-203); and (7) UCL Violation (Bus. & Prof Code §§ 17200-17204). On February 10, 2021, Plaintiff Jarrell filed a First Amended Complaint (“FAC”), adding a claim for (8) Penalties Pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”) for Violations of California Labor Code Sections set forth in the other causes of action. On July 12, 2021, Plaintiff Jarrell filed a Second Amended Complaint adding claims for (9) unpaid minimum wages (Labor Code §§ 1194, 1197, 1197.1) and (10) wages not timely paid during employment (Labor Code §§ 204, 210). The SAC also added 16 additional named Plaintiffs: Michael Burton, Alison Spackman, Kristen Pryor, Heather Schwartz, Lori Carroll, Aneury Ventura, Hunter Walsh, Michael Law, Rylee Blouch, Shir Dell, Aaron Lloyd; Adrianne Araham; Ashley Araham, Omara Yost, Rodolfo Garcia Lopez, and Hanna Matei.

1 Plaintiffs bring this class action on behalf of themselves and the following class: All
2 individuals who are or were employed by Defendant in California as a non-exempt hourly
3 employee from September 21, 2016 through the date of trial (the “Class Members”) (Code Civ.
4 Proc., § 382).” SAC, ¶ 2.

5 In addition, Plaintiffs bring this action against Defendant for economic, non- economic,
6 and compensatory damages, penalties, pre-judgment interest and post-judgment interest, and
7 costs and reasonable attorneys’ fees pursuant to, inter alia, Code of Civil Procedure section
8 1021.5. This lawsuit is also a PAGA action, brought on behalf of Plaintiffs, the State of
9 California as private attorney general, and on behalf of the following aggrieved employees: All
10 individuals who are or were employed by Defendants in California as a non-exempt hourly
11 employee from November 4, 2019 through the trial (the “Aggrieved Employees”). SAC, ¶ 4.

12 **II. THE MERITS OF THE CASE IN LIGHT OF FACTUAL AND LEGAL**
13 **DEFENSES**

14 **A. MERITS AND LEGAL DEFENSES OF CASE**

15 Plaintiffs alleged as follows: that the Defendant failed to fully conform their pay practices
16 to the requirements of the law during the relevant statutory periods; that the other Class Members
17 were not compensated for all hours worked including, but not limited to, all hours they were
18 subject to the control of Defendant and/or suffered or permitted to work under the Labor Code
19 and the Applicable Wage Order. SAC, ¶ 22. This off the clock work would, at times, result in
20 unpaid overtime, which was not always calculated based upon the correct regular rate due to
21 forms of compensation such as bonus and other non-discretionary payments. SAC, ¶¶ 36, 61-62.

22 Defendant asserts that all work was on the clock and there was no rounding or other
23 uncaptured compensable time. (Sullivan Decl., 3.) Defendant also asserts that it paid overtime
24 based upon the correct regular rate and that other forms of compensation, such as bonus, were
25 non-discretionary. *Id.* Plaintiffs’ analysis of pay records provided by Defendant reflected a
26 modest underpayment of overtime and double-time should bonus and other forms of
27 compensation be found to be non-discretionary, and thus required to be included when
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1 calculating the regular rate of pay. *Id.* The analysis of payroll and time records also revealed no
2 evidence rounding. *Id.*

3 Plaintiffs contend that there was an on-premises rest period policy in place, which
4 rendered their rest periods “on-duty.” (Sullivan Decl., ¶ 4.) Plaintiffs also contend that their
5 workday was often too busy to allow them to take timely, uninterrupted, and duty-free meal and
6 rest breaks. *Id.* Defendant asserts that there was sufficient time and coverage for meal and rest
7 breaks, and it is not required to police them so long as they are provided. *Id.* Defendant also
8 asserts that it never enforced an on-premises rest period policy. *Id.* Additionally, Defendant
9 produced time records showing that across all shifts of the sample time and pay records,
10 approximately 19% of shifts contained a unique meal period violation, which Defendant
11 contends does not demonstrate an overwhelming inability for employees to timely take meals
12 and instead, Defendant argues, reflects individuals who, on their own volition, took short, late, or
13 skipped a first or second meal break. *Id.* Defendant’s time and payroll records also show that,
14 although infrequent, some meal period penalties were paid to putative class members. *Id.*

15 Plaintiffs alleged they were required to use their personnel cellular phones without
16 reimbursement. (SAC, ¶ 32.) Defendants assert that they maintained a reimbursement policy and
17 that Plaintiffs’ allegations are individualized and not common to other employees. (Sullivan
18 Decl., 4.)

19 The waiting time, wage statement, pay period, waiting time, UCL, and PAGA claims are
20 all derivative of the aforementioned claims. (Sullivan Decl., 5.) Importantly, no facial violations
21 appear on Plaintiffs’ wage statements and the timing of pay periods during employment appear
22 to comply with Labor Code § 204 based on Plaintiffs’ wage statements. *Id.* Therefore, the same
23 defenses apply. *Id.*

24 **B. JOINDER NOT NECESSARILY IMPRACTICABLE; CLASS**
25 **RESOLUTION NOT CLEARLY A SUPERIOR METHOD**

26 California Code of Civil Procedure section 382 provides, “when the question is one of a
27 common or general interest, of many persons, or when the parties are numerous, and it is
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1 impracticable to bring them all before the court, one or more may sue or defend for the benefit of
2 all.” Here, the estimated class size is 178 individuals, which is sufficient to meet class
3 numerosity requirements. (Sullivan Decl., 6.) Nonetheless, 17 separate individuals sought to
4 bring claims against Lake Appliance and join the case, which supports Defendant’s contention
5 that individuals are empowered to bring separate individual claims should they have experienced
6 a violation of wage and hour laws, and that a class action is not a superior method to resolve the
7 claims of individuals who are also putative class members. *Id.*

8 **C. DEFENDANT’S ALLEGED PRACTICES MAY NOT BE EASILY**
9 **CERTIFIABLE; INDIVIDUAL ISSUES MAY PREDOMINATE; AND PAGA**
10 **MAY BE UNMANAGEABLE**

11 Defendant’s timekeeping, overtime, pay period, and meal and rest period practices
12 applied across numerous employee groups (customer service representatives, inventory/parts
13 staff, field technicians, dispatch, and administrative support), in numerous locations (Fair Oaks,
14 Orangeville, Santa Rosa, Sacramento, and remote employees), and overseen by numerous
15 different managers across these various locations. (Sullivan Decl., 7.)

16 Due to the individualized experiences of hourly employees with taking breaks and/or
17 timekeeping and differing communications with managers about such business practices,
18 Defendant contends that individualized issues may predominate. (Sullivan Decl., ¶ 8.) Relatedly,
19 Defendant contends that manageability may be difficult to establish for purposes of prevailing on
20 a PAGA claim because proving the case on the merits may require mini trials for affected
21 employees. *Id.*

22 **D. MEDIATION, DEFENDANT’S FINANCIAL LIMITATIONS, AND THE**
23 **RESOLUTION OF INDIVIDUAL CLAIMS**

24 The Parties mediated this matter on November 17, 2021, before experienced wage and
25 hour mediator Tripper Ortman. (Sullivan Decl., ¶ 9.) Defendant asserted an inability to pay any
26 significant amount of money to settle claims on a class or representative basis, fearing
27 bankruptcy and/or shutting down of the business in the event of a settlement of judgment. *Id.*
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1 Specifically, Defendant represents that it operates its business on the float and has limited funds
2 to make payroll from month to month. *Id.* Additionally, Defendant asserts that it recently lost
3 money on investments in real property. *Id.* In short, due to financial limitations and current
4 economic pressures, Defendant cannot satisfy an adequately large judgment or settlement on a
5 class-wide or representative basis due to the significant number of employees who worked
6 during the class and PAGA periods and whose claims would be extinguished in the event of a
7 settlement in the range that Defendant was able to pay. *Id.*

8 The case did not resolve on the day of mediation, and instead, Plaintiffs held open an
9 offer to resolve the case on an individual basis only on behalf of the individual named Plaintiffs,
10 with dismissal without prejudice as to class and PAGA claims. (Sullivan Decl., ¶ 10.)
11 Negotiations continued for months with a finalized Memorandum of Understanding ultimately
12 executed by all Parties between May and June 2022. *Id.*

13 The resolution of this matter, which includes dismissal without prejudice of the class and
14 PAGA claims, does not prejudice the putative class members, whose claims and rights to pursue
15 damages and penalties remain fully intact. (Sullivan Decl., ¶ 11.) The Parties therefore seek
16 approval of the dismissal of the class claims without prejudice to allow for individual settlements
17 to go forward for the seventeen Plaintiffs who stepped forward to litigate their claims. *Id.* By
18 agreement, Plaintiffs dismiss the PAGA claim without prejudice as well. *Id.*

19 **III. THE PARTIES DIMISSAL WITHOUT PREJUDICE OF CLASS AND PAGA**
20 **CLAIMS.**

21 **A. DISMISSAL WITHOUT PREJUDICE OF THE PAGA CLAIMS; NOTICE**
22 **PROVIDED TO THE LWDA**

23 When PAGA claims are settled, the trial court must “review and approve” the settlement.
24 Labor Code § 2699(l). However, when PAGA claims are dismissed without prejudice and not
25 settled, the trial court does not review and approve such a dismissal. Here, by agreement, Plaintiffs
26 dismiss the PAGA claim without prejudice, contingent upon the approval of the dismissal of the
27 class claims without prejudice. (Sullivan Decl., ¶ 12.) Plaintiffs submitted a copy of the stipulation
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1 to dismiss, the settlement agreement, and proposed order to the LWDA. *Id.*

2 **B. DISMISSAL WITHOUT PREJUDICE OF THE CLASS CLAIMS**

3 ***1. Request for Dismissal Without Prejudice of The Class Claims Is Supported under***
4 ***Cal. R. Ct. 3.770(a)***

5 Pursuant to California Rules of Court, Rule 3.770(a), Plaintiffs' counsel provides the
6 concurrently filed and attached declaration setting forth the facts upon which Plaintiffs' request
7 the dismissal without prejudice of the class claims. (Sullivan Decl., ¶ 13.) The strengths and
8 weaknesses of the claims alleged, the participation of 17 individual Plaintiffs in the lawsuit which
9 calls into question to superiority of a class resolution of claims, and Defendant's limited resources
10 to pay a settlement or judgment adequate to extinguish the claims of the putative class members
11 are set forth in this declaration. (Sullivan Decl., ¶¶ 3-12.) Based upon discovery, investigation,
12 mediation, and lengthy negotiations with the assistance of a seasoned mediator, Plaintiffs' counsel
13 determined that settlement on an individual basis and dismissal of class claims without prejudice
14 is warranted and will not prejudice the putative class members. (Sullivan Decl., ¶ 13.) Indeed, no
15 prejudice will result to any putative class members as a result of Plaintiffs' dismissal without
16 prejudice of the Class claims, pursuant to California Rules of Court, Rule 3.770 ("[T]he action
17 may be dismissed without notice to the class members if the court finds that the dismissal will not
18 prejudice them."). *Id.* While the individual Plaintiffs receive consideration for the dismissal with
19 prejudice of their individual claims and the execution of a general release of all claims known and
20 unknown under Civil Code section 1542, no consideration is being exchanged for the dismissal of
21 the class claims, although such dismissal without prejudice of the class claims follows naturally
22 from the resolution of the named Plaintiffs' individual claims. *Id.*

23 In particular, the requested dismissal without prejudice of the class claims will not affect
24 the ability or entitlement of any other putative class member to seek any relief or remedies for
25 underlying violations. (Sullivan Decl., ¶ 14.) Rather, the Parties have agreed to and now seek to
26 dismiss the named Plaintiffs' individual claims with prejudice. *Id.*

1 **2. No Hearing Required for Dismissal Under Cal. R. Ct. 3.770(b).**

2 The Court is authorized to dismiss without prejudice the class claims under California Rule
3 of Court, Rule 3.770(b), although the Parties make themselves available for a hearing should the
4 Court order one. (Sullivan Decl., ¶ 15.)

5 **3. No Notice To Putative Class Members; No Prejudice To Them In Compliance**
6 **with Cal. R. Ct. 3.770(c).**

7 The Parties' individual settlement agreement is not to the detriment of the putative class
8 members. (Sullivan Decl., ¶ 16.) For example, this proposed class in this action has not been
9 certified and no notice of the pendency of this action has been made, either orally or in writing. *Id.*
10 Moreover, no notice has been required to be provided to the putative class members; there is no
11 pending request for preliminary or final approval of the instant claims; and the terms of the
12 individual settlement agreement are reasonable. *Id.* Therefore, no notice to putative class members
13 is required in order to dismiss without prejudice the class claims in this matter. *Id.*

14 **C. DISMISSAL WITH PREJUDICE OF PLAINTIFFS' INDIVIDUAL**
15 **CLAIMS AND GENERAL RELEASE OF ALL CLAIMS, KNOWN AND**
16 **UNKNOWN**

17 The 17 individually named Plaintiffs have all provided a general release of all claims
18 known and unknown as part of this settlement, which include but are not limited to the wage and
19 hour claims alleged here. (Sullivan Decl., ¶ 17.) In addition to the releases provided, the settlement
20 covers all attorney fees and litigation costs expended in this matter. *Id.* In exchange for these
21 dismissals and releases, the 17 individually named Plaintiff's shall receive a gross settlement
22 payment of \$265,000, to be divided equitably according to an agreement covered by the attorney-
23 client privilege based in part upon the relative time worked with the Defendant. *Id.*

24 **THEREFORE**, the Parties hereby stipulate, and subject to the approval of this Court,
25 that:

26 1. Plaintiffs' class allegations and claims shall be dismissed without prejudice. The
27 dismissal of these class allegations is without prejudice as to the rights of any of the putative class
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1 members whom Plaintiffs have been attempting to represent to date. In accordance with California
2 Rule of Court, Rule 3.770, the dismissal of the uncertified class claims may be approved without
3 notice being given to members of the proposed class because the dismissal would not prejudice
4 any putative class members.

5 2. The PAGA claim as to all aggrieved employees is dismissed without prejudice.

6 3. Plaintiffs' individual claims shall be dismissed with prejudice.

7 4. By this stipulation and settlement, Defendants do not admit wrongdoing or waive
8 any factual or legal defenses.

9 5. The Parties shall bear their own costs, attorneys' fees, expenses, and disbursements
10 incurred in this action.

11 Dated: 7/13/22

SULLIVAN EMPLOYMENT LAW PC

12
13 By: 

14 Martin Sullivan, Esq.

15 *Attorneys for Plaintiff, the Class, and Aggrieved*
16 *Employees*

17
18 Dated: 7/13/2022

ELGUINDY, MEYER & KOEGEL, APC

19
20 By: 

21 David M. Daniels, Esq.

22 *Attorneys for Defendant*
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4 **DECLARATION OF MARTIN SULLIVAN**

5 I, Martin Sullivan, declare as follows:

6 1. I am an attorney at law duly licensed to practice law in the state of California. I am
7 an attorney affiliated with the law firm of Sullivan Employment Law PC. I am the attorney
8 responsible for representing Plaintiffs Kevin Jarrell, Michael Burton, Alison Spackman, Kristen
9 Pryor, Heather Schwartz, Lori Carroll, Aneury Ventura, Hunter Walsh, Michael Law, Rylee
10 Blouch, Shir Dell, Aaron Lloyd; Adrienne Araham; Ashley Araham, Omara Yost, Rodolfo Garcia
11 Lopez, and Hanna Matei ("Plaintiffs") in this action against Defendant Folsom Lake Appliance,
12 Inc., dba Lake Appliance Repairs ("Defendant") (together referred to herein as the "Parties").
13 Except where otherwise indicated, I have personal knowledge of the following facts, and if called
14 to testify, could and would competently testify thereto.

15 2. I make this declaration in support of the Parties' Stipulated Request for Dismissal.

16 3. **Merits and Legal Defenses of Case.** Through formal and informal discovery
17 exchanges and mediation, I have heard and now relay Defendant's assertions that all work by
18 putative class members was on the clock and there was no rounding or other uncaptured
19 compensable time. Defendant also asserts that it paid overtime based upon the correct regular rate
20 and that other forms of compensation, such as bonus, were non-discretionary. These issues are
21 contested. Specifically, my analysis of time and pay records provided by Defendant reflect a
22 modest underpayment of overtime and double-time should bonus and other forms of compensation
23 be found to be non-discretionary, and thus required to be included when calculating the regular
24 rate of pay. My analysis of payroll and time records does not evidence rounding.

25 4. I have reviewed Defendant's policies and have identified a policy that restricted
26 movement during rest periods, specifically requiring that rest periods be taken on company
27 premises. I, on behalf of Plaintiffs, contend that this restriction rendered rest periods "on-duty."
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1 Plaintiffs also contend that their workday was often too busy to allow them to take timely,
2 uninterrupted, and duty-free meal and rest breaks. Through formal and informal discovery
3 exchanges and mediation, I have heard and now relay Defendant's assertion that there was
4 sufficient time and coverage for meal and rest breaks, and it is not required to police them so long
5 as they are provided. Defendant also asserts that it never enforced an on premises rest period
6 policy. Additionally, Defendant produced time records, which I and an expert analyzed, which
7 reflect that across all shifts of the sample time and pay records, approximately 19% of shifts
8 contained a unique meal period violation. Defendant contends that this analysis does not
9 demonstrate an overwhelming inability for employees to timely take meals and, Defendant argues,
10 instead reflects individuals who, on their own volition, took short, late, or skipped a first or second
11 meal break. My analysis of Defendant's time and payroll records also show that, although
12 infrequent, Defendant did pay some meal period penalties to putative class members.

13 5. Admittedly, the waiting time, wage statement, pay period, waiting time, UCL, and
14 PAGA claims are all derivative of the aforementioned claims. My review of the wage statements
15 did not reveal any apparent facial violations and the timing of pay periods during employment
16 appear to comply with Labor Code § 204 based on Plaintiffs' wage statements. Therefore, the same
17 defenses apply.

18 6. **Joinder Not Necessarily Impracticable; Class Resolution Not Clearly A**
19 **Superior Method.** Through formal and informal discovery exchanges and mediation, Defendant
20 has estimated the putative class size is 178 individuals. Admittedly, 178 individuals is sufficient
21 to meet class numerosity requirements. Nonetheless, 17 separate individuals sought to bring claims
22 against Lake Appliance and join the case, which supports Defendant's contention that individuals
23 empowered to bring separate individual claims should they have experienced a violation of wage
24 and hour laws, and that a class action is not a superior method to resolve the claims of individuals
25 who are also putative class members.

26 7. **Defendant's Alleged Practices May Not Be Easily Certifiable; Individual**
27 **Issues May Predominate; and PAGA May Be Unmanageable.** Through discovery and
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1 investigation, I have learned that the individually named Plaintiffs variously worked as customer
2 service representatives, inventory/parts staff, field technicians, dispatch, and administrative
3 support. Additionally, they worked in various California locations, including Fair Oaks,
4 Orangeville, Santa Rosa, Sacramento, and remote. Moreover, numerous different managers
5 oversaw the individually named Plaintiffs across these various locations. Defendant's
6 timekeeping, overtime, pay period, and meal and rest period practices applied across these various
7 employee types, locations, and with differing supervisors, all rendering these practices subject to
8 attacks on the basis that individual issues of fact apply. Defendant contends that this presents a
9 potentially significant barrier to certification because individualized inquiries may be required.

10 8. Again, due to the potentially individualized experiences of hourly employees with
11 taking breaks and/or timekeeping and differing communications with managers about such
12 business practices, Defendant contends that individualized issues may predominate. Relatedly,
13 Defendant contends that manageability may be difficult to establish for purposes of prevailing on
14 a PAGA claim because proving the case on the merits may require mini trials for affected
15 employees.

16 9. **Mediation, Defendant's Financial Limitations, And The Resolution Of**
17 **Individual Claims.** I and counsel for Defendant coordinated a mediation, which took place on
18 November 17, 2021, before experienced wage and hour mediator Tripper Ortman. As part of
19 settlement discussions, Defendant asserted an inability to pay a significant amount of money to
20 settle claims on a class-wide or representative basis, fearing bankruptcy and/or shutting down of
21 the business in the event of a settlement or judgment on a broad basis. Specifically, Defendant
22 represents that it operates its business on the float and has limited funds to make payroll from
23 month to month. In short, due to financial limitations and current economic pressures, Defendant
24 represented that it cannot satisfy an adequately large judgment or settlement on a class-wide or
25 representative basis due to the significant number of employees who worked during the class and
26 PAGA periods and whose claims would be extinguished in the event of a settlement in the range
27 that Defendant was able to pay.
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1 10. The case did not resolve on the day of mediation. Instead, I on behalf of the
2 individually named Plaintiffs, held open an offer to resolve the case on an individual basis only on
3 behalf of the individual named Plaintiffs, with dismissal without prejudice as to class and PAGA
4 claims. Negotiations continued for months with a finalized Memorandum of Understanding
5 ultimately executed by all Parties between May and June 2022.

6 11. The resolution of this matter, which includes dismissal without prejudice of the
7 class and PAGA claims, does not prejudice the putative class members, whose claims and rights
8 to pursue damages and penalties remain fully intact. The Parties therefore seek approval of the
9 dismissal of the class claims without prejudice to allow for individual settlements to go forward
10 for the seventeen Plaintiffs who stepped forward to litigate their claims. By agreement, the named
11 Plaintiffs dismiss the PAGA claim without prejudice as well, contingent upon the approval of the
12 dismissal of the class claims without prejudice.

13 12. **Dismissal Without Prejudice of The PAGA Claims; Notice Provided to the**
14 **LWDA.** When PAGA claims are settled, the trial court must “review and approve” the settlement.
15 Labor Code § 2699(l). However, when PAGA claims are dismissed without prejudice and not
16 settled, the trial court does not review and approve such a dismissal. Here, by agreement between
17 the Parties, Plaintiffs dismiss the PAGA claim without prejudice, contingent upon the approval of
18 the dismissal of the class claims without prejudice. I electronically submitted a copy of this
19 stipulation, the settlement agreement, and proposed order to the LWDA, a receipt of which is
20 attached hereto as **Exhibit A**.

21 13. **Request for Dismissal Without Prejudice of The Class Claims Is Supported**
22 **under Cal. R. Ct. 3.770(a).** Pursuant to California Rules of Court, Rule 3.770(a), I provide this
23 declaration to set forth the facts upon which Plaintiffs’ request the dismissal without prejudice of
24 the class claims. Through my evaluation of the strengths and weaknesses of the claims alleged, the
25 participation of 17 individual Plaintiffs in the lawsuit which calls into question to superiority of a
26 class resolution of claims, and Defendant’s limited resources to pay a settlement or judgment
27 adequate to extinguish the claims of the putative class members, a settlement on an individual basis
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1 and dismissal of class claims without prejudice is warranted and will not prejudice the putative
2 class members. Indeed, no prejudice will result to any putative class members as a result of
3 Plaintiffs' dismissal without prejudice of the Class claims, pursuant to California Rules of Court,
4 Rule 3.770 (“[T]he action may be dismissed without notice to the class members if the court finds
5 that the dismissal will not prejudice them.”). While the individual Plaintiffs receive consideration
6 for the dismissal with prejudice of their individual claims and the execution of a general release of
7 all claims known and unknown Civil Code section 1542, no consideration is being exchanged for
8 the dismissal of the class claims, although it follows naturally from the resolution of the named
9 Plaintiffs' individual claims.

10 14. In particular, the requested dismissal without prejudice of the class claims will not
11 affect the ability or entitlement of any other putative class member to seek any relief or remedies
12 for underlying violations. Rather, the Parties have agreed to and now seek to dismiss the named
13 Plaintiffs' individual claims with prejudice.

14 15. **No Hearing Required for Dismissal Under Cal. R. Ct. 3.770(b).** The Parties do
15 not seek a hearing for approval of the requested dismissal of the class claims without prejudice,
16 however, will appear should the Court request it.

17 16. **No Notice To Putative Class Members; No Prejudice To Them In Compliance**
18 **with Cal. R. Ct. 3.770(c).** The Parties' individual settlement agreement is not to the detriment of
19 the putative class members. For example, this proposed class in this action has not been certified
20 and no notice of the pendency of this action has been made, either orally or in writing. Moreover,
21 no notice has been required to be provided to the putative class members; there is no pending
22 request for preliminary or final approval of the instant claims; and the terms of the individual
23 settlement agreement are reasonable. Therefore, no notice to putative class members is required
24 in order to dismiss without prejudice the class claims in this matter.

25 17. **Dismissal With Prejudice of Plaintiffs' Individual Claims And General**
26 **Release Of All Claims, Known And Unknown; Consideration Offered.** The 17 individually
27 named Plaintiffs have all provided a general release of all claims known and unknown as part of
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1 this settlement, which include but are not limited to the wage and hour claims alleged here. In
2 addition to the releases provided, the settlement covers all attorney fees and litigation costs
3 expended in this matter. A true and correct copy of the settlement agreement is attached hereto as
4 **Exhibit B.** In exchange for these dismissals and releases, the 17 individually named Plaintiff's
5 shall receive a gross settlement payment of \$265,000, to be divided equitably according to an
6 agreement covered by the attorney-client privilege based in part upon the relative time worked
7 with the Defendant.

8 I declare under penalty of perjury under the laws of the State of California that the
9 foregoing is true and correct.

10 Executed this 7/13/22, at Los Angeles, California.

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13 MARTIN SULLIVAN
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EXHIBIT A

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EXHIBIT B

Memorandum of Understanding (“MOU”)
Jarrell et al. v. Folsom Lake Appliance, Inc. et al.
Sacramento County Superior Ct. Case No.: 34-2020-00285145

1. This is a comprehensive settlement and release of individual Plaintiffs Kevin Jarrell, Michael Burton, Alison Spackman, Kristen Pryor, Heather, Schwartz, Lori Carroll, Aneury Ventura, Hunter Walsh, Michael Law, Rylee Blouch, Shir Dell, Aaron Lloyd, Adrienne Araham, Ashley Araham, Omara Yost, Rodolfo Garcia Lopez, and Hanna Matei’s (“Plaintiffs”) claims, and a dismissal without prejudice as to the class and PAGA claims also at issue.
2. Released Parties as referenced herein and as released in this Settlement are Defendants *Folsom Lake Appliance, Inc. dba Lake Appliance Repairs* and all their present and former parent corporation, affiliates, subsidiaries, divisions, predecessors, insurers, successors, contractors, managers, members, investors, and assigns, and their current and former employees, attorneys, officers, directors, and agents thereof, both individually and in their business capacities, and their employee benefit plans and programs and the trustees, administrators, fiduciaries, and insurers of such plans and programs, and any other individual or entity which could be liable for any of the Released Claims (hereinafter “Released Parties”).
3. By this settlement agreement, Plaintiffs, on their own behalf, and on behalf of his grantees, agents, representatives, heirs, executors, administrators, devisees, trustees, successors, assigns, assignors, attorneys, and any other entities in which Plaintiffs have an interest (collectively, the “Releasing Parties”) hereby agree to release and forever discharge the Released Parties from any and all liabilities, causes of action, charges, complaints, suits, claims, obligations, costs, losses, damages, rights, judgments, attorneys’ fees, expenses, bonds, bills, penalties, fines, and all other legal responsibilities of any form whatsoever, whether known or unknown, whether suspected or unsuspected, whether fixed or contingent, including those arising under any theory of law, whether common, constitutional, statutory or other, of any jurisdiction, foreign or domestic, whether in law or in equity, which they now have, ever had, or may claim to have against any of them, that existed prior to and including the Effective Date, including, without limitation, those arising out of or relating to: (i) their Complaint filed in Sacramento Superior Ct. Case No.: 34-2020-00285145, and/or the subject matter thereof including of all claims arising from her employment, including claims for wages and penalties, under Labor Code §§ 201-203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, claims under the Fair Employment and Housing Act, and any other non-waivable claim under common law, contract, or statute; (ii) this Agreement, (iii) any acts or omissions by the Releasing Parties occurring, or conditions existing, prior to the Effective Date; and (iv) any costs, attorneys’ or

expert fees, or expenses incurred or to be incurred by the Releasing Parties in connection with the subject matter hereof (collectively, the “Released Claims”). The Releasing Parties hereby acknowledge and agree that, except as expressly set forth in this Agreement, the Released Parties have no other liabilities or obligations, of any kind or nature, owed to the Releasing Parties, in connection with or relating to the Released Claims or otherwise.

4. Plaintiffs also knowingly waive their rights under Civil Code § 1542, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

5. Plaintiffs shall file all documents required to dismiss without prejudice the class and PAGA claims.
6. In exchange for the promises contained herein, Defendant *Folsom Lake Appliance, Inc.* shall pay to Plaintiffs \$265,000 within 10 court days of: (1) the order dismissing without prejudice the PAGA and Class claims; and (2) delivery of form W-9s to counsel for Defendant, Ryan Hanlon ([rhanlon@emklawyers.com](mailto:ghanlon@emklawyers.com)), whichever is later. The check shall be made payable as follows:

One check made payable to “Sullivan Employment Law PC Client Trust Account” in the amount of \$265,000.00 as complete consideration to Plaintiffs, including for fees and costs, for which Defendant shall issue Sullivan Employment Law PC a 1099.

The check shall be delivered to: Sullivan Employment Law, P.C., 1801 Century Park East, Ste. 850, Los Angeles, CA 90067.

The releases set forth in paragraphs 3 and 4 shall only take effect when the Court approves the dismissal without prejudice of the Class and PAGA claims and the consideration is received.

7. Notwithstanding anything else contained herein, this agreement shall be enforceable under CCP 664.6 and admissible under California Evidence Code 1123(a). Regardless of any settlement privilege or other rules of evidence, this MOU may be admitted in Court and enforceable. A Party required to enforce this agreement pursuant to CCP 664.6 who prevails shall be entitled to its attorney fees and costs.

8. Neither this MOU or the settlement of this matter will constitute an admission by Defendant of any form of liability or allegation against it.
9. Electronic signatures on this MOU shall have the same force and effect as traditional signatures.

Date 6/6/2022

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Name:

Defendant Folsom Lake Appliance, Inc

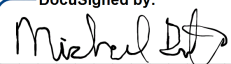
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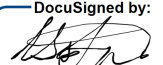
Plaintiff Kevin Jarrell

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Plaintiff Michael Burton

Date 5/5/2022

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Plaintiff Alison Spackman

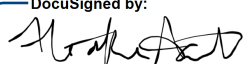
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Plaintiff Kristen Pryor

Date 5/5/2022

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Plaintiff Heather Schwartz

Date 5/5/2022

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Plaintiff Lori Carroll

Date 5/31/2022


Plaintiff Aneury Ventura

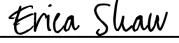
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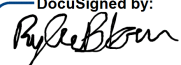
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Plaintiff Hunter Walsh

Date 6/2/2022

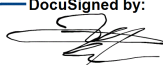

Plaintiff Michael Law

Date 5/5/2022

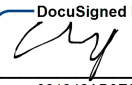
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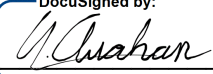
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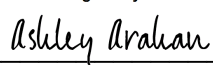
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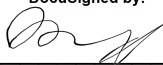
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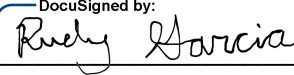
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Plaintiff Ashley Arahan

Date 5/5/2022

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Plaintiff Omara Yost

Date 5/5/2022

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Plaintiff Rodolfo Garcia Lopez

Date 5/31/2022


Plaintiff Hanna Matei