

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement is made by and between Plaintiff Jeremy Kimball ("Plaintiff"), on behalf of himself and on behalf of the State of California and all Private Attorneys General Act ("PAGA") Settlement Group Members, on the one hand, and Defendant R. F. MacDonald Co. on behalf of itself and all of its current and former owners, parents, subsidiaries, members, representatives, agents, insurers, officers, directors, and employees (referred to collectively herein as "Defendant"), on the other (Plaintiff and Defendant are collectively referred herein as, the "Parties", and individually as a "Party"), subject to the approval of the Court in accordance with California Labor Code section 2699(l)(2), upon and subject to the following terms and conditions.

I. DEFINITIONS

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

- A. "Action" means the civil action titled *JEREMY KIMBALL, as an individual on behalf of himself and on behalf of all employees similarly situated v. R. F. MACDONALD CO., a California corporation; and DOES 1 through 50, inclusive* (the "Action"), pending before Superior Court of the State of California, for the County of San Diego (the "Court"), No. 37-2021-00007728-CU-OE-CTL.
- B. "Agreement" or "Settlement Agreement" means this PAGA Settlement Agreement.
- C. "Complaint" means the Complaint filed by Plaintiff on February 23, 2021, in the Action, and all amendments thereto.
- D. "Court" means the Superior Court for the State of California, County of San Diego.
- E. "Covered Period" means the period of time from one year plus sixty-five (65) days prior to the filing of the Complaint (February 23, 2021) through the date of the filing of the Motion for an Order Approving the Settlement Agreement (the "Motion") or December 20, 2021, whichever is sooner.
- F. "Defendant" means the Defendant in this Action, R. F. MacDonald Co., a California corporation.
- G. "Effective Date" means the date upon entry of an Order by the Court approving the Settlement Agreement.
- H. "Defendant's Counsel" means Shauna N. Correia, Esq. and Rachel Davey, Esq. of Weintraub Tobin Chediak Coleman Grodin law corporation.
- I. "Judgment" means the Order Granting Approval of Settlement and Entering Final Judgment entered by the Court in substantially the same form evidenced by Exhibit A to this Agreement and incorporated by reference into this Agreement.

- J. “LWDA” means the California Labor and Workforce Development Agency.
- K. “LWDA Payment” means the portion of the payment from the Total Settlement Amount to be paid to the LWDA under the Settlement Agreement.
- L. “Net Settlement Amount” means the amount from the Total Settlement Amount that is available for distribution as Settlement Shares to PAGA Settlement Group Members and the LWDA Payment after deduction for (i) the Representative Plaintiff’s Payment (if any), (ii) the Plaintiff’s Counsel Fees and Expenses Payment, and (iii) the Settlement Administrator’s fees and expenses. If any Settlement Share check is not timely cashed by a Settlement Group Member, that share will be sent to the California State Controllers’ Office Unclaimed Property Fund in the name of the Settlement Group Member.
- M. “PAGA” means the Private Attorneys General Act of 2004, California Labor Code section 2698 *et seq.*
- N. “PAGA Notice” means a notice of proposed settlement pursuant to PAGA, substantially in the form evidenced by Exhibit B to this Agreement.
- O. “PAGA Released Claims” means all claims under PAGA that are pled in Plaintiff’s Representative Action Complaint, or which could have been pled under the PAGA based on the factual allegations in Plaintiff’s Representative Action Complaint, that arose during the Covered Period.
- P. “PAGA Settlement Group Members” means all current and former aggrieved employees of Defendant in California during the covered period. Defendant represents to Plaintiff that this number is approximately two hundred forty-two (242).
- Q. “Plaintiff” means the plaintiff in the Action, Jeremy Kimball.
- R. “Plaintiff’s Counsel” means Kevin Mahoney, Esq. and George Singer, Esq., of Mahoney Law Group, APC.
- S. “Released Parties” means Defendant and any present and former parents, subsidiaries, owners, shareholders, members, and their respective officers, directors, employees, representatives, insurers, agents, attorneys, and any other successors, assigns and legal representatives and its related persons and entities.
- T. “Representative Plaintiff’s Payment” means the special payment made to Plaintiff to compensate him for initiating and pursuing the Action, undertaking the risk of liability for attorneys’ fees and expenses in the event that he was unsuccessful in the prosecution of the Action.
- U. “Settlement” means the Parties’ agreement, as detailed herein, to dispose of the Action and all other claims, demands, rights, promises, covenants, actions, suits, causes of action, obligations, debts, expenses, administration costs, damages,

penalties fines, interest, injuries, compensation, judgments, orders and liabilities that were or could have been alleged in, arising from or related to the Action.

- V. “Settlement Administrator” means Phoenix Class Action Administrators.
- W. “Settlement Share” means the portion of the Net Settlement Amount allocable to each PAGA Settlement Group Member as provided by this Agreement.
- X. “Total Settlement Amount” means the total amount to be paid by Defendant as provided by this Agreement as provided in paragraph III.B herein. The Total Settlement Amount is Five Hundred Thousand Dollars (\$500,000.00). The Total Settlement Amount will cover (i) all Settlement Shares to PAGA Settlement Group Members, (ii) the LWDA Payment, (iii) the Representative Plaintiff’s Payment, (iv) the Plaintiff’s Counsel Fees and Expenses Payment, and (v) the Settlement Administrator’s fees and expenses. The Total Settlement Amount will not be increased unless there is ultimately 12.5% more than the two hundred forty-two (242) total PAGA Settlement Group Members during the covered period (i.e., two hundred seventy two (272) or more total PAGA Settlement Group Members), in which case the Gross Settlement Amount shall be increased proportionally, for example, the settlement would increase by Sixty Two Thousand Five Hundred Dollars (\$62,500.00) should the increase in aggrieved employees be 12.5%. The settlement is non-reversionary, such that the entire Gross Settlement Amount will be disbursed. The Total Settlement Amount shall not be increased if the number of aggrieved employees increases due to new hires on or after December 20, 2021 (i.e., Defendant shall not be penalized due to Plaintiff’s delay filing, or the Court’s delay in hearing/approving, the Motion for Approval of the PAGA Settlement).

II. FACTUAL BACKGROUND

- A. On or about December 17, 2020, Plaintiff served a letter on the LWDA and Defendant in accordance with the requirements of Labor Code section 2699.3, to notify the LWDA of alleged violations by Defendant of California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1174, 1194, 2802, 2698, and 2699.3 for alleged failures to properly pay and reimburse employees. The LWDA declined to investigate the alleged violations, and Plaintiff initiated this Action.
- B. On February 23, 2021, Plaintiff commenced this Action.
- C. In the Action, Plaintiff seeks penalties under PAGA on behalf of himself and the PAGA Settlement Group Members for the alleged violations of California’s Labor Code.
- D. Prior to mediation, Defendant supplied Plaintiff with employee and payroll data, meal waivers, handbooks and policies, and evidence of employee expense reimbursements, which Plaintiff’s Counsel’s expert reviewed and analyzed.

- E. On October 14, 2021, the Parties participated in a mediation presided over by Jill Sperber Esq. During the mediation, each side, represented by its respective counsel, recognized the risk of an adverse result in the Action and agreed to settle the Action, and all other matters covered by this Agreement pursuant to the terms and conditions of this Agreement.
- F. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that Plaintiff's claims in the Action have merit or that they have any liability to Plaintiff or the PAGA Settlement Group on those claims, or as an admission by Plaintiff that Defendant's defenses in the Action have merit.

III. SETTLEMENT TERMS AND CONDITIONS

- A. **Non-Admission.** Nothing in this Settlement nor the acts to be performed or judgments to be entered pursuant to the terms of the Settlement shall be construed to be an admission by Plaintiff that his claims do not have merit or by Defendant of any liability or wrongdoing as to Plaintiff, Aggrieved Employees or any other person. Defendant specifically disclaims any such liability or wrongdoing. Defendant deny the allegations in the Action and specifically denies that they have committed any misconduct, statutory or regulatory violation, wrongdoing, or any other actionable conduct of any kind. The Parties have entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses and risks. This Settlement and any related court documents or orders are not and may not be cited or admitted as evidence of liability.
- B. **Total Settlement Amount.** Subject to the terms and conditions of this Agreement and court approval, the Total Settlement Amount is Five Hundred Thousand Dollars (\$500,000.00). The Total Settlement Amount will cover (i) all Settlement Shares to PAGA Settlement Group Members, (ii) the LWDA Payment, (iii) the Representative Plaintiff's Payment, (iv) the Plaintiff's Counsel Fees and Expenses Payment, and (v) the Settlement Administrator's fees and expenses. The settlement is non-reversionary, such that the entire Gross Settlement Amount will be disbursed. Provided that the Court has granted approval, the settlement payment shall be due from Defendant within twenty days (20) from notice of the Order approving settlement ("Disbursement date").
- C. **Net Settlement Amount.** The Parties agree that the following amounts should be subtracted from the Total Settlement Amount, if approved by the Court, resulting in a Net Settlement Amount to distribute to the LWDA and Aggrieved Employees: (1) Payments to Settlement Administrator; (2) Payment to Plaintiff's Counsel; and (3) Representative Plaintiff's Payment.

- D. **Payments to Settlement Administrator.** The Settlement Administrator will pay to itself out of the Total Settlement Amount its reasonable fees and expenses as approved by the Court, and not to exceed Three Thousand Five Hundred Dollars and no Cents (\$3,500.00.)
- E. **Payment to Plaintiff's Counsel.** Defendant will not oppose Plaintiff's Counsel's request for a Fees and Expenses Payment in the total, maximum amount of One Hundred Sixty-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$166,666.66) for attorneys' fees (one-third (1/3) of the Total Settlement Amount). Defendant will not oppose Plaintiff's counsel's request for costs and expenses up to Ten Thousand Dollars (\$10,000.00) subject to actual proof submitted to the Court (to include Plaintiff's one-half share of the prepaid mediator's fees paid by Plaintiff's counsel). The Settlement Administrator will issue to Plaintiff's Counsel a Form 1099 with respect to the awarded attorneys' fees and costs.
- F. **Payment to Plaintiff.** Plaintiff will seek a Representative Plaintiff's Payment in the amount of Five Thousand Dollars (\$5,000.00) in addition to his Settlement Share as an aggrieved party. This payment is made to Plaintiff to compensate him for initiating and pursuing the Action, undertaking the risk of liability for attorneys' fees and expenses in the event that he was unsuccessful in the prosecution of the Action. The Settlement Administrator will issue to Plaintiff a Form 1099 with respect to the awarded attorneys' fees and costs.
- G. **Payments to LWDA.** The Settlement Administrator shall pay to the LWDA seventy-five percent (75%) of the Net Settlement Amount.
- H. **Settlement Share to PAGA Settlement Group Members.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will allocate Settlement Shares from the Net Settlement Amount to the PAGA Settlement Group Members in proportion to the number of pay periods worked for Defendant during the Covered Period in comparison to the total number of pay periods worked by all PAGA Settlement Group Members. A Form 1099 will be issued to each Settlement Group Member for his/her Settlement Share because the Action sought civil penalties.

I. **Appointment of Settlement Administrator.** The Parties will cooperate in selecting an acceptable Settlement Administrator to resolve disputes in connection with the calculation of Settlement Shares in accordance with the Settlement; distribute Settlement Shares and other payments due under the Settlement; and otherwise administer the Settlement. The Settlement Administrator's duties will include preparing, printing, and mailing the Notice Packet to the PAGA Settlement Group Members; conducting a National Change of Address search and using Accurant and other reasonable and cost-effective skip trace methods to locate any PAGA Settlement Group Member whose Notice Packet was returned by the U.S. Postal Service as non-deliverable, and re-mailing the Notice Packet to the PAGA Settlement Group Member's new address; issuing the checks to effectuate the payments due under the Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Settlement Administrator will have the final authority to resolve all disputes concerning the calculation of a PAGA Settlement Group Member's Settlement Share, subject to the dollar limitations set forth in this Agreement. The Settlement Administrator's reasonable fees and expenses, including the cost of printing and mailing the Notice Packet, will be paid out of the Total Settlement Amount as noted in section III(D) herein.

J. **Procedure for Approving Settlement.**

1. **Motion for an Order Approving the Settlement.**

a. The Parties will cooperate in seeking approval of the Settlement, including Plaintiff's filing a Motion for an Order Approving the Settlement Agreement (the "Motion") on or before December 20, 2021.

b. Pursuant to PAGA, on the date the Parties file the Motion, Plaintiff will submit to the LWDA the PAGA Notice substantially evidenced by **Exhibit B** to this Agreement, enclosing this Agreement. The Parties intend and believe that providing notice of this Settlement to the LWDA pursuant to the procedures described in this section complies with the requirements of PAGA.

c. At the hearing on the Motion (if one is required), the Parties will jointly appear, support the granting of the motion, and submit an order granting the motion in the form evidenced by **Exhibit A** to this Agreement.

d. Should the Court decline to approve all material aspects of the Settlement, or order material changes to the Settlement to which the Parties do not agree, or declines to issue the Order in a form approved by the Parties (except for the amount of attorney's fees or costs requested), the Parties will meet and confer to address the Court's concerns and determine whether resolution of the Action can be obtained in a manner consistent with the Court's concerns. If

no agreement can be reached, or Court approval cannot be obtained in spite of the Parties' reasonable efforts, or the Court's approval of this Settlement is reversed, modified, or declared or rendered void, then (i) the Settlement will be null and void and the Parties will have no further obligations under it, (ii) neither the Settlement nor any of the related negotiations or proceedings shall be of any force or effect; and (iii) all Parties to the Settlement, including Clara Villanueva with respect to the separate and confidential settlement of her individual claims, shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court. Invalidation of any material portion of the Settlement, shall invalidate the Settlement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect. However, an award by the Court of lesser amounts than sought for the Representative Plaintiff's Payment and/or Counsel Fees and Expenses Payment or the Settlement Administrator's Fees will not be considered a material change to the Settlement.

2. **No Right to Opt Out or Object.** The Parties agree there is no statutory right for any PAGA Settlement Group Member to object, opt out or otherwise exclude herself or himself from the Settlement. The Parties further agree there is no right or opportunity for any PAGA Settlement Group Member to appeal the approval of the Settlement by the Court. The Parties further agree that an Aggrieved Employees' recovery under this Settlement does not act to preclude claims not encompassed within the release of claims in Section III.K. This Agreement shall not be subject to collateral attack by any PAGA Settlement Group Member. Such prohibited collateral attached shall include, but not be limited to, claims that the PAGA Settlement Group Member failed, for any reason, to timely receive his or her Individual Settlement Payment.

3. **Notice to PAGA Settlement Group Members.** After the Court enters its order granting the Joint Motion, every PAGA Settlement Group Member will be provided with the Notice and a check for their Settlement Share.

a. Within twenty (20) days after the Defendant is served with the signed Court Order (either by the Clerk of the Court or by Plaintiff's Counsel, which may be via email to Defendant's Counsel), approving the Settlement, Defendant will provide the Settlement Administrator with the names, last known addresses and telephone numbers, Social Security numbers, and Covered Pay Periods of all PAGA Settlement Group Members. The Settlement Administrator shall keep this information confidential and not disclose it to Plaintiff's Counsel or any third parties. If any or all of the PAGA Settlement Group Members' data are unavailable to Defendant, Defendant will use best efforts to deduce or reconstruct their data prior to when it must be submitted to the Settlement Administrator.

b. Within five (5) calendar days after receiving the Total Settlement Payment and PAGA Settlement Group Members' data from Defendant, the Settlement Administrator will send a Notice and a check for their Settlement Share to each PAGA Settlement Group Member. The Settlement Administrator shall use reasonable steps to update PAGA Settlement Group Members' address, the reasonable steps shall include but are not limited to skip tracing and use of the NCOA database. The Settlement Administrator will mail this information to all identified PAGA Settlement Group Members, using the mailing address information provided by Defendant, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement. In the event of returned or non-deliverable notices, the Settlement Administrator will make reasonable efforts to locate PAGA Settlement Group Members and re-send the notices.

c. If a Notice Packet is returned because of an incorrect address, the Settlement Administrator will promptly, and not later than ten (10) days from receipt of the returned packet, search for a more current address for the PAGA Settlement Group Member using Accurint and other reasonable and cost-effective skip trace methods, and re-mail the Notice Packet to the PAGA Settlement Group Member. The Settlement Administrator will use the PAGA Settlement Group Members' data and otherwise work with Defendant to find a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, court orders, and fee, as agreed to with Plaintiff's Counsel and according to the following deadlines, to trace the mailing address of any PAGA Settlement Group Member for whom a Notice Packet is returned by the U.S. Postal Service as undeliverable. These reasonable steps will include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to PAGA Settlement Group Members for whom new addresses are found.

4. **Submission of Judgment.** Plaintiff shall submit a copy of the Judgment in this Action and a copy of any other order providing for or denying an award of civil penalties within ten (10) calendar days after entry of the Judgment and/or order, in compliance with Section 2699(1)(3) of the California Labor Code. The Judgment will be made available to the LWDA and Aggrieved Employees through the Settlement Administrator's website for a period of one (1) year following entry of judgment.
5. **Waiver of Right to Appeal.** Provided that the Order approving the Settlement and the Judgment thereon is consistent with the material terms of this Agreement, Plaintiff, Defendant, and their respective counsel hereby waive any and all rights to appeal from the Order or Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, a motion for new trial, and any extraordinary

writ, and the Judgment therefore will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. This paragraph does not preclude Plaintiff or Plaintiff's Counsel from appealing from a refusal by the Court to award the Plaintiff's Counsel attorneys' fees and/or costs sought by them. If an appeal is taken, the time for consummating the Settlement (including making payments under the Settlement) will be suspended until such time as their appeal is finally resolved and the Judgment becomes Final, as defined in this Agreement.

6. **Vacating, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal or a petition for *certiorari* or review, or any other motion, petition, or application, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material change to the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then either Plaintiff or Defendant will have the right to void the Settlement, which the Party must do by giving written notice to the other Parties, the reviewing court, and the Court not later than thirty (30) calendar days after the reviewing court's decision vacating, reversing, or materially modifying the Judgment becomes Final. A vacation, reversal, or modification of the Court's award of the Representative Plaintiff's Payment (if any), Settlement Administrator's fees and expenses, and/or Plaintiff's attorneys' fees and/or costs will not constitute a vacating, reversal, or material modification of the Judgment within the meaning of this paragraph, although Plaintiff or Plaintiff's Counsel have the right to appeal from any refusal by the Court to award the Plaintiff's Counsel attorneys' fees and/or costs sought by them.
7. **Timing of Settlement Payments.**
 - a. Within ten (10) calendar days after the Court Order is signed approving the Settlement, the Settlement Administrator will provide Defendant with wire transfer information. Defendant will transfer the Total Settlement Amount to the Settlement Administrator via wire transfer within twenty (20) days after the Defendant is served with the signed Court Order (either by the Clerk of the Court or by Plaintiff's Counsel, which may be via email to Defendant's Counsel), approving the Settlement.
 - b. Within five (5) calendar days after receiving the initial payment of settlement funds from Defendant, the Settlement Administrator will distribute the Total Settlement Amount as set forth in paragraph III.B.
8. **Uncashed Settlement Share Checks.** A PAGA Settlement Group Member must receive or cash his or her Settlement Share payment or check within 180 calendar days after it is mailed to him or her. If a check is returned to

the Settlement Administrator, the Settlement Administrator will make all reasonable efforts to re-mail it to the PAGA Settlement Group Member at his or her correct address. If any PAGA Settlement Group Member's Settlement Share check is not cashed within one hundred twenty (120) calendar days after its last mailing to the PAGA Settlement Group Member, the Settlement Administrator will send the PAGA Settlement Group Member a letter or postcard informing him or her that unless the check is cashed in the next sixty (60) calendar days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed. If a PAGA Settlement Group Member fails to cash the check for his or her Settlement Share within one hundred eighty days (180) calendar days after it is mailed to him or her, the funds shall be distributed by the Settlement Administrator to the State Controller's Unclaimed Property Fund in the Settlement Group Member's name.

K. Release and Waiver of Claims.

1. **PAGA Settlement Group Members.** As of the date the Settlement becomes Final, Plaintiff, acting on behalf of the State of California, and all PAGA Settlement Group Members, releases Defendant and the Released Parties from any and all claims based on the Private Attorneys General Act (2004), as pleaded in Plaintiff's Complaint or that could have been pleaded on the facts as alleged in the Complaint and Plaintiff's notice letter to LWDA, arising during the Covered Period, including but not limited to claims under Labor Code sections 201, 202, 203, 204, 206, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198 and 2802, 2698, 2699.3, and 2699.5, the Industrial Welfare Commission Wage Orders, and any resulting claim for attorneys' fees and costs (the "Released Claims"). This paragraph is not intended to nor does this paragraph release any claims that Plaintiff Jeremy Kimball, individually, has pending against Defendant in the Superior Court of California for the County of San Diego, case number 37-2020-00046428-CU-OE-CTL.
2. **Waiver of Rights under California Civil Code Section 1542.** The PAGA Settlement Group Members' Released Claims include all such respective claims under PAGA only, whether known or unknown by the releasing party. Therefore, with respect only to those respective Released Claims, Plaintiff and the PAGA Settlement Group Members expressly waive and relinquish the provisions, rights and benefits of section 1542 of the California Civil Code, which reads:

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.

With respect to the PAGA Settlement Group Members' Released Claims, the scope of the waiver of rights and benefits under section 1542 of the California Civil Code is in no way intended by the Parties to extend to any claims beyond the Released Claims; rather, this waiver is intended to apply only to the Released Claims. This paragraph is not intended to nor does this paragraph release any claims that Plaintiff Jeremy Kimball, individually, has pending against Defendant in the Superior Court of California for the County of San Diego, case number 37-2020-00046428-CU-OE-CTL.

- L. **No Effect on Other Benefits.** The payment to PAGA Settlement Group Members will not result in any additional benefit payments (such as 401(k) contributions or bonuses) beyond those provided by this Agreement to Plaintiff or the PAGA Settlement Group Members, and they will be deemed to have waived all such claims, whether known or unknown by them, as part of their release of claims under this Agreement.
- M. **Confidentiality Preceding Approval.** Prior to filing of the Motion for Settlement Approval, Plaintiff will not issue any press or other media releases or have any communication with the press or media or anyone other than financial advisors, retained experts, the LWDA and vendors related to settlement administration, regarding the Settlement. If, before the filing of the Motion for Settlement Approval, Plaintiff or his attorneys disclose to any unauthorized party (a) that a settlement has been reached or (b) any of the terms of the Settlement except as required by law or to effectuate the Settlement, Defendant may rescind the Settlement, rendering it null and void. Plaintiff further agrees that he will instruct his attorneys not to disclose the terms of this Agreement other than as necessary in connection with the motion to approve the settlement. This section does not bar Plaintiff's counsel from carrying out their duties as counsel to Representative Plaintiff for the LWDA.
- N. **Miscellaneous Terms.**
 - 1. **No Admission of Liability.**
 - a. Defendant each deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, or have any liability to anyone under the claims asserted in the Action. Defendant contends, among other things, that it has complied at all times with the California Labor Code, the related California Wage Orders, and the California Business & Professions Code, all other state and federal wage laws, and further contends that all of its respective employees were duly reimbursed for all business expenses as required by law, that it paid all PAGA Settlement Group Members for all hours of work, that all non-exempt PAGA Settlement Group Members received meal and rest breaks in accordance with law, and that all or substantially all non-exempt PAGA Settlement Group Members executed lawful and valid meal

waivers with respect to any missed meal periods for shifts less than six (6) hours or for second meal periods for shifts of less than ten (10) hours. Defendant contends that employees were paid for all hours of work including overtime, and that its policies prohibited “off the clock” work. Defendant made an offer of proof at mediation of various employees’ statements rebutting Plaintiff’s allegations. Further, Defendant contend that it timely issued accurate itemized wage statements properly to each and every employee, and that the Action is without merit. Defendant denied and continue to deny each and every material factual allegation and alleged claim asserted against it in the Action and denies and continues to deny that either Plaintiff, PAGA Settlement Group Members, or any other alleged aggrieved employee has been harmed by the Defendant’s policies and practices, and denies that any violations that could have occurred was knowing, intentional, deliberate, or otherwise purposeful, and that Defendant is or can be held liable under any provision of the Labor Code for any penalties associated with such inadvertent act or omission.

- b. The Parties recognize that the issues presented in the Action are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate to the potential benefits of litigation. The Parties have considered the risk and uncertainty of the outcome inherent in any litigation.
- c. Plaintiff and Plaintiff’s Counsel contend that they have diligently pursued an investigation of the PAGA Settlement Group Members’ claims against Defendant.
- d. Based on their own independent investigations and evaluations, the Parties and their respective counsel are of the opinion that the settlement for the consideration and on the terms set forth in this Settlement is fair, reasonable, and adequate and is in the best interests of the Plaintiff, the PAGA Settlement Group Members, and Defendant in light of all known facts and circumstances and the risks inherent in litigation, including the potential appellate issues. Further, Plaintiff’s Counsel believes that the settlement amount entered into is in the best interests of the PAGA Settlement Group Members and that the settlement for each PAGA Settlement Group Member is fair, reasonable, and adequate, given the inherent risk of litigation.
- e. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability or

wrongdoing by Defendant, or an admission by Plaintiff that any of his claims were non-meritorious or any defense asserted by Defendant were meritorious. This Settlement and the fact that Plaintiff and Defendant were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with the Settlement).

f. Whether or not the Judgment becomes Final, nothing in the Settlement, this Agreement, any document, statement, proceeding or conduct related to the Settlement or the Agreement, or any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendant or any other Released Parties, including, but not limited to, evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any of the Released Parties, in any further proceeding in the Action, or any other civil, criminal or administrative action or proceeding except for purposes of effectuating the Settlement pursuant to this Agreement.

g. This section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may be admitted in evidence and otherwise used in any and all proceedings to enforce any or all terms of this Agreement, or in defense of any claims released or barred by this Agreement.

2. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Agreement or its exhibits other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.

3. **Attorney Authorization.** Plaintiff and Defendant each warrant and represent that their respective Counsel are authorized to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to affect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court or mediator, and in all cases all such

documents, supplemental provisions and assistance of the court will be consistent with this Agreement. No attorney for any Party is a Party to this agreement and will not be liable for any party's breach of any of the terms of this agreement.

4. **Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their successors-in-interest.
5. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors, assigns, beneficiaries, and heirs of each of the Parties.
6. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
7. The Parties request, and the San Diego County Superior Court shall, retain jurisdiction to enforce this Agreement pursuant to California Code of Civil Procedure section 664.6, and the Parties agree to request that the Court retain such jurisdiction over all Parties and PAGA Members, to the fullest extent to enforce and effectuate the terms and intent of this Agreement, including after entry of Judgment, as a part of the Court's Order Approving PAGA Settlement.
8. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
9. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential. The Parties have made such investigation of the facts and the law pertaining to the matters described herein and to this Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of making and executing this Agreement, or with respect to any such matters that would alter or change the terms of this Agreement. No representations, warranties, or inducements have been made to any party concerning this Agreement other than those expressly set forth or referred to herein.

10. **Attorney's Fees and Costs.** Except as specifically set forth herein, each party shall bear its/his own attorneys' fees, costs, and expenses including expert expenses, taxable or otherwise, incurred by him/her/them/it arising out of the Action, and shall not seek reimbursement thereof from any other party to this Agreement.
11. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
12. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third calendar day after mailing by United States mail, addressed as follows:

To Plaintiff and the Settlement Group:

Kevin Mahoney
George Singer
Mahoney Law Group, APC
249 East Ocean Boulevard, Suite 814
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To Defendant:

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SCorreia@weintraub.com
RDavey@weintraub.com

13. **Execution in Counterpart.** This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or electronic signatures will be accepted as original. An original signature shall be provided within seven days, upon written request. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

IV. EXECUTION BY PARTIES

The Parties hereby execute this Agreement.

Dated: October __, 2021

JEREMY KIMBALL

On behalf of DEFENDANT:

Dated: November 4, 2021

By:


James MacDonald, Chief Executive Officer

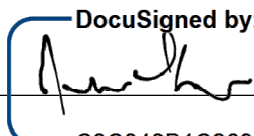
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Dated: October __, 2021
11/5/2021

JEREMY KIMBALL

DocuSigned by:

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On behalf of DEFENDANT:

Dated: October __, 2021

By: _____
James MacDonald, Chief Executive Officer

EXHIBIT A

[[PROPOSED] ORDER GRANTING APPROVAL OF SETTLEMENT]

EXHIBIT B

[NOTICE OF APPROVAL OF SETTLEMENT]

NOTICE OF SETTLEMENT

To: *To current and former non-exempt employees of R. F. MacDonald Co. in California at any time during the period from [December 20, 2019, through December 20, 2021].*

ACCORDING TO COMPANY RECORDS, YOU QUALIFY TO RECEIVE MONEY IN CONNECTION WITH A LEGAL SETTLEMENT. YOU DO NOT NEED TO DO ANYTHING; YOU WILL RECEIVE YOUR SHARE OF THE SETTLEMENT, WHICH IS ENCLOSED.

WHAT IS THIS NOTICE ABOUT?

A settlement (the "Settlement") has been reached between Plaintiff Jeremy Kimball ("Plaintiff") acting on behalf of the State of California, and Defendant R. F. MACDONALD CO., a California corporation ("Defendant"), in the action pending in the Court brought on behalf of the following individuals (the "Settlement Group"):

The allotted for and contemplated 242 current and former non-exempt employees of Defendants in California at any time during the period from December 20, 2019, through December 20, 2021.

The Court has approved the Settlement. You have received this notice because Defendant's records indicate that you are a member of the Settlement Group. This notice is designed to inform you of the settlement and to provide you with your Settlement Share.

WHAT IS THIS LAWSUIT ABOUT?

On February 23, 2021, Plaintiff brought an action entitled "*JEREMY KIMBALL, as an individual on behalf of himself and on behalf of all employees similarly situated v. R. F. MACDONALD CO., a California corporation; and DOES 1 through 50, inclusive*" (the "Action") designated as No. 37-2021-00007728-CU-OE-CTL. The action is pending in the Superior Court of California for the County of San Diego (the "Court").

In the Action, Plaintiff sought penalties pursuant to the California Private Attorneys' General Act, based upon allegations that Defendants failed to properly pay all wages due to Defendants' employees in California during the period of *December 20, 2019, through December 20, 2021*, in violation Labor Code section 2699, *et seq.* claiming violations of specific sections of the Labor Code including 201, 202, 203, 204, 206, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198 and 2802, 2698, 2699.3, and 2699.5, for alleged failures to properly pay and reimburse employees. Plaintiff sued for civil penalties under the California Labor Code Private Attorneys General Act ("PAGA"), Cal. Lab. Code § 2698 *et seq.* Under PAGA, any recovery of civil penalties is shared between the California Labor and Workforce Development Agency ("LWDA"), which gets 75% of the penalties recovered, and the allegedly aggrieved employees, who get 25% of the penalties recovered.

Defendant denies and continues to deny all of Plaintiff's material allegations. Specifically, Defendant contends that it at all times complied with the requirements of the Labor Code and that civil penalties are not recoverable.

After good-faith negotiations during mediation in which both sides recognized the substantial risk of an uncertain outcome, Plaintiff and Defendant agreed to settle the Action pursuant to the terms and conditions of the Settlement.

The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by Defendants that Plaintiff's claims in the Action have merit or that Defendant has any liability to Plaintiff or the group of individuals she seeks to represent on that claim. On the contrary, Defendant denies any and all such liability.

WHO IS INCLUDED IN THE SETTLEMENT?

You are included in the Settlement Group if you fall within the following definition:

{SF144478.DOCX:}

The allotted for and contemplated [insert number] current and former non-exempt employees of Defendants in California at any time during the period from December 20, 2019 through December 20, 2021.

You are receiving this notice because Defendant's records indicate that you are part of the Settlement Group.

WHAT WILL I RECEIVE FROM THE SETTLEMENT?

1. **Settlement Shares.** Pursuant to PAGA, 75% of the Net Settlement Amount will go to the LWDA. The remaining 25% of the Net Settlement Amount will be distributed to Settlement Group Members in proportion to the number of weeks that they were employed by Defendants during the covered period. The Net Settlement Amount is estimated to be [insert number], of which [insert number] will go to the LWDA and [insert number] will be distributed to Settlement Group Members. As a Settlement Group Member, your share of the Net Settlement is [insert amount]
2. **Payment of Settlement Shares. Your Settlement Share is enclosed.** Checks for Settlement Shares must be cashed within 180 days after they are issued, or else the funds they represent will go to the State of California in your name and held for your benefit.
3. **Settlement Group Member Release.** The Settlement approved by the Court includes a release by Plaintiff acting on behalf of the State of California, and Settlement Group of any and all claims based on the Private Attorneys General Act (2004), as pleaded in Plaintiff's Complaint or that could have been pleaded on the facts as alleged in the Complaint and Plaintiff's notice letter to LWDA, arising during the Covered Period, including but not limited to PAGA claims for alleged violations of Labor Code sections 201, 202, 203, 204, 206, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198 and 2802, 2698, 2699.3, and 2699.5, for alleged failures to properly pay and reimburse employees. (the "Released Claims").

The Released Claims include all such claims, whether known or unknown under PAGA. Therefore, as a Settlement Group Member, and only as to the Released PAGA Claims, you expressly waive and relinquish the provisions, rights, and benefits of section 1542 of the California Civil Code, which reads:

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

WHAT ARE MY RIGHTS AS A SETTLEMENT GROUP MEMBER?

1. **Participating in Settlement.** You are a part of the Settlement Group, and therefore, you are bound by the terms of the Settlement and the final judgment entered by the Court and you are deemed to have released the PAGA claims against Defendants and the other released parties described above. As a member of the Settlement Group, you will not be responsible for the payment of attorneys' fees or reimbursement of litigation expenses.

GETTING MORE INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you are referred to the detailed Settlement Agreement, which will be on file with the Clerk of the Court. The pleadings and other records in this litigation including the Settlement Agreement, may be examined at the Office of the Clerk of the Court, Superior Court of California for San Diego County, 330 W Broadway, San Diego CA 92101 during the Clerk's normal business hours; or you may contact the Settlement Administrator, Phoenix Settlement Administrators at P.O. Box 7208, Orange, CA, 92863; Phone: (800) 523-5773 or Plaintiff's Counsel as follows: Kevin Mahoney and

George Singer of Mahoney Law Group, APC, 249 East Ocean Boulevard, Suite 814, Long Beach, CA 90802, (562) 590-5550.

**PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION REGARDING
THIS SETTLEMENT OR THE CLAIM PROCESS.**