

Joseph Lavi (SBN 209776)
Vincent C. Granberry (SBN 276483)
Pooja Patel (SBN 317891)
Melissa A. Huether (SBN 316604)
LAVI & EBRAHIMIAN, LLP
8889 W. Olympic Blvd., Suite 200
Beverly Hills, CA 90211
Telephone: (310) 432-0000
Facsimile: (310) 432-0001

Attorneys for Plaintiffs, LUIS BENITEZ and MARIO
LOZADA on behalf of himself and current and former
aggrieved employees

Todd B. Scherwin (SBN 239848)
Krystle D. Meyer (SBN 270995)
FISHER & PHILLIPS LLP
444 South Flower Street, Suite 1500
Los Angeles, California 92614
Telephone: (213) 330-4500
Facsimile: (213) 330-4501

Attorneys for Defendant
STAFFPAY, INC. dba EMPLICITITY

[Additional counsel listed on the next page]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

LUIS BENITEZ, on behalf of himself and
current and former aggrieved employees,

PLAINTIFF,

vs.

STAFFPAY, INC. dba EMPLICITITY;
STAFFPAY EXECUTIVE STAFFING,
INC., IMPERIAL CFS, INC.; ITI
RESOURCE, INC.; and DOES 1 to 100,
Inclusive,

DEFENDANTS.

CASE NO. 21STCV10755
[Unlimited Jurisdiction - PAGA]

*[Assigned for all purposes to the
Honorable Armen Tamzarian in Dept. 52]*

**JOINT STIPULATION OF SETTLEMENT
PAGA ACTION**

Complaint: March 19, 2021
Trial Date: None Set

Steven Mannix CA Bar No. 272014
**OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.**

19191 S. Vermont Avenue, Suite 950

Torrance, CA 90502

Telephone: 310-217-8191

Facsimile: 310-217-8184

Attorneys for Defendants,
IMPERIAL CFS, INC. and
ITI RESOURCE, INC.

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1 This Joint Stipulation of Settlement of PAGA Action is made by and between the
2 Plaintiffs Luis Benitez and Mario Lozada (“Plaintiffs”), on their own behalf and on behalf of
3 all members of the PAGA Group, as defined below, on the one hand, and STAFFPAY, INC.
4 dba EMPLICITY, IMPERIAL CFS, INC., and ITI RESOURCE, INC. (“Defendants”) on the
5 other hand (collectively the “Parties”), in the lawsuit entitled *Luiz Benitez, et al., on behalf of*
6 *himself and others similarly situated v. Staffpay, Inc., et al*, filed in Los Angeles County
7 Superior Court, Case No. 21STCV10755. This Joint Stipulation of Settlement of PAGA
8 Action resolves all claims that were asserted or could have been asserted against Defendants
9 arising out of the facts alleged in the Action.

10 **I. DEFINITIONS**

11 **A. Action.** The term “Action” as used herein means the action entitled filed in Los
12 Angeles County Superior Court, Case No. 21STCV10755.

13 **B. Administrative Costs.** All administrative costs of settlement, including cost of
14 notice to the PAGA Group, administration, and any fees and costs incurred or charged by the
15 Settlement Administrator in connection with the execution of its duties under this Joint
16 Stipulation of Settlement of PAGA Action.

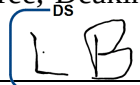
17 **C. Agreement.** The terms “Agreement” or “Settlement Agreement” are used
18 synonymously herein to mean this Joint Stipulation of Settlement of PAGA Action for purposes
19 of resolution.

20 **D. Court.** The term “Court” as used herein means the Superior Court of the State
21 of California for the County of Los Angeles.

22 **E. Date of Approval.** The terms “Date of Approval” or “Approval” as used herein
23 mean the date of the PAGA Settlement Approval Hearing.

24 **F. Defendants.** The term “Defendants” as used herein means: STAFFPAY, INC.
25 dba EMPLICITY, IMPERIAL CFS, INC., and ITI RESOURCE, INC.

26 **G. Defense Counsel.** The term “Defense Counsel” as used herein means: Todd B.
27 Scherwin and Krystle D. Meyer of Fisher & Phillips LLP who are counsel for and acting on
28 behalf of Defendants Staffpay, Inc. dba Emplicity. and Steven Mannix of Ogletree, Deakins,

Handwritten signature of Luis Benitez, consisting of the letters 'L' and 'B' in a stylized, cursive font.

Nash, Smoak & Stewart, P.C. who are counsel for and acting on behalf of Defendants Imperial CFS, Inc. and ITI Resources, Inc.

H. LWDA. The term “LWDA” means the Labor Workforce Development Agency.

I. LWDA Payment. The term “LWDA Payment” as used herein means seventy-five percent (75%) of the Net Settlement Amount which will be distributed to the LWDA in accordance with California Labor Code section 2699(i).

J. Net Settlement Amount. The term “Net Settlement Amount” as used herein means the Settlement Amount minus any award of attorneys’ fees and litigation costs and Administrative Costs.

K. Net Settlement Payments. The term “Net Settlement Payment(s)” shall mean payments made to the PAGA Group.

L. Notice of Resolution. The Notice of PAGA Resolution is the document attached hereto as Exhibit “A.”

M. PAGA Group or Aggrieved Employee(s). The PAGA Group is defined as: All current and former hourly, non-exempt employees who worked at Defendant Imperial CFS either directly or through any staffing agency, including but not limited to the employees of Defendants and PowerStaff, within the State of California at any time within the PAGA Period.

N. PAGA Group Portion. The PAGA Group Portion shall mean the remaining twenty-five percent (25%) of the Net Settlement Amount designated to the PAGA Group. The PAGA Group Portion will be distributed to the PAGA Group on a *pro rata* basis based on his or her number of pay periods during the PAGA Period.

O. PAGA List. A list of the Aggrieved Employees including: (1) name; (2) last known home address; (3) number of pay periods as a PAGA Group member during the PAGA period (and any other employment information that may be necessary to calculate each PAGA Group Members Net Settlement Payment); and (4) social security number.

P. PAGA Period. The term “PAGA Period” or “Settlement Period” shall refer to the time period from February 14, 2019 through December 18, 2021.

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1 **Q. Plaintiff.** The term “Plaintiffs” as used herein means Luis Benitez and Mario
2 Lozada. The term Plaintiffs shall be used synonymously with the term “PAGA Representatives”.

3 **R. Plaintiff’s Counsel.** The term “Plaintiff’s Counsel” as used herein means: LAVI
4 & EBRAHIMIAN, LLP who are counsel for and acting on behalf of Plaintiff.

5 **S. Settlement Administrator.** The term “Settlement Administrator” as used herein
6 means Phoenix Class Action Administration Solutions, which will be responsible for the
7 administration of the Settlement Payment, as defined below, and all related matters.

8 **T. Settlement Agreement.** The terms “Settlement Agreement” or “Agreement” are
9 used synonymously herein to mean this Joint Stipulation of Settlement of PAGA Action.

10 **U. Settlement Amount.** The terms “Settlement Amount” and “Gross Settlement
11 Fund” as used herein mean a fund in the sum of Six Hundred Ninety Thousand Dollars and Zero
12 Cents (\$690,000.00) which shall be paid by Defendants, and from which all Net Settlement
13 Payments, Court approved attorneys’ fees and litigation costs pursuant to Section X,
14 Administrative Costs pursuant to Section VI, and distribution to the LWDA pursuant to Section
15 VIII(C) shall be paid, except as provided herein. The Settlement Amount is for approximately
16 30,000 pay periods during the PAGA period. In the event the actual number of the pay periods
17 during the PAGA period increases by more than 10% from the 30,000 pay periods, the
18 Settlement Amount shall increase proportionately over the 10%, i.e. meaning that if the total
19 pay periods increased by 11%, the Settlement Amount will increase by 1%.

20 **II. BACKGROUND**

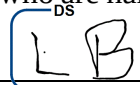
21 **A.** On February 14, 2020, Plaintiff Lozada submitted a letter to the LWDA alleging
22 violations of wage and hour laws including failure to pay all minimum wages, failure to pay all
23 overtime wages, failure to provide meal breaks, failure to provide rest breaks, failure to provide
24 accurate wage statements, and failure to timely pay final wages. On February 14, 2020, Plaintiff
25 Lozada also filed a class action lawsuit against Defendants Imperial CFS, Inc., Power Staff,
26 Personnel Staffing Group, LLC, and Pacific International Cold Storage LLC in the Los Angeles
27 County Superior Court, Case No. 20STCV05761 alleging the same violations (“Lozada Class
28 Action”).

1 **B.** On January 11, 2021, Plaintiff Benitez filed a class action against Defendants
2 Staffpay, Inc. DBA Emplicity, Staffpay Executive Staffing, Inc., Imperial CFS, Inc., and ITI
3 Resource, Inc. in the Los Angeles County Superior Court, Case No. 21STCV01087 (“Benitez
4 Class Action”). Staffpay Executive Staffing, Inc. was dismissed from the Benitez Class Action
5 on April 27, 2021.

6 **C.** On January 12, 2021, Plaintiff Benitez submitted a letter to the LWDA alleging
7 violations of wage and hour laws including failure to pay all minimum wages, failure to pay all
8 overtime wages, failure to provide meal breaks, failure to provide accurate wage statements,
9 failure to timely pay wages during employment, and failure to timely pay final wages. On March
10 19, 2021, Plaintiff Benitez filed an action in the Los Angeles County Superior Court, Case No.
11 21STCV10755 alleging a single case of action for penalties pursuant to Labor Code § 2699(f)
12 for alleged violations and penalties under Labor Code §§2699(f), 201, 202, 203, 204, 226, 226.7,
13 510, 512, 1194, 1197, 1198, as well as the IWC Wage Order (the “Action”). Although Staffpay
14 Executive Staffing, Inc. was originally named as a defendant in the Action, this entity was
15 dismissed on July 20, 2021.

16 **D.** Following the filing of the Action, counsel for the Parties met and conferred with
17 respect to the potential settlement of the Action. Pursuant to these discussions, the Parties agreed
18 to exchange informal discovery and engage in private mediation. The Parties subsequently
19 exchanged informal discovery, including: a sampling of the timekeeping and payroll records of
20 the PAGA Group; information and documentation concerning the claims set forth in the Action,
21 such as Defendants’ employee handbooks and policies and procedures regarding the payment
22 of wages, meal and rest breaks, and time keeping; information regarding the number of PAGA
23 Group members and the number of current versus former employees; and the total pay periods
24 worked by the PAGA Group.

25 **E.** On September 20, 2021, the Plaintiffs and Defendants Staffpay, Inc. DBA
26 Emplicity, Imperial CFS, Inc., and ITI Resource, Inc. attended a mediation session with Steven
27 Rottman, Esq. in order to resolve both the Lozada Class Action, the Benitez Class Action, and
28 the Action. Defendants Power Staff, and Pacific International Cold Storage LLC who are named

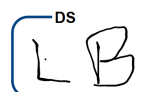


1 in the Lozada Class Action did not participate. Defendant Personnel Staffing Group, LLC did
2 participate but did not agree to this Settlement.

3 **F.** Pursuant to this agreement, the Parties have agreed that Plaintiffs will file a First
4 Amended Complaint in the Action which will add Plaintiff Lozada and his PAGA claim.
5 Thereafter, Plaintiff Lozada agrees to dismiss his class and individual claims alleged in the
6 Lozada Class Action without prejudice with respect to Defendants Imperial CFS, Inc., Power
7 Staff, Personnel Staffing Group, LLC and will proceed on a class wide basis against Defendant
8 Pacific International Cold Storage LLC. Additionally, Plaintiff Benitez will dismiss the entire
9 Benitez Class Action without prejudice. The Parties agree that because Plaintiffs each signed
10 arbitration agreements which Defendants contend to be enforceable, the Parties reached this
11 Settlement on a PAGA only basis and therefore dismissal of the class allegations is appropriate.

12 **G.** In the Action, Plaintiffs allege that Defendants failed to provide meal breaks and
13 failed to authorize and permit legally compliant rest breaks each day and failed to provide
14 premium pay for the alleged meal break violations. Plaintiffs further allege that minimum,
15 overtime and double time wages were not properly paid. Moreover, Plaintiffs allege that the
16 employees received inaccurate wage statements and were not paid all wages owed upon
17 termination and/or resignation. Plaintiffs contend Defendants' conduct violates PAGA and
18 therefore entitles them to civil penalties.

19 **H.** Plaintiffs' Counsel has conducted an investigation of the law and facts relating
20 to the claims asserted in the Action and has concluded, taking into account the sharply contested
21 issues involved, the expense and time necessary to pursue the Action through trial and any
22 appeals, the risks and costs of further prosecution of the Action, the risk of an adverse outcome,
23 the uncertainties of complex litigation, and the substantial benefits to be received by the
24 Plaintiffs and the members of the PAGA Group pursuant to this Agreement, that a settlement
25 with Defendants on the terms and conditions set forth herein is fair, reasonable, adequate, and
26 in the best interests of the PAGA Group. Plaintiffs, on their own behalf and as a representative
27 pursuant to PAGA, have agreed to settle the Action with Defendants on the terms set forth
28 herein.



1 **I.** Defendants have concluded that, because of the substantial expense of defending
2 against the Action, the length of time necessary to resolve the issues presented herein, the
3 inconvenience involved, and the concomitant disruption to their business operations, it is in its
4 best interests to accept the terms of this Agreement. Defendants deny each of the allegations and
5 claims asserted against it in the Action. However, Defendants nevertheless desires to settle the
6 Action for the purpose of avoiding the burden, expense and uncertainty of continuing litigation
7 and for the purpose of putting to rest the controversies engendered by the Action.

8 **J.** This Agreement is intended to and does effectuate the full, final and complete
9 resolution of all allegations and claims that were asserted, or could have been asserted, in the
10 Action by Plaintiffs.

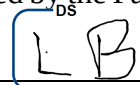
11 **III. JURISDICTION**

12 The Court has jurisdiction over the Parties and the subject matter of this Action. The
13 Action includes claims that, while Defendants deny them in their entirety, would, if proven,
14 authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted
15 Approval of the resolution, pursuant to California Code of Civil Procedure Section 664.6, the
16 Court shall retain jurisdiction of this action solely for the purpose of interpreting, implementing,
17 and enforcing this Joint Stipulation of Settlement of PAGA Action consistent with the terms set
18 forth herein, and the Parties and their counsel submit to the jurisdiction of the Court for purposes
19 of interpreting, implementing and enforcing this Agreement and all orders and judgments
20 entered in connection therewith.

21 **IV. STATEMENT OF NO ADMISSION**

22 **A.** Defendants deny liability to Plaintiffs and to the PAGA Group upon any claim
23 or cause of action. This Agreement does not constitute, and is not intended to constitute, an
24 admission by Defendants as to the merits, validity, or accuracy of any of the allegations or claims
25 made against it in the Action.

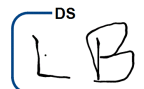
26 **B.** Nothing in this Agreement, nor any action taken in implementation thereof, nor
27 any statements, discussions or communications, nor any materials prepared, exchanged, issued
28 or used during the course of the negotiations leading to this Agreement, is intended by the Parties



1 to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible
2 in any way in this case or any other judicial, arbitral, administrative, investigative or other forum
3 or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance,
4 regulation, rule or executive order, or any obligation or duty at law or in equity. The Parties
5 themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in this
6 case or any other judicial, arbitral, administrative, investigative or other forum or proceeding,
7 as purported evidence of any violation of any federal, state, or local law, statute, ordinance,
8 regulation, rule or executive order, or any obligation or duty at law or in equity, or for any other
9 purpose. Notwithstanding the foregoing, this Agreement may be used in any proceeding before
10 the Court that has as its purpose the interpretation, implementation, or enforcement of this
11 Agreement or any orders or judgments of the Court entered in connection with the resolution.
12 In addition, this Agreement may be introduced, used, or admitted in any pending or future action
13 seeking PAGA damages.

14 **C.** None of the documents produced or created by Plaintiffs or the PAGA Group in
15 connection with the claims procedures or claims resolution procedures constitute, and they are
16 not intended to constitute, an admission by Defendants of any violation of any federal, state, or
17 local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law
18 or in equity.

19 **D.** Nothing in this Agreement will be construed as an admission or
20 acknowledgement of any kind that any group should or would be given collective treatment in
21 the Action or in any other action or proceeding. Further, neither this Agreement nor the Court's
22 actions with regard to this Agreement will be admissible in any court or other tribunal regarding
23 the propriety of collective treatment. In the event that this Agreement is not approved by the
24 Court or any appellate court, is terminated, or otherwise fails to be enforceable, Plaintiffs will
25 not be deemed to have waived, limited or affected in any way any claims, rights or remedies in
26 the Action, and Defendants will not be deemed to have waived, limited, or affected in any way
27 any of their objections or defenses in the Action.

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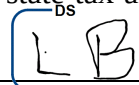
1 **V. RELEASE, DISMISSAL, AND CONFIDENTIALITY**

2 **A. Release as to PAGA Claims.**

3 Upon Approval by the Court of this Settlement and Defendants full funding of the
4 Settlement Amount, Plaintiffs, as a representative of the State of California, the PAGA Group,
5 and the State of California will release and forever discharge any and all claims and causes of
6 action, known or unknown, contingent or accrued, against Defendants, Defendants' parents,
7 subsidiaries, affiliates, their insurers, attorneys, shareholders, executives, managers, and all
8 agents thereof (collectively "Released Parties"), arising out of the facts and claims asserted in
9 the Action for civil penalties under the Private Attorney General Act of 2004 Cal. Lab. Code §
10 2698 based upon the facts alleged, for violations of the California Labor Code governing: meal
11 and rest breaks; unpaid wages, including minimum wages, regular wages, overtime, and double
12 time wages, and all theories for or related to nonpayment of such wages or failure to timely pay
13 such wages; wage statement violations; separation pay violations; and any other penalties which
14 could be asserted based on the allegations alleged against Defendants in Plaintiff Lozada's
15 February 14, 2020 LWDA Letter and Plaintiff Benitez's January 12, 2021 LWDA letter and the
16 Action (the "Released Claims"). As a result of this release, the PAGA Group will be unable to
17 bring a claim under PAGA, or recover civil penalties under any pending PAGA lawsuit, for any
18 of the Released Claims that arose during the Settlement Period.

19 **B. Publicity.**

20 The Plaintiffs agree that they have not and will not publish the Settlement. By way of
21 this settlement, Plaintiffs direct their counsel not to issue any press releases or press statements
22 regarding the Settlement, identify Defendants or Defense Counsel by name in any media
23 including Plaintiffs' Counsel's website, or have any communications with the press or media
24 about the Action or the Settlement. However, nothing in the provision shall be construed from
25 as preventing the Parties from taking following actions: (a) Plaintiffs' counsel shall be allowed
26 to refer to the Action and Settlement in other litigations to support their adequacy as attorneys
27 for a putative class or PAGA group or to justify an award of attorneys' fees; (b) the Parties shall
28 have the right to disclose the Resolution as may be required under federal or state tax and/or



1 securities laws or under Generally Accepted Accounting Principles; (c) the Parties shall have
2 the right to disclose the Settlement to third parties without identifying the case name, case
3 number, or names of any of the Parties or Released Parties; (d) the Parties may refer to the
4 Resolution, describe its terms, and file the settlement agreement with the Court, the LWDA, and
5 the Settlement Administrator in connection with any proceedings which are reasonably
6 necessary to obtain Approval of the Settlement; (e) the Parties or their representatives may
7 communicate with accountants or legal advisors regarding the Settlement; and (f) the Released
8 Parties may disclose the Settlement in any pending or future action seeking PAGA damages.
9 Except for the previously listed exceptions, in response to any inquiries about the Action, the
10 Parties may state that “the matter has been resolved.”

11 **VI. SETTLEMENT ADMINISTRATOR**

12 Plaintiffs and Defendants, through their respective counsel, have selected Phoenix Class
13 Action Administration Solutions as the Settlement Administrator to administer the Settlement,
14 which includes but is not limited to distributing and responding to inquiries about the Notice of
15 PAGA Resolution and calculating all amounts to be paid from the Net Settlement Fund. Charges
16 and expenses of the Settlement Administrator, estimated to be Five Thousand Dollars
17 (\$5,000.00), will be paid from the Settlement Amount. Any charges and expenses of the
18 Settlement Administrator greater than the allocated Five Thousand Dollars (\$5,000.00) will
19 come from the Settlement Amount. If the actual Settlement Administrator fees are less than the
20 Parties’ estimation, the difference between the actual and estimated Settlement Administrator
21 fees will be included in the Net Settlement Amount.

22 **VII. NOTICE**

23 **A.** Plaintiffs and Defendants, through their respective attorneys, have jointly
24 prepared a Notice of PAGA Resolution, in the form attached hereto as “**Exhibit A**” which in
25 substance will be provided to the members of the PAGA Group as follows:

26 (1) As soon as practicable following Approval of the Settlement, but no later
27 than fifteen (15) calendar days after the Court’s Approval, Defendants will provide to the
28 Settlement Administrator the PAGA List.

(2) The Settlement Administrator shall run all the addresses provided through the United States Postal Service NCOA database (which provides updated addresses for any individual who has moved in the previous four years who has notified the U.S. Postal Service of a forwarding address) to obtain current address information.

(3) Within twenty-one (21) calendar days after the Settlement Administrator's receipt of the PAGA List, the Settlement Administrator will mail the Notice of PAGA Resolution together with a settlement payment to all PAGA Group members by first-class United States mail, postage prepaid, with directions to the Postmaster to forward the Notice and return all undeliverable Notices to the Settlement Administrator. For each Notice of PAGA Resolution and settlement payment that is returned as undeliverable, the Settlement Administrator shall promptly attempt to locate the Aggrieved Employee by performing an additional skip trace and shall re-mail the Notice of PAGA Resolution and settlement check no later than ten (10) calendar days following receipt of the undeliverable Notice of PAGA Resolution.

(4) The Notice of PAGA Resolution will be provided in English.

VIII. COMPUTATION AND DISTRIBUTION OF PAYMENTS

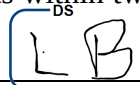
A. Distribution Formula.

(1) Members of the PAGA Group will receive a lump sum payment in an amount determined by the Settlement Administrator (i.e., the Net Settlement Payment) in accordance with the provisions of this Agreement.

(2) The Net Settlement Payment to each member of the PAGA Group will be determined by dividing the Net Settlement Amount by the total number of pay periods worked by all members of the PAGA Group during the Settlement Period (the "Pay Period Amount") and then multiplying the Pay Period Amount by the number of pay periods worked by the individual PAGA member.

B. Funding of Resolution.

(1) The funding of the Settlement Amount will be completed at one time with funds provided to and escrowed by the Settlement Administrator. The funds used for the Settlement Amount shall be paid to the Settlement Administrator by Defendants within twenty

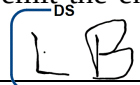


(20) calendar days of the date the Order approving the Settlement becomes "Final". Such Order becomes Final upon the later of: (a) provided that no appeal from the Order approving the Settlement is filed, the day after the deadline for any appeals expires (i.e., 60 days from when the Order is entered); (b) if an appeal of the Order is filed, and the appeal is finally disposed of by ruling, dismissal, denial, or otherwise, the day after the last date for filing a request for further review of the Court of Appeal's decision passes, and no further review is requested; or (c) if an appeal of the Order is filed and there is a final disposition by ruling, dismissal, denial, or otherwise by the Court of Appeal, and review of the Court of Appeal's decision is requested, the day after the request for review is denied with prejudice and/or no further review of the Order can be requested.

(2) If a PAGA Group member is deceased at the time of distribution, the Settlement Administrator shall distribute the deceased PAGA Group member's Net Settlement Payment to the deceased PAGA Group member's legal heir(s). In the event of a dispute as to the legal heir(s), the Settlement Administrator shall notify the executor of the deceased PAGA Group member's estate and attempt to place the deceased PAGA Group member's payment in escrow or similar disposition such that any competing heirs may take whatever action they wish to resolve ultimate disposition of such money and the Settlement Administrator and the Parties hereto may disclaim any further interest in or obligation in relation to such money.

(3) If a check is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace search and, if another address is identified, shall mail the check to the newly identified address. If the Settlement Administrator is unable to obtain a valid mailing address through this process, the monies represented by the check shall be turned over according to the below procedures.

(4) Settlement checks will specifically indicate that they are void if not negotiated within one hundred eighty 180 days of their issuance. Any settlement checks that remain uncashed one hundred eighty (180) or more calendar days after issuance by the Settlement Administrator shall be voided. The Settlement Administrator will remit the entire



1 amount of each PAGA Group member's uncashed Net Settlement Payment to the California
2 State Controller for deposit in the Unclaimed Property Fund in the name of the PAGA Group
3 member to whom the uncashed Net Settlement Payment was drafted.

4 **C. Time for Distribution of the Attorneys' Fees, Costs and LWDA Payment.**

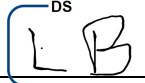
5 The Settlement Administrator shall cause the Court approved attorneys' fees, litigation
6 costs and LWDA Payment to be paid at the same time and manner as the Settlement Payments
7 to the PAGA Group.

8 **IX. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN**

9 The amounts paid under this Agreement do not represent a modification of any
10 previously credited hours of service under any employee benefit plan, policy or bonus program
11 sponsored by Defendants. Such amounts will not form the basis for additional contributions to,
12 benefits under, or any other monetary entitlement under, benefit plans (self-insured or not)
13 sponsored by Defendants, policies or bonus programs. Any payments made under the terms of
14 this Settlement shall not be applied retroactively, currently or on a going forward basis as salary,
15 earnings, wages, or any other form of compensation for the purposes of Defendants' benefit
16 plan, policy or bonus program. Defendants retain the right to modify the language of its benefit
17 plans, policies and bonus programs to effect this intent and to make clear that any amounts paid
18 pursuant to this Settlement are not for "hours worked," "hours paid," "hours of service," or any
19 similar measuring term as defined by applicable plans, policies and bonus programs for purpose
20 of eligibility, vesting, benefit accrual or any other purpose, and that additional contributions or
21 benefits are not required by this Settlement.

22 **X. PLAINTIFFS' COUNSEL ATTORNEYS' FEES AND LITIGATION COSTS**

23 Defendants shall not oppose an application by Plaintiffs' Counsel to receive, and
24 Plaintiffs' Counsel shall not seek or receive, an amount in excess of Two Hundred Thirty
25 Thousand Dollars and Zero Cents (\$230,000.00) which represents 33 1/3% of the Settlement
26 Amount for all past and future attorneys' fees necessary to prosecute, settle, and administer the
27 Action and this Settlement. In the event that the escalator clause in section I.U. herein is
28 triggered and the Settlement Amount is increased, Plaintiffs' Counsel has, at their discretion,



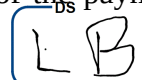
1 the option to increase their attorneys' fees in order to remain at 33 1/3% of the Settlement
2 Amount. Additionally, Defendants shall not oppose an application by Plaintiffs' Counsel to
3 receive, and Plaintiffs' Counsel shall not seek or receive, an amount in excess of Thirty
4 Thousand Dollars (\$30,000.00), which represents all past and future litigation costs and
5 expenses necessary to prosecute, settle and administer the Action and this Settlement. Any
6 attorneys' fees or litigation costs awarded to Plaintiffs' Counsel by the Court shall be deducted
7 from the Settlement Amount for the purpose of determining the Net Settlement Amount. This
8 amount shall include all attorneys' fees and litigation costs and expenses for which Plaintiff and
9 Plaintiff's Counsel could claim under any legal theory whatsoever. Should the Court approve a
10 lesser percentage or amount of fees and/or litigation costs than the amount that Plaintiffs'
11 Counsel ultimately seeks, then the unapproved portion or portions shall revert to the Net
12 Settlement Amount.

13 **XI. TAXATION AND ALLOCATION**

14 **A.** For withholding tax characterization purposes and payment of taxes, the Net
15 Settlement Amount shall be deemed and is allocated by the Parties as follows: 100% as
16 penalties.

17 **B.** All PAGA Group members who cash their settlement check may receive an IRS
18 Form 1099 for their portion of the settlement, if deemed required by the Settlement
19 Administrator (in compliance with IRS guidelines).

20 **C.** Nothing in this Settlement is intended to constitute legal advice regarding
21 federal, state, and/or local tax obligations. The Parties, Defense Counsel and Plaintiffs' Counsel
22 make no representations as to the tax treatment or legal effect of the payments called for
23 hereunder, and Aggrieved Employees are not relying on any statement or representation by the
24 Parties, Plaintiffs' Counsel or Defense Counsel in this regard. Aggrieved Employees understand
25 and agree that they will be responsible for the payment of any employee taxes and penalties
26 assessed on the payment described herein and will hold the Parties, Plaintiffs' Counsel and
27 Defense Counsel free and harmless from and against any claims, liabilities, costs and expenses,
28 including attorney's fees, resulting in any way from personal tax treatment of the payments



made pursuant to this Agreement. To the extent that this Settlement or any of its attachments is interpreted to contain or constitute advice regarding any state or federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code. Neither the Parties, Plaintiffs' Counsel nor Defense Counsel are responsible for any Aggrieved Employee's tax obligations regarding the allocation of the settlement payments.

XII. COURT APPROVAL

This Agreement and the Resolution is contingent upon Approval by the Court. Plaintiffs and Defendants agree to take all steps as may be reasonably necessary to secure Approval of the Resolution, to the extent not inconsistent with the terms of this Agreement, and will not take any action adverse to each other in obtaining Court Approval of the Resolution in all respects.

XIII. APPRISAL AND CERTIFICATION BY THE SETTLEMENT ADMINISTRATOR.

The Settlement Administrator shall keep Plaintiffs' Counsel and Defense Counsel apprised of all distributions from the Settlement Amount. Upon completion of administration of the Settlement, the Settlement Administrator shall provide written certification of such completion to Plaintiffs' Counsel and Defense Counsel. The Settlement Administrator shall also provide Defense Counsel with a final accounting, including the names of payees and Net Settlement Payments.

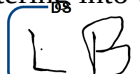
XIV. MISCELLANEOUS PROVISIONS

A. Stay of Action.

Named Plaintiffs and Defendants agree to the stay of all discovery in the Action, pending Approval of the Resolution by the Court.

B. Interpretation of This Agreement.

(1) This Agreement constitutes the entire agreement between Plaintiffs and Defendants. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other written or oral representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary or contradict its terms. In entering into this



1 Agreement, the Parties agree that this Agreement is to be construed according to its terms and
2 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and
3 enforced under the laws of the State of California, both in its procedural and substantive aspects,
4 without regard to its conflict of laws provisions. Any claim arising out of or relating to this
5 Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior
6 Court of the State of California for the County of Los Angeles, and Plaintiffs and Defendants
7 hereby consent to the personal jurisdiction of the Court over them solely in connection
8 therewith. The foregoing is only limited to disputes concerning this Agreement and in no way
9 limits or negates the enforceability and effect of the underlying arbitration agreements signed
10 by employees of Defendants, specifically including but not limited to Plaintiffs, obligating them
11 to arbitrate any and all claims on an individual (and not on a class, collective, or representative)
12 basis.

13 (2) Plaintiffs, on their own behalf and on behalf of the PAGA Group, and
14 Defendants participated in the negotiation and drafting of this Agreement and had available to
15 them the advice and assistance of independent counsel. As such, neither Plaintiffs nor
16 Defendants may claim that any ambiguity in this Agreement should be construed against the
17 other.

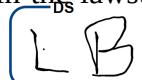
18 (3) The terms and conditions of this Agreement constitute the exclusive and
19 final understanding and expression of all agreements between Plaintiffs and Defendants with
20 respect to the settlement of the Action. This Agreement may be modified only by a writing
21 signed by counsel for all Parties or their successors-in-interest.

22 **C. Further Cooperation.**

23 Plaintiffs and Defendants and their respective counsel shall proceed diligently to prepare
24 and execute all documents, to seek Approval from the Court, and to do all things reasonably
25 necessary or convenient to consummate this Agreement as expeditiously as possible.

26 **D. Confidentiality of Documents.**

27 Plaintiffs, and the Settlement Administrator, shall maintain the confidentiality of all
28 documents, deposition transcripts, declarations and other information obtained in the lawsuit,



1 unless necessary for appeal or such documents are ordered to be disclosed by the Judge or by a
2 subpoena.

3 **E. Counterparts.**

4 This Agreement may be executed in one or more actual or non-original counterparts, all
5 of which will be considered one and the same instrument and all of which will be considered
6 duplicate originals. This Agreement may be signed electronically or by facsimile, and an
7 electronic or facsimile signature is deemed valid and binding, and triggers all rights and
8 obligations under this Agreement.

9 **F. Authority.**

10 Each individual signing below warrants that he or she has or they have the authority to
11 execute this Agreement on behalf of the party for whom or which that individual signs.

12 **G. No Third-Party Beneficiaries.**

13 Named Plaintiff, members of the PAGA Group, Defendants and Released Parties are
14 direct beneficiaries of this Agreement, but there are no third-party beneficiaries.

15 **H. Force Majeure.**

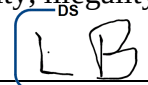
16 The failure of any party to perform any of its obligations hereunder shall not subject such
17 party to any liability or remedy for damages, or otherwise, where such failure is occasioned in
18 whole or in part by acts of God, fires, accidents, earthquakes, other natural disasters, explosions,
19 floods, wars, interruptions or delays in transportation, power outages, labor disputes or
20 shortages, shortages of material or supplies, governmental laws, restrictions, rules or
21 regulations, sabotage, terrorist acts, acts or failures to act of any third parties, or any other similar
22 or different circumstances or causes beyond the reasonable control of such party.

23 **I. Deadlines Falling on Weekends or Holidays.**

24 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,
25 or legal/court holiday, that deadline shall be continued until the following business day.

26 **J. Severability.**

27 In the event that any one or more of the provisions contained in this Agreement shall for
28 any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or



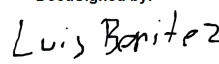
unenforceability shall in no way effect any other provision if Defense Counsel and Plaintiffs' Counsel, on behalf of the Parties and the PAGA Group, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

K. Defendants' Fees and Costs

All of Defendants' own legal fees, costs and expenses incurred in this Action shall be borne by Defendants.

APPROVED AS TO CONTENT

DATE: _____, 2022
May 3, 2022

DocuSigned by:

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LUIS BENITEZ

DATE: _____, 2022

MARIO LOZADA

DATE: _____, 2022

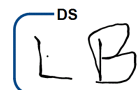
By:
For: STAFFPAY, INC. dba
EMPLICITY

DATE: _____, 2022

By:
For: IMPERIAL CFS, INC.

DATE: _____, 2022

By:
For: ITI RESOURCE, INC.



unenforceability shall in no way effect any other provision if Defense Counsel and Plaintiffs' Counsel, on behalf of the Parties and the PAGA Group, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

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APPROVED AS TO CONTENT

DATE: _____, 2022

LUIS BENITEZ

DATE: _____, 2022



MARIO LOZADA

DATE: _____, 2022

By:
For: STAFFPAY, INC. dba
EMPLICITY

DATE: _____, 2022

By:
For: IMPERIAL CFS, INC.

DATE: _____, 2022

By:
For: ITI RESOURCE, INC.

MSL

unenforceability shall in no way effect any other provision if Defense Counsel and Plaintiffs' Counsel, on behalf of the Parties and the PAGA Group, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

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APPROVED AS TO CONTENT

DATE: _____, 2022

LUIS BENITEZ

DATE: _____, 2022

MARIO LOZADA

DATE: May 1, 2022



By: Cheryl Schmidt

For: STAFFPAY, INC. dba
EMPLICITY

DATE: _____, 2022

By:

For: IMPERIAL CFS, INC.

DATE: _____, 2022

By:

For: ITI RESOURCE, INC.

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APPROVED AS TO CONTENT

DATE: _____, 2022

LUIS BENITEZ

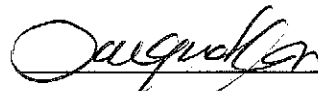
DATE: _____, 2022

MARIO LOZADA

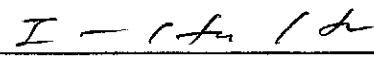
DATE: _____, 2022

By: _____
For: STAFFPAY, INC. dba
EMPLICITY

DATE: 4/28, 2022


By: Jackie Hsu
For: IMPERIAL CFS, INC.

DATE: 4/28, 2022


By: I-Hui Hsu
For: ITI RESOURCE, INC.

1 APPROVED AS TO FORM

2
3 DATE: _____, 2022
4 May 3, 2022

LAVI & EBRAHIMIAN, LLP

DocuSigned by:
Joseph Lavi
871E0169FCF244D...

5 By: _____
6 Joseph Lavi
7 Vincent C. Granberry
8 Pooja Patel
9 Melissa A. Huether
10 Attorneys for Plaintiffs

11
12
13
14
15
16
17 DATE: _____, 2022

FISHER & PHILLIPS LLP

18 By: _____
19 Todd B. Scherwin
20 Krystle D. Meyer
21 Attorneys for Defendants STAFFPAY, INC. dba
22 EMLICITY and STAFFPAY EXECUTIVE
23 STAFFING, INC.

24
25
26
27
28 DATE: _____, 2022

**OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.**

By: _____
Steven Mannix
Attorneys for Defendants IMPERIAL CFS, INC.
and ITI RESOURCE, INC.

DS
LB

1 APPROVED AS TO FORM

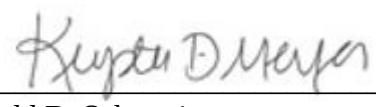
2
3 DATE: _____, 2022

LAVI & EBRAHIMIAN, LLP

4
5 By: _____
6 Joseph Lavi
7 Vincent C. Granberry
8 Pooja Patel
9 Melissa A. Huether
10 Attorneys for Plaintiffs

11
12 DATE: May 2, 2022

FISHER & PHILLIPS LLP

13 By:  _____
14 Todd B. Scherwin
15 Krystle D. Meyer
16 Attorneys for Defendants STAFFPAY, INC. dba
17 EMPPLICITY and STAFFPAY EXECUTIVE
18 STAFFING, INC.

19
20 DATE: May 23, 2022

**OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.**

21 By:  _____
22 Steven Mannix
23 Attorneys for Defendants IMPERIAL CFS, INC.
24 and ITI RESOURCE, INC.

Exhibit A

NOTICE OF PAGA RESOLUTION

Luis Benitez, et al. v. Staffpay, Inc., et al.
Superior Court of the State of California for the County of Los Angeles
Case No. 21STCV10755

<<Name>>
<<Address>>
<<City>>, <<State>> <<Zip Code>>
XX - XX - _ _ _ _

I. NOTICE OF PAGA SETTLEMENT

The Los Angeles County Superior Court (the “Court”) has approved a settlement in the above-captioned action filed by Luiz Benitez and Mario Lozada (“Plaintiffs”) on behalf of themselves and all other allegedly aggrieved employees.

In this lawsuit, Plaintiffs are seeking to recover civil penalties on behalf of the California Labor and Workforce Development Agency (“LWDA”) and other aggrieved employees under the California Private Attorneys General Act (“PAGA”). These civil penalties are based on Plaintiffs’ allegations that defendants STAFFPAY, INC. dba EMPPLICITY, IMPERIAL CFS, INC., and ITI RESOURCE, INC. (“Defendants”) violated California state wage and hour laws governing: meal and rest breaks; unpaid wages, including minimum wages, regular wages, overtime, and double time wages, and all theories for or related to nonpayment of such wages; wage statement violations; and separation pay violations.

The Court has **not** made a determination about Plaintiffs’ claims. This Notice is not to be understood as an expression of any opinion by the Court as to the merits of Plaintiffs’ claims.

Defendants deny Plaintiffs’ allegations. Defendants maintain that they were in compliance with the California Labor Code at all times and enters into this settlement with no admission of liability and solely for the purposes of compromising and settlement the action to avoid the cost and operational burden of continued litigation.

You are receiving this Notice because you are in the group of employees referred to as “Aggrieved Employees” for purposes of settlement only, which is defined as: (a) All current and former hourly, non-exempt employees who worked at Defendant Imperial CFS either directly or through any staffing agency, including but not limited to the employees of Defendants and PowerStaff, within the State of California at any time within the PAGA Period. The “PAGA Period” or “Settlement Period” is defined as the time period from February 14, 2019 through December 18, 2021.

II. CALCULATION OF INDIVIDUAL PAGA PAYMENT

Each individual PAGA payment was calculated on a proportional basis based on the number of pay periods worked by that individual during the PAGA Period. Your individual PAGA payment has been calculated at \$[AMOUNT PAID TO THIS EMPLOYEE]. Your payment is

enclosed with this Notice. The amount paid to each Aggrieved Employee will be allocated as follows: one-hundred percent (100%) will be attributed to penalties and will be reported on an IRS Form 1099.

The Parties agree that all Aggrieved Employees who receive payment pursuant to this settlement will be responsible for any and all tax obligations associated with such receipt. **You will be responsible for correctly characterizing this compensation for tax purposes and paying any taxes that may be due on the payment you receive. Neither Counsel for Plaintiffs, Counsel for Defendants, nor the Settlement Administrator may legally provide you with advice regarding the tax implications of the receipt of this settlement payment.**

III. RELEASE

Upon Approval by the Court of this Settlement and Defendants full funding of the Settlement Amount, Plaintiffs, as a representative of the State of California, the PAGA Group, and the State of California will release and forever discharge any and all claims and causes of action, known or unknown, contingent or accrued, against Defendants, Defendants' parents, subsidiaries, affiliates, their insurers, attorneys, shareholders, executives, managers, and all agents thereof (collectively "Released Parties"), arising out of the facts and claims asserted in the Action for civil penalties under the Private Attorney General Act of 2004 Cal. Lab. Code § 2698 based upon the facts alleged, for violations of the California Labor Code governing: meal and rest breaks; unpaid wages, including minimum wages, regular wages, overtime, and double time wages, and all theories for or related to nonpayment of such wages or failure to timely pay such wages; wage statement violations; separation pay violations; and any other penalties which could be asserted based on the allegations alleged against Defendants in Plaintiff Lozada's February 14, 2020 LWDA Letter and Plaintiff Benitez's January 12, 2021 LWDA letter and the Action (the "Released Claims"). As a result of this release, the PAGA Group will be unable to bring a claim under PAGA, or recover civil penalties under any pending PAGA lawsuit, for any of the Released Claims that arose during the Settlement Period.

IV. SETTLEMENT ADMINISTRATOR

**** PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE ****

You may call the Settlement Administrator at [\[ADMINISTRATOR INFO\]](#) with any questions.

Settlement checks will be void 180 days after issuance if not deposited or cashed. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement. If you do not cash or otherwise deposit your check, after 180 days, it will be transmitted to the California State Controller's Office in the Unclaimed Property Fund in your name.