

FILED

KERN COUNTY SUPERIOR COURT

06/03/2022

BY Urena, Veronica

DEPUTY

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Attorneys for Defendant

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KERN

BLAINE SMITH, individually, and on behalf
of aggrieved employees pursuant to the Private
Attorneys General Act ("PAGA"),

Plaintiff,

v.

KS INDUSTRIES, L.P., a California limited
partnership; and DOES 1 through 100,
inclusive;

Defendants.

Lead Case No.: S-1500-CV-284188-BCB
Consolidated with Case No. BCV-21-101300

Assigned for All Purposes to:
Honorable Bernard C. Barmann, Jr.
~~Department 10~~ Division H vu

**JOINT STIPULATION AND [PROPOSED]
APPROVAL ORDER GRANTING
PRIVATE ATTORNEYS GENERAL ACT
(LABOR CODE § 2698, ET SEQ.)
SETTLEMENT AND RELEASE
AGREEMENT**

Complaint Filed: June 8, 2021
Trial Date: None Set

1 RICHARD ESPARZA, as an aggrieved
2 employee on behalf of himself and other
current and former aggrieved employees,

3 Plaintiff,

4 v.

5 KS INDUSTRIES, L.P., a California limited
6 partnership; and DOES 1 through 100,
inclusive;

7 Defendants.
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Lead Case No.: S-1500-CV-284188-BCB
Consolidated with Case No. BCV-21-101300

Assigned for All Purposes to:
Honorable Thomas S. Clark
Department 17

**JOINT STIPULATION AND [PROPOSED]
APPROVAL ORDER GRANTING
PRIVATE ATTORNEYS GENERAL ACT
(LABOR CODE § 2698, ET SEQ.)
SETTLEMENT AND RELEASE
AGREEMENT**

Complaint Filed: February 20, 2015
FAC Filed: March 27, 2015
SAC Filed: February 8, 2018
TAC Filed: March 23, 2018
Trial Date: None Set

1 Plaintiffs Richard Esparza and Blaine Smith (“Plaintiffs”), on behalf of themselves and other
2 current and former aggrieved employees, and Defendant KS Industries, L.P. (“Defendant”), by and
3 through their respective counsel of record, hereby stipulate as follows for purposes of settling this
4 action:

5 1. On February 19, 2015, Plaintiff Richard Esparza filed a PAGA letter with the Labor
6 and Workforce Development Agency (the “Esparza PAGA Letter”) alleging numerous wage and hour
7 violations, including the following: failure to pay all minimum and overtime wages, failure to pay the
8 regular rate of pay for overtime, failure to provide compliant meal and rest breaks and related
9 premiums, failure to provide accurate wage statements, failure to provide timely wages, failure to
10 provide final wages, and failure to reimburse business expenses (collectively with the allegations in
11 the Smith PAGA Letter described in Paragraph 4 below, the “PAGA Letter Alleged Violations”).

12 2. On February 20, 2015, Plaintiff Richard Esparza filed a Complaint, *Esparza v. KS*
13 *Industries, L.P.* (California Superior Court, County of Kern, Case No. S-1500-CV-284188). The
14 Complaint consisted of one PAGA cause of action seeking penalties under the PAGA for the PAGA
15 Letter Alleged Violations. On March 23, 2018, Plaintiff filed a Third Amended Complaint (“TAC”)
16 (the “Esparza PAGA Claim”). The TAC is the operative complaint of the Esparza PAGA Claim.

17 3. On March 17, 2021, Plaintiff Blaine Smith filed a PAGA letter with the Labor and
18 Workforce Development Agency (the “Smith PAGA Letter”) alleging similar and additional wage and
19 hour violations to those alleged in the Esparza PAGA Letter (collectively with the allegations in the
20 Smith PAGA Letter described in Paragraph 1 above, the “PAGA Letter Alleged Violations”).

21 4. On June 8, 2021, Plaintiff Blaine Smith filed a Complaint, *Smith v. KS Industries, L.P.*
22 (California Superior Court, County of Kern, Case No. BCV-21-101300) (“the Smith PAGA Claim”).

23 5. On April 22, 2022, the Parties filed a stipulation to consolidate the Esparza PAGA
24 Claim with the Smith PAGA Claim. The stipulation was accepted by the Court and the Esparza PAGA
25 Claim was consolidated with the Smith PAGA Claim under Case Number BCV-21-101300 on April
26 28, 2022, with the Smith PAGA Claim was designated as the lead action (“the Consolidated PAGA
27 Claim”).

28 6. The “Action” is defined herein as the Consolidated PAGA Claim and the PAGA Letter

1 Alleged Violations incorporated therein.

2 7. Plaintiffs and Defendant (collectively, the “Parties”) have engaged in both formal and
3 informal discovery, pursuant to which Plaintiffs propounded an initial set of written discovery requests
4 on Defendant and Defendant produced a volume of documents and data relevant to Plaintiff’s claims,
5 including but not limited to, Defendant’s relevant policies, procedures, and practices; a sampling of
6 timekeeping and payroll records and wage statements relating to Plaintiff and the other aggrieved
7 employees; and summaries of data pertaining to the number of employees purportedly affected by
8 Defendant’s alleged violations.

9 8. On April 12, 2022, the Parties participated in a private mediation with Steven Rottman,
10 a well-regarded mediator experienced in mediating complex employment matters, pursuant to which
11 the Parties reached an agreement on the settlement of Plaintiff’s claims.

12 9. Attached hereto as “**EXHIBIT A**” is the fully executed Settlement Agreement
13 (“Settlement,” “Settlement Agreement,” or “Agreement”) setting forth the terms of the settlement.
14 Attached hereto as “**EXHIBIT B**” is the Transmittal of Individual Settlement Award letter, which will
15 be sent to all PAGA Settlement Members to provide them with notice of the Settlement and
16 information regarding their respective Individual Settlement Awards.

17 10. The Maximum Settlement Amount agreed to in the Settlement Agreement is
18 \$2,400,000.00, subject to Court approval. Plaintiffs’ Counsel shall receive thirty-eight percent (38%),
19 or \$912,000.00, of the Maximum Settlement Amount as the Plaintiffs’ Counsel Payment, subject to
20 Court approval.

21 11. On or about May 18, 2022, Plaintiffs provided notice of the Settlement Agreement to
22 the LWDA by electronically submitting a copy of the Settlement Agreement.

23 12. WHEREAS, attached hereto as “**EXHIBIT C**” is the email confirmation from the
24 LWDA regarding the submission of the Settlement Agreement.

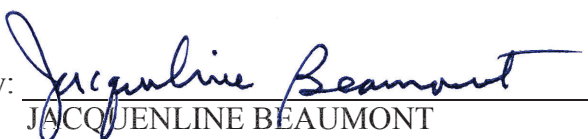
25 WHEREFORE, IT IS HEREBY STIPULATED AND AGREED BY THE PARTIES
26 HERETO, THROUGH THEIR RESPECTIVE COUNSEL, AS FOLLOWS: The Settlement is fair,
27 adequate, and reasonable, as it represents a reasoned compromise reached through arm’s-length
28 negotiations and considers the risks, complexity, and expense of further litigation.

1
2 Dated: May 13, 2022
3

JUSTICE LAW CORPORATION

4
5 By: 
6 DOUGLAS HAN
7 SHUNT TATAVOS-GHARAJEH
8 CHANCELLOR NOBLES
9 *Attorneys for Plaintiffs*

10
11 Dated: May 17, 2022

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13 **CALL & JENSEN APC**
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15 By: 
16 JACQUELINE BEAUMONT
17 JOHN EGLEY
18 *Attorneys for Defendant*
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Costs”). Defendant shall pay these amounts in accordance with this Order and the Settlement Agreement.

8. The Court approves the payment of \$10,000.00 to each Plaintiff for their time and effort and for the risk they undertook in bringing and prosecuting the Action (“Enhancement Awards”). Defendant shall pay this amount in accordance with this Order and the Settlement Agreement.

9. The Court approves the payment of up to \$14,000.00 to Phoenix Class Action Administration Solutions (“Phoenix” or “Settlement Administrator”) for the costs of administering the Settlement (“Settlement Administration Costs”).

10. Pursuant to California Labor Code section 2699(l), the Court has reviewed the sum allocated for payment of penalties under PAGA (“PAGA Fund”), determined that the PAGA Fund is fair, just, reasonable, and adequate, and hereby approves the PAGA Fund. The PAGA Fund shall be the portion of the Maximum Settlement Amount (\$2,400,000.00) remaining after the above-approved Plaintiffs’ Counsel Payment, Litigation Costs, Settlement Administrator Costs, and Enhancement Awards are paid. Seventy-five percent (75%), or \$1,060,500.00, of the PAGA Fund will be paid to the LWDA, and twenty-five percent (25%), or \$353,500.00, of the PAGA Fund will be paid to the Settlement Group on a pro-rata basis, based on the number of pay periods the PAGA Settlement Member worked as an hourly-paid employee of Defendant during the Settlement Period. Defendant shall pay this amount in accordance with this Order and the Settlement Agreement.

11. The Parties to this Action are directed to perform in accordance with the terms set forth in the Settlement Agreement.

12. The Court hereby directs the Settlement Administrator to administer the Settlement and to make the payments as provided for in the Settlement Agreement and by this Order.

13. The Court further finds that PAGA does not require that notice of the Settlement be provided to the Settlement Group, however, the Settlement Administrator is ordered to distribute payments to the PAGA Settlement Members with a cover letter. The Court has reviewed and approved the Transmittal of Individual Settlement Award letter, which will be distributed to the PAGA Settlement Members along with their Individual Settlement Awards.

14. Defendant shall provide the Settlement Administrator with a list of the names,

addresses, and Social Security Numbers of the PAGA Settlement Members, as well as the total number of payroll periods worked by each Settlement Group Member and the total number of payroll periods in the PAGA Period, within fourteen (14) calendar days after the Court issues an Order approving the Settlement.

15. Within twenty (20) calendar days after the Effective Date, Defendant shall deposit with the Settlement Administrator the entire \$2,400,000.00 of the Gross Settlement Amount for distribution in accordance with the Settlement Agreement.

16. Within thirty (30) calendar days after the Effective Date, the Settlement Administrator shall pay the Plaintiffs' Counsel Payment, the Litigation Costs, the Settlement Administrator Costs, the LWDA payment, the Individual Settlement Awards to the PAGA Settlement Members, and Plaintiffs' Enhancement Awards.

17. Thereafter, all funds associated with checks issued to PAGA Settlement Members that have not been cashed, deposited, or negotiated 180 days after the date of their issuance will be transmitted to the State of California State Controller's Office for deposit in the name of the employees.

18. Plaintiffs, the LWDA, and the PAGA Settlement Members are hereby bound by the Settlement and its associated release of Released Claims.

19. Upon the Effective Date, all PAGA Settlement members will be barred from asserting or prosecuting all claims on an individual basis, or on behalf of the State of California, for claims and/or causes of action for civil penalties and other relief available under the PAGA against the Released Parties that were or could have been pled based on any and all of the underlying alleged Labor Code violations, facts, and theories pled in the Esparza PAGA Claim, the Smith PAGA Claim, and in the PAGA Letter Alleged Violations, including but not limited to state wage and hour claims for any and all civil penalties under California's Private Attorneys General Act of 2004 based on the alleged Labor Code violations, penalties, attorneys' fees, costs, and other amounts recoverable under said causes of action under California law, to the extent permissible, including but not limited to the California Labor Code and the applicable Wage Orders ("Released Claims").

20. PAGA Settlement Members shall not have the right to opt out of or object to the Settlement.

1 21. Pursuant to the Settlement, the Action is hereby dismissed with prejudice.

2 22. The Court shall retain jurisdiction as to the implementation and enforcement of the
3 terms of the Settlement.

4 23. Notice of this Order and Judgment shall be given to the LWDA by submission through
5 the online system established for the filing of notices and documents, within ten (10) calendar days
6 after its entry, in conformity with Labor Code section 2699(1).

7 Date: Signed: 6/3/2022 02:51 PM
8 _____



Honorable Bernard C. Barmann, Jr.
Judge of the Superior Court

EXHIBIT A

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SHUNT TATAVOS-GHARAJEH (SBN 272164)
CHANCELLOR NOBLES (SBN 330081)
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Attorneys for Defendant

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN

BLAINE SMITH, individually, and on behalf
of aggrieved employees pursuant to the Private
Attorneys General Act ("PAGA"),

Plaintiff,

v.

KS INDUSTRIES, L.P., a California limited
partnership; and DOES 1 through 100,
inclusive;

Defendants.

Lead Case No.: BCV-21-101300
Consolidated with Case No. S-1500-CV-284188

Assigned for All Purposes to:
Honorable Bernard C. Barmann, Jr.
Department 10

SETTLEMENT AGREEMENT

Complaint Filed: June 8, 2021
Trial Date: None Set

1 RICHARD ESPARZA, as an aggrieved
2 employee on behalf of himself and other
current and former aggrieved employees,

3 Plaintiff,

4 v.

5 KS INDUSTRIES, L.P., a California limited
6 partnership; and DOES 1 through 100,
inclusive;

7 Defendants.

Lead Case No.: BCV-21-101300
Consolidated with Case No. S-1500-CV-284188

Assigned for All Purposes to:
Honorable Thomas S. Clark
Department 17

SETTLEMENT AGREEMENT

Complaint Filed: February 20, 2015
FAC Filed: March 27, 2015
SAC Filed: February 8, 2018
TAC Filed: March 23, 2018
Trial Date: None Set

1 Plaintiffs Richard Esparza and Blaine Smith, on the one hand, and Defendant KS
2 Industries, L.P., on the other hand, stipulate as follows:

3 **SETTLEMENT AGREEMENT**

4 Plaintiffs Richard Esparza and Blaine Smith, individually and in their capacity as
5 representatives of the State of California on behalf of other aggrieved employees, and Defendant
6 KS Industries, L.P., hereby enter into this Settlement Agreement and Release of Private Attorneys
7 General Act of 2004 Claims (“**Settlement Agreement**”) as follows:

8 **I. DEFINITIONS**

9 As used in this Settlement, the following terms shall have the following meanings:

10 1. “**Actions**” shall mean the civil action entitled *Esparza v. KS Industries, L.P.*, filed
11 in the Superior Court for the County of Kern on or about February 20, 2015, and amended on
12 March 27, 2015; February 8, 2018; and March 23, 2018, and the PAGA Letter incorporated therein,
13 designated as case number S-1500-CV-284188; and the civil action entitled *Smith v. KS Industries,*
14 *L.P.*, filed in the Superior Court for the County of Kern on or about June 8, 2021, and the PAGA
15 Letter incorporated therein, designated as case number BCV-21-101300.

16 2. “**Defendant**” shall mean KS Industries, L.P.

17 3. “**Defense Counsel**” refers to Call & Jensen APC.

18 4. “**Effective Date**” refers to the date the court has entered a judgment approving the
19 settlement, if the State of California has not filed an objection. However, if the State of California
20 has filed an objection, the Effective Date of this Settlement shall be the last date on which a notice
21 of appeal from the judgment may be filed and none is filed; or, if judgment is entered and a timely
22 appeal from the judgment is filed, the Effective Date of this Settlement shall be the date that the
23 judgment is affirmed and is no longer subject to appeal.

24 5. “**LWDA**” refers to the California Labor & Workforce Development Agency.

25 6. “**PAGA**” refers to the Labor Code Private Attorneys General Act of 2004,
26 California Labor Code Sections 2698 *et seq.*

27 7. “**PAGA Period**” shall mean the time from February 19, 2014, until May 31, 2022,

or the date the court grants approval, whichever date is earlier.

8. **“PAGA Settlement Members”** shall mean the named Plaintiffs and all allegedly hourly-paid or non-exempt aggrieved employees who worked directly for Defendant in California during the PAGA Period eligible for a payment under this PAGA settlement.

9. **“Plaintiffs”** refers to Richard Esparza and Blaine Smith, individually and in their capacity as representatives of the State of California on behalf of other aggrieved employees.

10. **“Plaintiffs’ Counsel”** refers to Justice Law Corporation.

11. **“Parties”** collectively refers to Plaintiffs and Defendant.

12. **“Released Claims”** shall mean all claims on an individual basis, or on behalf of the State of California, for claims and/or causes of action for civil penalties and other relief available under the PAGA against the Released Parties that were or could have been pled based on any and all of the underlying alleged Labor Code violations, facts, and theories pled in the Esparza PAGA Claim, the Smith PAGA Claim, and in the PAGA Letter Alleged Violations, including but not limited to state wage and hour claims for any and all civil penalties under California’s Private Attorneys General Act of 2004 based on the alleged Labor Code violations, penalties, attorneys’ fees, costs, and other amounts recoverable under said causes of action under California law, to the extent permissible, including but not limited to the California Labor Code and the applicable Wage Orders.

13. **“Released Parties”** shall mean Defendant KS Industries, L.P. and its past, present and/or future, direct and/or indirect owners, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parents, subsidiaries, affiliates, divisions, predecessors, successors, and assigns.

14. **“Settlement Administrator”** refers to a qualified, third-party settlement administrator mutually selected by the Parties to administer the terms of the Settlement.

II. RECITALS

1. On February 19, 2015, Plaintiff Richard Esparza filed a PAGA letter with the Labor and Workforce Development Agency (the “Esparza PAGA Letter”) alleging numerous wage and

hour violations, including the following: failure to pay all minimum and overtime wages, failure to pay the regular rate of pay for overtime, failure to provide compliant meal and rest breaks and related premiums, failure to provide accurate wage statements, failure to provide timely wages, failure to provide final wages, and failure to reimburse business expenses (collectively with the allegations in the Smith PAGA Letter described in Paragraph 4 below, the “PAGA Letter Alleged Violations”).

2. On February 20, 2015, Plaintiff Richard Esparza filed a Complaint, *Esparza v. KS Industries, L.P.* (California Superior Court, County of Kern, Case No. S-1500-CV-284188). The Complaint consisted of one PAGA cause of action seeking penalties under the PAGA for the PAGA Letter Alleged Violations. On March 23, 2018, Plaintiff filed a Third Amended Complaint (“TAC”) (the “Esparza PAGA Claim”). The TAC is the operative complaint of the Esparza PAGA Claim.

3. On March 17, 2021, Plaintiff Blaine Smith filed a PAGA letter with the Labor and Workforce Development Agency (the “Smith PAGA Letter”) alleging similar and additional wage and hour violations to those alleged in the Esparza PAGA Letter (collectively with the allegations in the Smith PAGA Letter described in Paragraph 1 above, the “PAGA Letter Alleged Violations”).

4. On June 8, 2021, Plaintiff Blaine Smith filed a Complaint, *Smith v. KS Industries, L.P.* (California Superior Court, County of Kern, Case No. BCV-21-101300) (“the Smith PAGA Claim”).

5. On April 22, 2022, the Parties filed a stipulation to consolidate the Esparza PAGA Claim with the Smith PAGA Claim. The stipulation was accepted by the Court and the Esparza PAGA Claim was consolidated with the Smith PAGA Claim under Case Number BCV-21-101300 on April 28, 2022, with the Smith PAGA Claim was designated as the lead action (“the Consolidated PAGA Claim”).

6. The “Action” is defined herein as the Consolidated PAGA Claim and the PAGA Letter Alleged Violations incorporated therein.

7. Counsel for all Parties have thoroughly investigated the facts relating to the claims alleged in this Action and have made a thorough study of the legal principles applicable to the claims asserted against Defendant. Based on their investigation and evaluation of this case, Plaintiffs' Counsel have concluded that the settlement is fair, reasonable, and adequate in light of all known facts and circumstances, including the defenses asserted by Defendant, potential adverse findings regarding liability, and numerous potential appellate issues.

8. Defendant denies, and continues to deny, each and every claim and contention alleged in the Action and has always maintained that it never engaged in any unlawful acts regarding any of the matters alleged in the Action.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and conditions set forth, the Parties agree as follows:

III. NON-ADMISSION OF LIABILITY

A. Based on the factual and legal issues involved, the expense and time necessary to prosecute the Action through trial, the risks, uncertainty and costs of further prosecution, the difficulty of proof necessary for purposes of liability, and the relative benefits to the PAGA Settlement Members of an expeditious resolution to the Action, the Parties have concluded that the terms set forth in this Settlement are fair, reasonable, adequate and in the best interests of the PAGA Settlement Members.

B. By entering into this Settlement, Defendant denies any liability for any of the claims in the Action, as well as any other potential or unknown claims based on wage and hour violations under state or federal law. Neither this Settlement, nor any document referred to or contemplated herein, nor any action taken to carry out this Settlement, is, may be construed as, or may be used as, an admission, concession, or indication by or against Defendant of any unlawful conduct, fault, wrongdoing or liability whatsoever. Defendant specifically denies that it has engaged in any unlawful or wrongful conduct against Plaintiffs or the PAGA Settlement Members.

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1 **IV. TERMS OF THE SETTLEMENT PAYMENT**

2 **A. The Maximum Settlement Amount**

3 Defendant shall pay a settlement payment in a total amount of Two Million, Four Hundred
4 Thousand Dollars (\$2,400,000) (the “**Maximum Settlement Amount**”). The Maximum
5 Settlement Amount shall include Plaintiffs’ Counsel Payment, the Enhancement Awards,
6 Settlement Administrator Costs, and the LWDA Payment as these terms are defined below.
7 Following these deductions, the remaining Net Settlement Amount will be distributed to the
8 Settlement Group on a pro rata basis based on each PAGA Settlement Member’s share of payroll
9 periods worked during the PAGA Period.

10 **B. Plaintiffs’ Counsel Payment of Attorneys’ Fees and Costs**

11 1. Plaintiffs’ Counsel will apply to the Court for an award of attorneys’ fees
12 not to exceed thirty-eight percent (38%) of the Maximum Settlement Amount, or \$912,000, and
13 reasonable litigation costs not to exceed \$40,000 (“**Plaintiffs’ Counsel Payment**”). Plaintiffs’
14 Counsel will be responsible for submitting all documents to support their request for attorneys’
15 fees and costs.

16 2. Defendant will not oppose or object to Plaintiffs’ Counsel’s application for
17 attorneys’ fees, not to exceed 38% of the Maximum Settlement Amount plus all documented and
18 reasonable litigation costs and expenses up to \$40,000.

19 3. In the event that the Court does not approve an award of attorneys’ fees
20 equal to the requested amount, or the Court alters the payment methodology described herein, it
21 will not be considered a material change of the settlement and will not operate to terminate or
22 cancel the agreement, and this Settlement will be enforceable.

23 4. The Plaintiffs’ Counsel Payment shall be paid from the Maximum
24 Settlement Amount. Any reductions by the Court of Plaintiffs’ Counsel’s request for attorneys’
25 fees or costs shall revert to the PAGA Fund.

26 **C. Enhancement Awards to Plaintiffs**

27 1. Subject to Court approval, Defendant agrees to pay each Plaintiff an
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enhancement payment of up to Ten Thousand Dollars (\$10,000.00), to be paid from the Maximum Settlement Amount, as an enhancement for their service as the PAGA representatives, in addition to any payment they may otherwise receive as a PAGA Settlement Member (“**Enhancement Awards**”).

2. Defendant will not oppose Plaintiffs’ request for the Enhancement Awards. Plaintiffs will be responsible for correctly characterizing this compensation for tax purposes and for paying any taxes owing on said amount. The Parties agree that a reduction by the Court of the requested General Release Payment is not a basis for rendering the entire Settlement voidable or unenforceable. Any reductions by the Court of the General Release Payment shall revert to the PAGA Fund.

D. Settlement Administrator Costs

1. The cost of the Settlement Administrator to implement and complete the settlement process according to the terms of this Settlement, including the costs to calculate payments to individual PAGA Settlement Members and to prepare any necessary tax documents for PAGA Settlement Members are referred to as the “**Settlement Administrator Costs**,” and are estimated to be \$14,000 but not to exceed \$30,000.

E. PAGA Fund

1. After deducting Plaintiffs’ Counsel Payment, the Settlement Administration Costs, and any court-approved Enhancement Awards, the remainder of the Maximum Settlement Amount will be allocated for settlement of alleged violations of PAGA (“**PAGA Fund**”).

2. Seventy-five percent (75%) of the PAGA Fund shall be allocated toward payment to the Labor & Workforce Development Agency (“**LWDA Payment**”).

3. Twenty-five percent (25%) of the PAGA Fund will be distributed to the PAGA Settlement Group on a pro rata basis based on each PAGA Settlement Member’s share of payroll periods worked during the PAGA period.

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V. COMPUTATION AND DISTRIBUTION OF MAXIMUM SETTLEMENT AMOUNT

A. Deposit of Maximum Settlement Amount

1. The Settlement Administrator shall establish a Qualified Settlement Fund pursuant to Section 468B(g) of the Internal Revenue Code for purposes of administering the Settlement. The Settlement Administrator shall furnish the Qualified Settlement Fund with its own Employer ID Number and calculate all settlement checks and payroll deductions and withholdings required under law based on information that will be confidentially furnished by Defendant.

2. Within twenty (20) calendar days after the Effective Date, Defendant shall deposit the Maximum Settlement Amount with the Settlement Administrator.

B. Formula for Calculating Share of PAGA Fund

The portion of the PAGA Fund that is paid to each PAGA Settlement Member shall be determined by the following formula:

1. The payment to PAGA Settlement Members will be based on the number of pay periods worked by each PAGA Settlement Member during the PAGA Period. Partial weeks will be counted as full pay periods.

2. The amount to be paid per pay period worked by a PAGA Settlement Member will be calculated by dividing the value of the portion of the PAGA Fund that will be paid to PAGA Settlement Members by the total number of pay periods worked by all PAGA Settlement Members during the PAGA Period.

3. Defendant's records shall be determinative for purposes of calculating the number of pay periods worked and any payments to PAGA Settlement Members.

C. Distribution of PAGA Fund

1. Within fourteen (14) calendar days after the Court grants approval of the settlement, Defendants will provide the name, address, and Social Security Number of the PAGA Settlement Members to the Settlement Administrator, as well as the total number of payroll periods worked by each Settlement Group Member and the total number of payroll periods in the PAGA Period.

2. Within thirty (30) calendar days after the Effective Date, the Settlement Administrator shall pay to the LWDA an amount equivalent to seventy-five percent (75%) of the PAGA Fund, or as otherwise directed by the Court.

3. Within thirty (30) calendar days after the Effective Date, the Settlement Administrator shall distribute to PAGA Settlement Members their individual portion of the PAGA Fund (the “**Individual Payment**”), or as otherwise directed by the Court.

4. To provide the best notice practicable, any Individual Payment returned to the Settlement Administrator as non-delivered shall be sent by post-marked First Class U.S. Mail to the forwarding address affixed thereto, if any. If no forwarding address is provided for an Individual Payment that is returned as non-deliverable, the Settlement Administrator shall use the best available technology accessible (e.g. skip tracing, address verification, etc.) to the Settlement Administrator or other mutually agreeable method to locate PAGA Settlement Members and will then mail the Individual Payment to the address identified by the best available technology accessible to the Settlement Administrator or other mutually agreeable method. If no current address is located, the Individual Payment for that individual will be deemed undeliverable. If any PAGA Settlement Members cannot be located within two attempts at mailings by the Settlement Administrator, the Individual Payment for that individual will be deemed undeliverable. The amount of any undeliverable checks will be void and sent to the State of California State Controller’s Office in the PAGA Settlement Member’s name. However, the PAGA Settlement Members whose checks were undeliverable will still have released the Released Claims. The Parties agree that this results in no unpaid residue under California Civil Procedure Code section 384, as the entire PAGA will be paid out to the LWDA and PAGA Settlement Members. Therefore, Defendant will not be required to pay any interest on said amount.

5. The Settlement Administrator shall maintain a list of the postmark date for the original mailing of the Individual Payment to the PAGA Settlement Members, the postmark date of any subsequent mailing to any PAGA Settlement Members, and a list of PAGA Settlement Members who did not receive the Individual Payment due to the inability to locate a valid address

1 using the procedures described herein or who otherwise could not be located within two attempts
2 at mailing.

3 6. All settlement checks will remain valid and negotiable for 180 days from the date
4 of their mailing by the Settlement Administrator. After 180 days from the date of their mailing by
5 the Settlement Administrator, the dollar value of all checks that remain uncashed for more than
6 180 days will be void and sent to the State of California State Controller's Office in the PAGA
7 Settlement Member's name. However, the PAGA Settlement Members who have not cashed their
8 checks within 180 days from the date of their mailing will still have released the Released Claims.
9 The failure by a PAGA Settlement Member to cash their settlement checks will have no effect on
10 their release of the Released Claims. The Parties agree that this results in no unpaid residue under
11 California Civil Procedure Code section 384, as the entire PAGA will be paid out to the LWDA
12 and PAGA Settlement Members, whether or not the PAGA Settlement Members cash their
13 settlement checks. Therefore, Defendant will not be required to pay any interest on said amount.

14 7. The Settlement Administrator will prepare and issue IRS Form 1099 to PAGA
15 Settlement Members who received a payment unless it is less than \$600.

16 **D. Settlement Administrator Cost Payment**

17 Within thirty (30) calendar days after the Effective Date, Settlement Administrator shall
18 pay the Settlement Administration Costs directly to the Settlement Administrator.

19 **E. Plaintiffs' Counsel Payment**

20 Within thirty (30) calendar days after the Effective Date, Settlement Administrator shall
21 pay the Plaintiffs' Counsel Payment directly to Plaintiffs' Counsel.

22 **F. Plaintiffs' Enhancement Awards**

23 Within thirty (30) calendar days after the Effective Date, Settlement Administrator shall
24 provide the Enhancement Awards directly to Plaintiffs' Counsel for delivery to Plaintiffs.

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VI. CLAIMS RELEASED BY PAGA SETTLEMENT MEMBERS

A. Claims Released by the LWDA and All PAGA Settlement Members

Upon the approval by the Court and non-objection by the LWDA of this Agreement, effective on the Effective Date, all PAGA Settlement Members will be barred from asserting or prosecuting claims on an individual basis, or on behalf of the State of California, for claims and/or causes of action for civil penalties and other relief available under the PAGA against the Released Parties that were or could have been pled based on any and all of the underlying alleged Labor Code violations, facts, and theories pled in the Esparza PAGA Claim, the Smith PAGA Claim, and in the PAGA Letter Alleged Violations, including but not limited to state wage and hour claims for any and all civil penalties under California's Private Attorneys General Act of 2004 based on the alleged Labor Code violations, penalties, attorneys' fees, costs, and other amounts recoverable under said causes of action under California law, to the extent permissible, including but not limited to the California Labor Code and the applicable Wage Orders ("Released Claims"); and the PAGA Settlement Members shall be deemed to have fully and forever released and discharged Released Parties from the Released Claims effective on the Effective Date.

B. Tax Treatment and Tax Indemnification

PAGA Settlement Members will assume any tax obligations or consequences which may arise from this Settlement. PAGA Settlement Members release any and all claims that they have or may have against Defendant for any claims, demands, deficiencies, levies, assessments, executions, judgments, penalties, taxes, indemnification, and any other recoveries related to any payments made under this Settlement or any compensation provided at any time by Defendant or any of the Released Parties. If any state or federal taxing authority contacts, investigates, or pursues any action against any PAGA Settlement Members for their individual share of taxes related to any payments made under this Settlement or any compensation provided at any time by Defendant or any of the Released Parties, each PAGA Settlement Member shall be responsible for his or her own defense of and payment for any claim of unpaid taxes, interest, or penalties brought by any state or federal taxing authority for the PAGA Settlement Member's share of any state or federal

1 tax obligation. If a PAGA Settlement Member has questions about any liability to any state or
2 federal taxing authority, they should contact the Settlement Administrator. The PAGA Settlement
3 Members should not contact Defendant, any of the Released Parties, or Defense Counsel.

4 **VII. MISCELLANEOUS PROVISIONS**

5 **A. Escalator Clause**

6 The PAGA Settlement is based on Defendant's representation that there are 307,458 pay
7 periods worked by approximately 3,799 putative aggrieved employees as of March 15, 2022, as
8 calculated for the mediation. If, at the time of approval, it is determined that the number of pay
9 periods in the PAGA Period actually exceeds 307,458 by ten percent (10%) or more, Defendants
10 shall increase pro rata the PAGA Settlement Amount for every pay period that is more than
11 307,458. To further clarify the pro rata increase, if the actual number of pay periods during the
12 PAGA Period is 338,214, then the MSA shall increase in the amount of \$7.81 per additional pay
13 period above 338,214 that constitute the final settled pay periods amount for the Settlement Group.

14 **B. Voiding the Settlement**

15 A failure of the Court to approve any material condition of this Settlement shall render the
16 entire Settlement voidable and unenforceable as to Plaintiffs and Defendant, at the option of
17 Plaintiffs or Defendant. Each party may exercise its option to void this Settlement as provided
18 above by giving notice, in writing, to the other, and to the Court within fifteen (15) calendar days
19 after the Order failing to approve a material condition of the Settlement has been received by the
20 party seeking to void the Settlement.

21 **C. Mutual Full Cooperation**

22 Plaintiffs, Defendant, Plaintiffs' Counsel, and Defense Counsel agree to fully cooperate
23 with each other to accomplish the terms of this Settlement, including, but not limited to, execution
24 of such documents and to take such other action as may reasonably be necessary to implement the
25 terms herein. The Parties agree to use their best efforts and any other efforts that may become
26 necessary by Order of the Court, or otherwise, to effectuate this Settlement.

27 ///

The signatories hereto represent that they are fully authorized to enter into this Settlement.

E. Binding Nature of the Settlement

1. This Settlement shall be binding upon, and inure to the benefit of, Plaintiffs, the PAGA Settlement Members, the State of California and its state labor law enforcement agencies (including but not limited to the Labor and Workforce Development Agency (LWDA) and its departments, divisions, commissions, boards, agencies and employees), and Defendant and the Released Parties, and the successors or assigns of each of the above, subject to the terms and conditions hereof and the approval of the Court. Plaintiffs represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, any claim, demand, action, cause of action or rights released in the Released Claims in this Settlement.

2. This Settlement may be amended or modified only by a written instrument signed by Plaintiffs' Counsel and Plaintiffs, as well as Defense Counsel and Defendant. No rights under this Settlement may be waived except in writing.

3. This Settlement and any attached exhibits constitute the entire agreement between Plaintiffs and Defendant relating to the terms contained herein. All prior or contemporaneous agreements, understandings and statements, whether oral or written, whether express or implied, and whether by a party or its counsel, concerning this Settlement are merged herein. No oral or written representations, warranties or inducements have been made to any party concerning this Settlement or its exhibits other than the representations, warranties and covenants contained and memorialized in such documents.

4. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any of its provisions. Each term of this Settlement is intended to be contractual and not merely a recital.

F. Joint Drafting of Settlement Documents

1. Plaintiffs' Counsel and Defense Counsel have arrived at this Settlement as a result

of a series arm's-length negotiations, taking into account all relevant factors, present and potential.

2. This Settlement has been drafted jointly by Plaintiffs' Counsel and Defense Counsel and, therefore, in any construction or interpretation of this Settlement, the same shall not be construed against any of the Parties.

3. Plaintiffs and Plaintiffs' Counsel agree that none of the documents provided to them by Defendant shall be used for any purpose other than the settlement of this Action. Specifically, none of the documents provided shall be used to pursue any subsequent claims or litigation against Defendant or the Released Parties.

G. Execution of the Settlement

This Settlement may be executed in one or more counterparts and by facsimile. All executed copies of this Settlement and photocopies thereof shall have the same force and effect and shall be as legally binding and enforceable as the original.

H. No Press Release or Publicity Regarding the Terms of the Settlement

Plaintiffs and Plaintiffs' Counsel, as well as Defendant and Defense Counsel, agree that they will not issue any media or press release, initiate any contact with the media or the press, respond to any media or press inquiry or have any communications with the media or the press about the fact, amount or terms of this Settlement. Plaintiffs and Plaintiffs' Counsel shall not publicize or refer to the fact or amount of the Settlement, on their websites, social media, any other marketing materials, professional organization such as CELA, or legal publication. Plaintiffs and Plaintiffs' Counsel will not state on their websites, social media, any other marketing materials, or legal publications, that Defendant engaged in any act contrary to California law, or denied payment owed to individuals classified as independent contractors or employees, or otherwise disparage Defendant, or otherwise identify Defendant. Defendant shall be allowed to report the Settlement or results of this lawsuit if required to do so by public disclosure regulatory requirements or with respect to any financial or other disclosures which in their judgment are necessary.

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1 **I. Continuing Jurisdiction of the Court**

2 Pursuant to California Code of Civil Procedure section 664.6, the Parties agree that the
3 Court shall retain jurisdiction over the Parties, and over this Settlement, in order to: (i) monitor
4 and enforce compliance of Settlement, and/or (ii) resolve any disputes over this Settlement or the
5 administration of the benefits of this Settlement.

6 05/13/2022

7 DATED: May __, 2022



Richard Esparza, Plaintiff

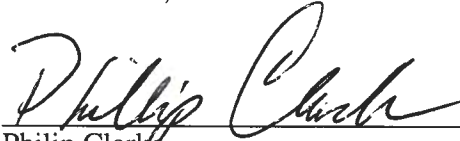
9 05/13/2022

10 DATED: May __, 2022



Blaine Smith, Plaintiff

12 DATED: May 17, 2022



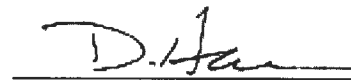
Philip Clarke
Authorized Agent for Defendant KS Industries, L.P.

15 **APPROVED AS TO FORM:**

18 Dated: May 13, 2022

JUSTICE LAW CORPORATION

20 By: _____



Douglas Han
Shunt Tatavos-Gharajeh
Chancellor Nobles
Attorneys for Plaintiff

24 *[Additional signatures on next page]*

1 Dated: May 17, 2022

2 **CALL & JENSEN APC**

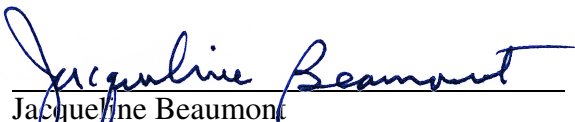
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4 By: 
5 Jacqueline Beaumont
6 John Egley
7 Attorneys for Defendant
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EXHIBIT B

SETTLEMENT ADMINISTRATOR LETTERHEAD

NOTICE OF SETTLEMENT

I. What is the Purpose of this Notice?

The purpose of this notice is to let you know that a consolidated representative action lawsuit was settled in the Superior Court of California for the County of Kern (the “Court”), and you are considered to be an PAGA Settlement Member for purposes of the settlement entitled *Smith v. KS Industries, L.P.*, Kern County Superior Court Case No. BCV-21-101300, consolidated with *Esparza v. KS Industries, L.P.*, Kern County Superior Court Case No. S-1500-CV-284188 (the “Lawsuit”). In the consolidated lawsuit, Mr. Richard Esparza and Mr. Blaine Smith pursued various claims against KS Industries, L.P. (“Defendant”) under Labor Code § 2699 *et seq.*, the California Private Attorney General Act (“PAGA”), on behalf of aggrieved employees who worked directly for Defendant between February 19, 2014, and May 31, 2022 (“PAGA Settlement Members”).

II. What is the Position of Defendants on Settlement?

Defendant KS Industries, LP, views this settlement as a compromise, to which it has agreed in order to avoid the uncertainty of litigation. Defendant is not admitting to any allegations in the cases. In fact, Defendant denied and continue to deny that it has engaged in any unlawful activity, that it has failed to comply with the law in any material respect, or that it has any liability to anyone under the claims asserted in the Lawsuits.

III. Why Did I Get this Notice?

You received this notice because Defendant’s records identify you as a PAGA Settlement Member for purposes of the Lawsuit, and you are receiving the enclosed check as a result. Specifically, a “PAGA Settlement Member” is defined as follows: all current and former non-exempt hourly paid individuals who were employed by Defendant within the state of California who worked at any time during the period February 19, 2014, through May 31, 2022.

The enclosed check is your share of the settlement. Your settlement amount represents penalties and will be reported on an IRS Form 1099. Your check is valid for 180 days from the date of mailing. Funds attributable to any uncashed check will escheat to the California State Controller’s Office in the name of the PAGA Settlement Member’s name.

IV. What is the Effect of this Settlement on My Rights?

As a result of this settlement and your designation as a PAGA Settlement Member, you are releasing Released Claims (defined in this paragraph) against Defendant and all related parties. Upon the approval by the Court and non-objection by the LWDA of this Agreement, effective on the date the Court enters the order approving the settlement of the Lawsuit, you are releasing and will be barred from asserting or prosecuting claims on an individual basis, or on behalf of the State of California, for claims and/or causes of action for civil penalties and other relief available under the PAGA against the Released Parties that were or could have been pled based on any and all of the underlying alleged Labor Code violations, facts, and theories pled in the Esparza PAGA Claim, the Smith PAGA Claim, and in the PAGA Letter Alleged Violations, including but not limited to state wage and hour claims for any and all civil penalties under California’s Private Attorneys General Act of 2004 based on the alleged Labor Code violations, penalties, attorneys’ fees, costs, and other amounts recoverable under said causes of action under California law, to the extent permissible, including but not limited to the California Labor Code and the applicable Wage Orders.

V. Who Can I Contact if I Have Any Questions?

You can contact the Settlement Administrator, Phoenix Class Action Administration Solutions, at [PHONE] to ask questions, provide updated contact information, or correct your employment information. The Settlement Administrator is an independent third party selected by Plaintiffs and the Defendant, and approved by the Court, to send notice, process and issue checks, and administer the settlement. You may also contact the lawyers for Plaintiffs, Justice Law Corporation, at 818.230.7502 or contact them via email at info@justicelawcorp.com.

EXHIBIT C



Justice Law Corporation <info@justicelawcorp.com>

Thank you for your Proposed Settlement Submission

1 message

DIR PAGA Unit <lwdadonotreply@dir.ca.gov>

Wed, May 18, 2022 at 10:45 AM

To: info@justicelawcorp.com

05/18/2022 10:44:48 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

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I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is manderson@justicelawcorp.com

JOINT STIPULATION AND APPROVAL ORDER GRANTING PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698, ET SEQ.) SETTLEMENT AND RELEASE AGREEMENT

on interested parties in this action by electronically submitting as follows:

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

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

Executed on June 16, 2022, at Pasadena, California.

Moin! Andauer

Mariah Anderson