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9 attorney general

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SAN DIEGO

12 GABRIEL DELGADO, on behalf of the
general public as private attorney general,

13 Plaintiffs,

14 v.

15 BAKER COMMODITIES INC., a California
16 Corporation, and DOES 1-50, inclusive,

17 Defendants.
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Case No. 37-2021-00018865-CU-OE-CTL

[Assigned for All Purposes to:
The Hon. Carolyn Caietti]

**DECLARATION OF JAMES HAWKINS
IN SUPPORT OF MOTION TO APPROVE
PAGA SETTLEMENT**

HEARING DATE: APRIL 22, 2022
TIME: 10:30 A.M.
DEPT.:C-70

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1 the Agreement that is now presented to this Court. The Parties engaged in significant efforts to
2 obtain the facts regarding the claims asserted, including a 25% sampling of time and payroll
3 records, an exchange of detailed statistical data regarding shifts worked by individuals Plaintiff
4 intends to represent, the production of documents, meal period premiums paid, and the exchange
5 of detailed briefing and analysis in connection with that mediation. A mediator's proposal was
6 eventually agreed upon and an MOU was executed. The long form settlement agreement was
7 later negotiated and is presented here for approval.

8 5. The claim before this court is the representative claim under PAGA on behalf of
9 the State of California for civil penalties pursuant to the PAGA. The parties have agreed to
10 settle this PAGA claim in its entirety after discovery and arm's length mediation. Defendant
11 filed and served its answer generally denying the claims therein and asserting affirmative
12 defenses. Defendant denies any wrongdoing and denies liability with respect to the matters
13 alleged in the Complaint and believes that it has valid defenses to all of Plaintiff's claims.
14 Defendant further contends that it has complied with all wage and hour laws applicable to the
15 employment of Plaintiffs and other Class Members. To date, no court has made any findings
16 that Defendant engaged in any wrongdoing or in any wrongful conduct, or otherwise acted
17 improperly or in violation of any law, rule or regulation with respect to any of the issues
18 presented in this action.

19 6. The settlement is intended to fully and finally resolve the PAGA claims asserted
20 by Plaintiff on behalf of the State of California and aggrieved employees. This is only a
21 settlement of the PAGA claims for civil penalties, and is not a class settlement and does not
22 release the individual claims, if any, of the Aggrieved Employees. After deducting the Attorneys'
23 Fees (\$66,666.67) and Costs (\$12,220.51), Settlement Administration Expenses (\$7,370.00)
24 ILYM Group (the Settlement Administrator), and Plaintiff's separate Individual Settlement
25 Payment (\$10,000), the remaining Net Settlement Amount is estimated to be \$103,747.82 and
26 will be distributed to the LWDA and Aggrieved Employees. An estimated \$25,936.95 (25% of
27 the NSA) will be distributed to the Aggrieved Employees on a pro rata basis, amounting to an
28 average of \$81 per Aggrieved Employee. The remaining \$77,807.11 (75% of the NSA) is to be

1 distributed to the LWDA. This recovery provided for under the Settlement Agreement is a
2 reasonable result for the State and Aggrieved Employees. Any difference from these amounts will
3 be added to the Net Settlement Amount. (Agreement at ¶ III (2) through (6).

4 7. The Aggrieved Employees are defined as all individuals who were employed by
5 Defendants as non-exempt employees who worked at least one pay period for Baker
6 Commodities, and anytime during the PAGA Period of July 2, 2020, through December 31, 2021.

7 8. Defendants confirmed that PAGA Group Members consisted of approximately 317
8 employees who worked approximately 16,743 pay periods during the PAGA Period of July 2,
9 2020, through December 31, 2021. The 16,743 pay periods divided by the settlement of
10 \$200,000.00 yields an \$11.94 per pay period value.

11 9. Plaintiff's counsel balanced the terms of the proposed Settlement against the risk
12 of litigation and probable outcome if this matter went at trial. Based on their own respective
13 independent investigations and evaluations, and after taking into account the sharply disputed
14 factual and legal issues involved in this matter, the risks attending further prosecution of the case,
15 and the monetary benefits received under the Settlement despite the questionable nature of the
16 claims, Plaintiff's counsel is of the opinion that Settlement for the consideration and on the terms
17 set forth in the Settlement Agreement is fair, reasonable and adequate and is in the best interests
18 of the State, Plaintiff, and the Aggrieved Employees. Counsel for the Parties investigated the
19 applicable law as applied to the facts discovered regarding the claims of Plaintiff, Defendant's
20 defenses thereto and the damages claimed by Plaintiff on behalf of the Aggrieved Employees.

21 10. Since the filing of the complaint, the Parties have exchanged extensive discovery
22 and engaged in numerous discussions regarding the factual and legal issues surrounding this case.
23 Throughout the litigation, Defendant produced thousands of pages of information and data,
24 including written policies, employee handbooks, a 25% sampling of time and payroll records for
25 the Aggrieved Employees reflecting time punches at the start of employees' shifts, and at the end
26 of the shift, and meal period punches, applicable pay rates, job titles, policies on clocking in and
27 out using the mobile apps, time card approval agreements re MP RB accuracy of time card
28 stamps, policies regarding attesting to time entered, first and second meal break waivers, timecard

1 signoff policies, union contracts, arbitration agreements, and timekeeping operations. Defendant
2 also provided Plaintiff's personnel file, records regarding documents identifying the non-exempt
3 positions and information regarding the number of employees holding these positions during the
4 relevant time period. Defendant also provided substantial information concerning the total
5 number of potential size of the PAGA group, the total number of pay periods at issue, and other
6 summary data related to the alleged class. The Parties have conducted themselves in informed,
7 good faith arms-length negotiations after conducting discovery and exchanging extensive
8 evidence and information about the claims and defenses of this lawsuit and engaging in pre-
9 mediation discussions, telephone conferences, and correspondence all aimed at settling their
10 dispute.

11 11. In preparation for the mediation, Plaintiff reviewed the entire discovery produced.
12 The information had to be extrapolated and processed to figure out the amount of compensation
13 Plaintiff contends are due to the Aggrieved Employees. Defendant also provided substantial
14 information concerning the total number of potential Aggrieved Employees, the total number of
15 pay periods at issue, and other summary data related to the alleged class. The evidence and
16 information gathered and reviewed by Plaintiff's counsel provided a factual framework for a
17 comprehensible and reliable damage model pertaining to all Aggrieved Employees. The
18 mediation and subsequent settlement discussions included discussion and examination of the
19 Aggrieved Employees claims and the Parties' respective positions on the legal and factual issues
20 raised in the Complaints.

21 12. During mediation and subsequent settlement negotiations, the Parties discussed all
22 aspects of the case, including the risks and delays of further litigation, the risks to the Parties of
23 proceeding with trial, the law relating to representative PAGA actions, the functions performed
24 by the purported Aggrieved Employees in the various roles, the various alleged labor code
25 violations, including off the clock work, donning and doffing, meal and rest period violations,
26 unreimbursed expenses, wage statement violations, the evidence produced and analyzed, and the
27 possibility of bifurcation of discovery and/or trial and appeals, among other things. During all
28 settlement discussions, the Parties conducted their negotiations with the mediator and subsequent

1 negotiations at arm's length in an adversarial position. Based on all of the information available
2 to the Parties and with the assistance of the experienced mediator, and experienced counsel, the
3 Parties agree that this matter is well-suited for settlement given the strengths and weaknesses of
4 the PAGA claim.

5 13. The settlement is presumptively fair because: (1) it is the product of non-collusive,
6 arm's-length negotiations that were overseen by an independent mediator knowledgeable in
7 complex labor and employment matters; (2) it was negotiated by counsel with significant
8 experience in similar complex labor and employment matters; and (3) it occurred after counsel for
9 the Parties engaged in significant investigation to evaluate the strength and potential value of the
10 PAGA claim, and the risks of litigating these claims through trial.

11 14. This Aggrieved Employees recovery compares favorably to the estimated amount
12 of PAGA penalties given the evidence provided and the risks of liability and then penalty awards
13 at trial. With the assistance of an expert, Plaintiff calculated that the maximum amount of
14 statutory PAGA civil penalties was potentially \$3,348,600 based on 16,743 pay periods,
15 consisting of the maximum \$200 per pay period for one of the alleged violations per pay period.
16 Importantly, these calculations were performed at the \$200 statutory rate for the penalties, as it is
17 likely that any penalties awarded would be at a much lower rate given the apparent compliant
18 policies in place. As discussed further herein, California Labor Code Section 2699(e) (1) permits
19 a Court to award a lesser amount than the maximum civil penalty if based on the facts and
20 circumstances to do otherwise would result in an award that is "unjust, arbitrary and oppressive or
21 confiscatory."

22 15. Plaintiff and Plaintiff's Counsel believe that the Settlement is a fair, adequate, and
23 reasonable resolution of this matter. Plaintiff and his counsel recognize the expense and length
24 of continued proceedings necessary to litigate the matter through trial and any possible appeals
25 and have also considered the uncertainty and risk of the outcome of further litigation, and the
26 difficulties and delays inherent in such litigation based upon the burdens of proof. Plaintiff and
27 his counsel are also aware of the burdens of proof necessary to establish liability, both generally
28 and in response to Defendant's defenses thereto, and the difficulties in establishing Defendant's

1 liability for, and the right to recover, penalties on behalf of Plaintiff, the State of California, and
2 the other purported aggrieved employees.

3 16. The settlement is a compromise of highly disputed claims and to recover any
4 PAGA penalties, Plaintiff would be required at trial to prove each of the underlying Labor Code
5 violations. *See Cardenas v. McLane Foodservice, Inc.*, No. SACV 10-473 DOC (FFMx), 2011
6 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) (“Given the statutory language [of PAGA], a
7 plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a
8 violation of the Labor Code by the defendant.”). Here, Plaintiff would need to prove each
9 Aggrieved Employee suffered a violation for each period the employee worked in relation to
10 failure to compensate for non-productive time and rest recovery periods separate from any piece-
11 rate compensation, meal or rest period violations, failure to pay minimum or overtime wages,
12 failure to provide accurate itemized wage statements, failure to maintain accurate payroll records,
13 failure to pay wages when due, and failure to reimburse for required expenses.

14 17. The result achieved in this case, and the monetary recovery provided by this
15 Settlement, are well-within the range of an acceptable settlement under the circumstances,
16 especially when compared to the settlement of PAGA claims in other cases. *See, e.g., DCH Auto*
17 *Wage and Hour Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May 2017) (approving
18 the amount of \$15,000 out of \$4 million toward settlement of PAGA claims); *Flores v. Dart*
19 *Container Corp.*, No. 2:19-cv-00083 WBS JDP, 2021 U.S. Dist. LEXIS 6897, at *3 (E.D. Cal.
20 Jan. 12, 2021) (approving the amount of \$15,000 out of \$411,000 towards settlement of PAGA
21 claims); *Dawson v. Hitco Carbon Composites, Inc.*, No. CV 16-07337 PSG (FFMx), 2019 U.S.
22 Dist. LEXIS 226687, at *6-7 (C.D. Cal. Nov. 25, 2019) (approving the amount of \$10,000 of \$1.1
23 million toward settlement of PAGA claims); *Brown v. CVS Pharmacy, Inc.*, No. CV15-7631 PSG
24 (PjWx), 2017 U.S. Dist. LEXIS 182309, at *3 (C.D. Cal. Apr. 24, 2017) (approving the amount
25 of \$20,000 of \$3 million gross settlement towards settlement of PAGA claims); *Nordstrom*
26 *Commissions Case*, 186 Cal.App.4th 576, 589 (2010) (finding no abuse of discretion by the trial
27 court in approving a settlement that allocates \$0 toward the settlement of PAGA claims that were
28 at issue in the lawsuit); *Alcala v. Meyer Logistics, Inc.*, No. CV 17-7211 PSG (AGRx), 2019 U.S.

1 Dist. LEXIS 166879, at *26 (C.D. Cal. June 17, 2019) (finding that courts approve PAGA
2 settlements that fall within zero to two percent of gross settlement recovery). Here, the value
3 obtained for settlement of the PAGA claims is very significant, and it will be distributed in
4 accordance with and in fulfillment of the objectives of the PAGA statute.

5 18. A crucial factor in evaluating the value of a PAGA-only case is that all PAGA
6 awards are discretionary and can be reduced by the Court.¹ California Labor Code Section
7 2699(e)(1) permits a Court to award a lesser amount than the maximum civil penalty if, based on
8 the facts and circumstances, to do otherwise would result in an award that is “unjust, arbitrary and
9 oppressive or confiscatory.” For example, in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504
10 (2018), the Court of Appeal affirmed a judgment after trial that only provided for a PAGA
11 penalty of \$5 per pay period. Given this precedent, there is a risk at trial that any PAGA penalties
12 awarded could be significantly less than Plaintiff’s calculation even where Plaintiff prevailed on
13 the PAGA claim. If the amount of \$5 per pay period from *Carrington v. Starbucks* is used, the
14 potential recovery of civil penalties would be only \$229,000, which is significantly less than this
15 settlement provides.

16 19. The settlement is also supported by other PAGA settlement previously approved
17 by other courts. See, e.g., *DCH Auto Wage and Hour Cases*, Los Angeles Superior Court, Case
18 No. JCCP4833 (May 2017) (approving the amount of \$15,000 out of \$4 million toward
19 settlement of PAGA claims); *Flores v. Dart Container Corp.*, No. 2:19-cv-00083 WBS JDP,
20 2021 U.S. Dist. LEXIS 6897, at *3 (E.D. Cal. Jan. 12, 2021) (approving the amount of \$15,000
21 out of \$411,000 towards settlement of PAGA claims); *Dawson v. Hitco Carbon Composites, Inc.*,

22 ¹ Under PAGA, courts have considerable discretion to reduce the penalty award. In *Thurman v.*
23 *Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1135-1136 (2012), the court found
24 no abuse of discretion when the trial court reduced the penalty by 30 percent based on the facts of
25 the case, ruling that “[t]o do otherwise under the particular facts and circumstances of this case
26 would be unjust, arbitrary, oppressive, and confiscatory.” Some trial courts have actually awarded
27 no civil penalties, even when Labor Code violations are established. See *Makabi v. Gedalia*, 2016
28 Cal. App. Unpub. 1489, *5-7 (2nd Dist. Ct. of App. Mar. 6, 2016) (no PAGA penalties were
awarded by the Los Angeles County Superior Court) (unpublished decision); *In re Taco Bell
Wage & Hour Actions*, No. 1:07-cv-01314-SAB, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D.
Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

1 No. CV 16-07337 PSG (FFMx), 2019 U.S. Dist. LEXIS 226687, at *6-7 (C.D. Cal. Nov. 25,
2 2019) (approving the amount of \$10,000 of \$1.1 million toward settlement of PAGA claims);
3 *Brown v. CVS Pharmacy, Inc.*, No. CV15-7631 PSG (PJWx), 2017 U.S. Dist. LEXIS 182309, at
4 *3 (C.D. Cal. Apr. 24, 2017) (approving the amount of \$20,000 of \$3 million gross settlement
5 towards settlement of PAGA claims); *Nordstrom Commissions Case*, 186 Cal.App.4th 576, 589
6 (2010) (finding no abuse of discretion by the trial court in approving a settlement that allocates \$0
7 toward the settlement of PAGA claims that were at issue in the lawsuit); *Alcala v. Meyer*
8 *Logistics, Inc.*, No. CV 17-7211 PSG (AGRx), 2019 U.S. Dist. LEXIS 166879, at *26 (C.D. Cal.
9 June 17, 2019) (finding that courts approve PAGA settlements that fall within zero to two percent
10 of gross settlement recovery). Here, the value obtained for settlement of the PAGA claims is
11 reasonable, and it will be distributed in accordance with and in fulfillment of the objectives of the
12 PAGA statute.

13 20. Had the case not settled, the Parties would have been required to conduct extensive
14 formal written discovery, and multiple depositions of party and percipient witnesses all over the
15 State of California, to prepare the case for trial. From the inception of this litigation, Defendant
16 indicated that it would aggressively litigate this case. Even if Defendants failed to succeed on
17 their defenses, litigating a complex PAGA action is inherently expensive, and the litigation could
18 continue beyond entry of judgment if either party were to appeal adverse rulings. Additionally,
19 there is a real possibility that Plaintiff would recover nothing, either for himself or on behalf of
20 the State of California or other Aggrieved Employees, after years of costly and labor-intensive
21 litigation. Avoiding these risks and the likelihood of future contentious litigation, which would
22 involve significant costs, favors settlement.

23 21. Defendant argued that no penalties prior to the PAGA notification should be
24 awarded because the violations were not intentional. Defendant could also argue that the
25 subsequent violations under PAGA only start to accrue after employers receive notice through a
26 citation from the Labor Commissioner, which would have significantly decreased Defendants'
27 exposure. See *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008) (holding
28 "[u]ntil the employer has been notified that it is violating a Labor Code provision ... the employer

1 cannot be presumed to be aware that its continuing underpayment of employees is a ‘violation’
2 subject to penalties.”). *See also Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw*
3 *Transit Servs., Inc.*, 2009 WL 2448430 *1, *9 (S.D. Cal. 2009) (“For the purposes of subsequent
4 violation penalties, the issue is not whether [defendant] willfully violated the Labor Code, but
5 rather whether a court or commissioner had notified it of any violation.”); *Robinson v. Open Top*
6 *Sightseeing San Francisco, LLC*, No. 14-CV-00852-PJH, 2018 WL 895572, at *20 (N.D. Cal.
7 Feb. 14, 2018) (applying “initial” penalty to each violation of § 226 and § 2699(f)(2) because
8 there was no evidence showing defendant was previously notified its practice violated § 226);
9 *Willis v. Xerox Bus. Servs., LLC*, 2013 WL 605383, at *1, *6 (E.D. Cal. 2013) (“for a plaintiff to
10 recover for a ‘subsequent violation,’ an employer must have notice that it has violated the Labor
11 Code”). As such, Defendants contends that Plaintiff’s calculation are inflated not only because
12 the “stack” penalties for a single person during a single pay period, but because the penalties
13 Plaintiff would award in each instances are at an inapplicable (doubled) rate.

14 22. These defenses present a risk to the PAGA claim and the potential that some or all
15 of the PAGA penalties sought may not be awarded. While Plaintiff maintains that his PAGA
16 claim has merit, in reaching the Settlement, Plaintiff and his counsel took into account the
17 strengths and weaknesses of each side's position and the uncertainty associated with continued
18 litigation, trial, and/or appeals.

19 23. Defendant disputes that the penalties assessed by Plaintiff and his expert
20 would have been awarded. Further, it is Defendant’s contention that PAGA penalties cannot be
21 stacked, and that at most just one PAGA penalty can be awarded to an aggrieved employee in
22 any one pay period. *See* Labor Code section 2699 (f)(2) (authorizing awardable PAGA penalties
23 to be measure by “each “each aggrieved employee per pay period”); *Smith v. Lux Retail North*
24 *America, Inc.*, 2013 WL 2932243, at *1, *4 (N.D. Cal. 2013) (rejecting a pleading that sought the
25 “stacking of penalties”; “[f]or the single mistake of failing to include commissions in the
26 overtime base, plaintiff has asserted *five* (count them, five) separate labor code violations that
27 could lead to statutory penalties;” “is it plausible that we would really pile one penalty on another
28 for a single substantive wrong?”; noting that “no actual holding in any judicial decision has ever

1 blessed such stacking”). As such, and for this initial reason, Defendant contends that the
2 maximum potential recovery in this action is significantly lower than as stated by Plaintiff.

3 24. Defendant further argues that Plaintiff would still face significant practical
4 problems in aggregating any material exposure, as each violation would need to be proven as to
5 each person and for each period for which recovery is sought. Defendant argues that it is unlikely
6 that any significant number of current and former employees would travel to the venue of a trial,
7 stay at a hotel, prepare for and deliver testimony, all in exchange for – at most – 25% of \$50 or
8 \$100 (i.e. \$12.50 or \$25) for each pay period in which there was a violation. (“wage statement
9 penalties”). For purposes of section 226, “a good faith dispute presents when there is (1)
10 uncertainty in the law; (2) representations by an authority that compliance was not required; or
11 (3) an employer’s good faith mistaken belief grounded in a good faith dispute.” *Magadia v. Wal-*
12 *Mart Assocs., Inc.*, 384 F. Supp. 3d 1058 (N.D. Cal. 2019). “Mere recklessness” is not a basis for
13 liability. *Pedroza*, 2012 WL 9506073, *5.

14 25. Defendant contends that Plaintiff and the Aggrieved Employees were properly
15 compensated, and that they did not violate the Labor Code as to any of them. Defendant asserted
16 additional defenses to the PAGA claim as discussed above. These defenses present a risk to the
17 PAGA claim and the potential that some or all of the PAGA penalties sought may not be awarded

18 26. The underlying Labor Code section 203 claim was uncertain given the defenses
19 asserted for the underlying claims as well as the lack of evidence of the “willfulness” prong
20 necessary for a Labor Code §203 claim. Plaintiff’s counsel also recognized a risk of an adverse
21 finding given Defendant’s apparently compliant policies and procedures at the time of mediation.
22 The labor code section 226 claim was dependent on the underlying claims for failure to pay
23 wages.

24 **Plaintiff’s Individual Settlement Payment**

25 27. The Settlement provides for an enhancement which is an individual settlement
26 payment to be paid to Plaintiff in the amount of \$10,000² in exchange for a general release of all
27 known and unknown claims. Unlike Aggrieved Employees who only releasing claims for civil

28 ² If the Settlement is not approved by the Court, the individual settlement agreement will be held invalid and

1 penalties under PAGA, Plaintiff is releasing his individual claims. In exchange for a release of
2 these claims, the Parties agreed to an Individual Settlement Payment of \$10,000. In addition,
3 Plaintiff contributed considerable time and effort to the litigation of this case in order to enforce
4 the California Labor Code on behalf of the State of California and for the benefit of other
5 Aggrieved Employees. Plaintiff gathered and produced relevant documents and information,
6 provided the facts and evidence necessary to attempt to prove the allegations, and discussed his
7 employment with his counsel. Plaintiff assisted counsel in developing the theories and evidence
8 to prepare for mediation. He was available whenever his counsel needed him and tried to obtain
9 documents and information that would aid in the litigation of the PAGA claims and pursuit of
10 recovery on behalf of the State of California and the Covered Employees.

11 28. Plaintiff as PAGA Representative has provided extensive supporting documents
12 and assisted Counsel in developing information necessary to litigate and settle this case.
13 Plaintiffs also conducted record review and consultation with counsel in preparation for discovery
14 and eventual mediation, and to assist in evaluating and proving the claims.

15 29. I have a great deal of experience in wage and hour class action litigation. I have
16 obtained certification of several classes, I have been approved as class counsel in many other
17 wage/hour class actions, and I am currently litigating numerous others. Although not an all
18 inclusive list, over the years I have prosecuted the following class action matters as lead and/or
19 co-lead counsel, all of which implicated similar law and facts to those associated with this action:

20 a. *Aguilar v. 7-Eleven, Inc., et. al.*, Orange County Superior Court- Case No.: 30-
21 2009-00268714-CU-OE-CXC. Certified Wage and Hour Class action seeking
22 premium wages for meal period and rest periods and resultant penalties. Class
23 Notice pending.

24 b. *Carey, et. al. v. Arthur J. Gallagher, et. al.*, USDC, SOUTHERN DISTRICT-
25 Case No.: 09-cv-0168. Wage and Hour Class action seeking past wages of overtime
26 for mis-classification of insurance claims adjusters employed by Gallagher Bassett, a
27 third party administrator (TPA) in the State of California. Certification granted.

28 unenforceable.

1 Plaintiffs' counsel co-lead counsel. Case settled, Final Approval granted, no
2 objections and funds fully distributed.

3 c. *Dao v. 3M Company, et al.* USDC, CENTRAL DISTRICT, Case No. CV-08-
4 04554. Wage and Hour Class Action case seeking past wages for "off the clock",
5 overtime and meal and rest break violations for production workers in the State of
6 California. Plaintiff's Counsel appointed as Lead Counsel. Case settled, Final
7 Approval granted, no objections and funds fully distributed.

8 d. *Ortiz v. Kmart*, USDC, CENTRAL DISTRICT, Case No. SACV 06-638 ODW.
9 Wage and Hour Class Action case seeking past wages for meal and rest period
10 violations for retail employees in the State of California. Plaintiff's counsel appointed
11 co-lead counsel. Case settled, Final Approval granted, no objections and funds fully
12 distributed.

13 e. *Morgan v. Aramark Campus, LLC*, USDC, CENTRAL DISTRICT, Case No.
14 SACV08-00412. Wage and Hour Class Action case seeking past wages for meal and
15 rest period violations for retail employees in the State of California. Plaintiff's
16 Counsel appointed as Lead Counsel. Case settled, Final Approval granted, no
17 objections and funds fully distributed.

18 f. *West v Iron Mountain Information Management, Inc, et. al.*; Los Angeles County
19 Superior Court, Case No. BC393709. Wage and Hour Class Action seeking past
20 wages for overtime, meal and rest break violations for driver employees in the State of
21 California. Settlement for "binding arbitration." Arbitration Award for Plaintiff
22 Class. Arbitration Award confirmed. Plaintiff's counsel, lead trial counsel and class
23 counsel.

24 g. *Gonzalez v. Superior Industries Inter, Inc., et al.*, Los Angeles County Superior
25 Court, Case No. BC 357912. Wage and Hour Class Action seeking past wages for
26 overtime, meal and rest breaks violations for production employees in the State of
27 California. Plaintiff's counsel appointed as lead counsel. Case settled, Final Approval
28 granted, no objections and funds fully distributed.

1 h. *Acosta v. Fleetwood Travel Trailers of California, Inc.*, et al., Riverside County
2 Superior Court, Case No. RIC 440630. Wage and Hour Class Action seeking past
3 wages for overtime, meal and rest break violations for production employees in the
4 State of California. Plaintiff's counsel appointed as co-lead counsel. Case settled,
5 Final Approval granted, no objections and funds fully distributed.

6 i. *Walker v. Sharkeez, et al.*, Orange County Superior Court, Case No. 05CC00293.
7 Wage and Hour Class Action seeking past wages for unlawful deductions, meal and
8 rest break violations for restaurant employees in the State of California. Plaintiff's
9 counsel appointed as lead counsel. Case settled, Final Approval granted and funds
10 fully distributed.

11 j. *Padron v. Universal Protection Service, et al*, Orange County Superior Court,
12 Case No. 05CC00013. Wage and Hour Class Action seeking past wages for overtime,
13 meal and rest break violations for security officers in the State of California.
14 Plaintiff's counsel appointed as co-lead counsel. Case settled, Final Approval granted,
15 no objections and funds fully distributed.

16 k. *Martinez v. Securitas Security Services USA*, et al., Santa Clara Superior Court,
17 Case No. 105-CV047499, et al. J.C.C.P. No. 4460. Wage and Hour Class Action
18 seeking past wages for meal and rest break violations for security officers employed
19 by defendant in the State of California. Plaintiff's counsel and co-counsel. Case
20 settled, Final Approval granted and funds fully distributed.

21 l. *Velasquez-Lopez v. Hotel Cleaning Services, Inc.* et al., Riverside Superior Court,
22 Case No. RIC 420909. Wage and Hour Class Action seeking past wages for overtime,
23 meal and rest break violations for housekeepers employed by defendant in the State of
24 California. Plaintiff's counsel appointed as lead counsel. Case settled, Final Approval
25 granted, no objections and funds fully distributed.

26 m. *Ruiz, et al. v. Unisourse Worldwide, Inc., et al.*, USDC, CENTRAL DISTRICT,
27 Case No. CV09-05848. Wage and Hour Class Action seeking past wages for meal
28 and rest period violations for non-exempt employees employed by defendant in the

1 state of California. Case settled. Awaiting Preliminary Approval hearing. Plaintiff
2 has petitioned the Court for Lead Counsel.

3 n. *Herrador v. Culligan International Company, et al.*, USDC, CENTRAL
4 DISTRICT, Case No. SACV 08-680. Wage and Hour Class Action seeking past
5 wages for field and branch employees of defendant in the State of California.
6 Plaintiff's counsel appointed as lead counsel. Case settled and awaiting Final
7 Approval.

8 o. *Defries v. Domain Restaurants, et al.*, Orange County Superior Court, Case No.
9 05CC00128. Wage and Hour Class Action seeking past wages for restaurant
10 employees of defendant in the State of California. Plaintiff's counsel appointed as
11 lead counsel. Case settled, Final Approval granted, no objections and funds fully
12 distributed.

13 p. *Denton v. BLB Enterprises, Inc., et al.*, Orange County Superior Court, Case No.
14 07CC01292. Wage and Hour Class Action seeking unpaid overtime, meal and rest
15 break violations for security guards employed by defendant in the State of California.
16 Plaintiff's counsel appointed as lead counsel. Case settled, Final Approval granted, no
17 objections and funds fully distributed.

18 q. *Rios v. Sandberg Furniture Manufacturing Co., Inc, et al.*, Los Angeles Superior
19 Court, Case No. BC411477. Wage and Hour Class Action seeking unpaid meal and
20 rest break violations for production employees employed by defendant in the State of
21 California. Plaintiff counsel appointed as lead counsel. Case settled, Final Approval
22 granted, no objections and funds fully distributed.

23 r. *McMurray v. Dave and Busters, Inc., et al.*, Orange County Superior Court, Case
24 No. 06CC00099. Wage and Hour Class Action seeking past wages for meal and rest
25 break violations for restaurant employees employed by defendant in the State of
26 California. Plaintiff's counsel appointed as co-lead counsel. Case settled, Final
27 Approval granted, no objections and funds fully distributed.

28 s. *Osuna v. DFG Restaurants, Inc., et al.*, Los Angeles Superior Court, Case No. BC

1 330145. Wage and Hour Class Action seeking past wages of overtime for mis-
2 classification of managers employed by Defendant, DBA Carl's Jrs. in the State of
3 California. Plaintiff's counsel appointed as co-lead counsel. Case settled, Final
4 Approval granted, no objections and funds fully distributed.

5 t. Burns v. Gymboree Operations, Inc., et al., San Francisco Superior Court, Case
6 No. CGC-07-461612. Wage and Hour Class Action seeking past wages for meal and
7 rest break violations for retail employees employed by defendant in the State of
8 California. Plaintiff's counsel appointed lead counsel. Case settled, Final Approval
9 granted, no objections and funds fully distributed.

10 u. Willems v. Diedrich Coffee, Inc., et al., Orange County Superior Court, Case No.
11 07CC00015. Wage and Hour Class Action seeking past wages of overtime for mis-
12 classification of managers employed by Defendant in the State of California.
13 Plaintiff's counsel appointed lead counsel. Case settled, Final Approval granted, no
14 objections and funds fully distributed.

15 v. Davila, et al. v. Beckman Coulter, Inc., et al., Orange County Superior Court, Case
16 No. 07CC01347. Wage and Hour Class Action seeking past wages for overtime, meal
17 and rest break violations for production workers employed by defendant in the State of
18 California. Plaintiff's counsel appointed lead counsel. Case settled; final approval
19 granted; no objections and funds fully distributed.

20 w. Perez v. Naked Juice Company of Glendora, Inc., Los Angeles Superior Court,
21 Case No. BC387088. Wage and Hour Class Action seeking past wages for overtime,
22 meal and rest period violations for production employees employed by defendant in
23 the State of California. Plaintiff counsel appointed as lead counsel. Case settled, Final
24 Approval granted, no objections and funds fully distributed.

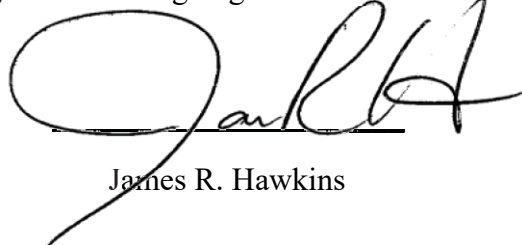
25 30. First, the requested fees are justified by the result achieved. Plaintiff's Counsel
26 negotiated a recovery of \$200,000.00 and this result justifies the requested fees equal to one-third
27 of this recovery (\$66,666.67). This percentage is within the standard contingent recovery
28 percentage of one-third, and this percentage is what was expressly approved by the Supreme

1 Court in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016). Second, the requested fees
2 are justified by the work performed.

3 31. A review of our firm's detailed billing system reveals that to date, our firm as
4 Counsel, on behalf of Plaintiff and the Settlement Aggrieved Employees, invested hundreds of
5 hours litigating this matter through the date of this declaration and have invested attorney time at
6 a rate of more than double the requested fees. The rates charged by my firm are in line with the
7 prevailing rates of attorneys in the local legal community for similar work and, if this were a
8 commercial matter, these are the charges that would be made and presented to the client. These
9 hourly rates have been approved by Court's throughout California, including the Courts in the
10 Superior Court of California. The requested fees are reasonable.

11 32. Finally the award of litigation expenses is based upon the actual expenses incurred
12 by Plaintiff and Plaintiff's Counsel, and were all reasonably necessary to the litigation, and are
13 detailed in **Exhibit #2** attached hereto. Under the Agreement, Plaintiffs' Counsel will be
14 recovering litigation expenses in the total amount of \$12,220.51.

15 I declare under penalty of perjury that the foregoing is true and correct. Executed on
16 March 11, 2022 at Irvine, California.

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18 James R. Hawkins
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EXHIBIT 1

JAMES HAWKINS APLC

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individually and on behalf of all others similarly situated

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Attorneys for Defendant
BAKER COMMODITIES, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

GABRIEL DELGADO, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

BAKER COMMODITIES INC., a
California Corporation; and DOES 1-50,
inclusive,

Defendants.

Case No. 37-2021-00018865-CU-OE-CTL
Hon. Carolyn Caietti

**JOINT STIPULATION OF PAGA
SETTLEMENT AND RELEASE OF CLAIMS**

1 This Joint Stipulation of PAGA Settlement and Release of Claims ("Settlement,"
2 "Settlement Agreement" or "Agreement"), subject to the approval of the Court, that the Action
3 and PAGA Released Claims shall be settled and resolved subject to the following terms and
4 conditions set forth in this Settlement Agreement," is entered by and between Plaintiff Gabriel
5 Delgado ("Plaintiff"), for himself and on behalf of the State of California and other Aggrieved
6 Employees pursuant to the California Private Attorneys General Act, and Defendant Baker
7 Commodities, Inc. ("Defendant" or "Baker") (collectively, the "Parties").

8 This Settlement Agreement shall be effective on the latter of: (a) the Court's final
9 approval of the Settlement if no objections by or on behalf of Aggrieved Employees have been
10 filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been
11 filed or withdrawn; (c) the final resolution of any appeal that has been filed ("Effective Date").

12 **I. DEFINITIONS**

13 Unless otherwise defined herein, the following terms, when used in this Settlement
14 Agreement, shall have the following meanings:

15 1. "Action" means the matter entitled *Gabriel Delgado vs. Baker Commodities, Inc.*,
16 San Diego County Superior Court Case No. 37-2021-00018865-CU-OE-CTL, and as set forth in
17 Plaintiff's correspondence to the California Labor and Workforce Development Agency ("LWDA
18 Letter") dated April 30, 2021.

19 2. "Aggrieved Employees" consist of all current and former non-exempt employees
20 who worked at least one pay period for Baker Commodities, Inc. at any time during the PAGA
21 Period, i.e., from July 2, 2020 to December 31, 2021.

22 3. "Defendant" or "Baker" means Baker Commodities, Inc.

23 4. "Complaint" means the operative complaint filed by Plaintiff in San Diego
24 Superior Court in in Case No. 21STCV09903.

25 5. "Court" or "San Diego County Superior Court" means the Superior Court of
26 California for the County of San Diego.

27 6. "Defense Counsel" or "Counsel for Defendant" are James A. Bowles, Esq., Elissa
28

L. Gysi, Esq. and Richard S. Zuniga, Esq. of Hill, Farrer & Burrell, LLP, One California Plaza, 300 S. Grand Ave, 37th Floor, Los Angeles, California 90071.

7. "Employee PAGA Portion" is the amount to be distributed to the Aggrieved Employees, which shall consist of 25% of the PAGA Penalties Amount, as provided in Section III.3 herein.

8. "Employee Payments" refers to the PAGA Penalty Payments that will be distributed to Aggrieved Employees, as provided in Section III.3 herein.

9. "Gross Settlement Amount" is the sum of Two Hundred Thousand Dollars and Zero Cents (\$200,000.00), which represents the total amount payable under this Settlement Agreement by Defendant, and includes the Employee PAGA Portion payable to Aggrieved Employees, LWDA Payment payable to the LWDA, Court-awarded Attorneys' Fees (not to exceed \$66,666.67) to Plaintiff's Counsel, Court-awarded Litigation Costs (not to exceed \$20,000.00) to Plaintiff's Counsel, Court-awarded Enhancement Payment (not to exceed \$10,000.00) to Plaintiff, and a Court-awarded payment to the Settlement Administrator for Settlement Administration Costs (not to exceed \$10,000.00).

10. "LWDA" means the California Labor and Workforce Development Agency.

14. "LWDA Payment" means the amount to be paid to the LWDA, which is seventy-five percent (75%) of the PAGA Penalties Amount as set forth in Section III.3 herein.

11. "Plaintiff's Counsel" means James Hawkins, Esq., Gregory Mauro, Esq. and Michael Calvo, Esq. of James Hawkins, APLC.

12. "Net Settlement Amount" is the amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts are subtracted from the Gross Settlement Amount: (a) Attorneys' Fees to Plaintiff's Counsel; (b) Litigation Costs to Plaintiff's Counsel; (c) Enhancement Payment to Plaintiff; and (d) Settlement Administration Costs to Settlement Administrator.

13. "PAGA" means the California Labor Code Private Attorneys General Act, California Labor Code § 2698, *et seq.*

15. "PAGA Period" means the time period from July 2, 2020 through December 31,

2021.

16. "PAGA Released Claims" means any and all claims, to recover civil penalties pursuant to PAGA alleged in the operative complaint in the Action and in the LWDA Letter for civil penalties during the PAGA Period, and any and all claims that could have been premised on the facts, claims, or legal theories described in the operative complaint in the Action and the LWDA Letter from the alleged (1) failure to pay wages including overtime; (2) failure to provide meal periods; (3) failure to provide rest periods; (4) failure to timely pay wages; (5) failure to provide accurate itemized wage statements; (6) failure to accurately record and pay sick leave; (7) payment of wages in a non-labor code compliant instrument; and (8) failure to indemnify necessary business expenses, including any related claims for attorneys' fees, costs, or interest resulting therefrom.

17. "Released Parties" mean Baker Commodities, Inc. and its past, present, and future owners, officers, directors, employees, board members, shareholders, attorneys, insurers, reinsurers, customers, partners, investors, members, representatives, predecessors, parent companies, subsidiaries, affiliates, divisions, successors, agents and principals, and their heirs, estates, executors, administrators, servants, insurers, attorneys, and assigns.

18. "Settlement Administrator" means ILYM, Inc., a third-party administrator who shall administer the settlement, subject to approval by the Court, in accordance with this Settlement Agreement, and whose costs and expenses to administer the settlement are currently estimated not to exceed \$10,000 ("Settlement Administration Costs").

II. RECITALS

1. In April 2021, Plaintiff provided written notice to the LWDA and Baker and amended the written notice to the LWDA and Baker on April 30, 2021, asserting claims for civil penalties pursuant to Labor Code sections 2698 and 2699 ("PAGA") stemming from alleged violations of California Labor Code sections 201, 202, 203, 204, 210, 226(a), 226(e), 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197.1, 1198, and 2802.

2. On April 28, 2021 Plaintiff filed a class action complaint in the Superior Court of California, County of San Diego, Case No. 21STCV09903, entitled *Gabriel Delgado vs. Baker*

1 *Commodities, Inc.*, San Diego County Superior Court Case No. 37-2021-00018865-CU-OE-CTL
2 alleging violations of the Labor Code and Unfair Competition Law for: (1) failure to pay wages
3 including overtime; (2) failure to provide meal periods; (3) failure to provide rest periods; (4)
4 failure to timely pay wages; (5) failure to provide accurate itemized wage statements; (6) failure
5 to accurately record and pay sick leave; (7) payment of wages in a non-labor code compliant
6 instrument; (8) failure to indemnify necessary business expenses, and (9) for unfair competition.
7 On July 14, 2021, Plaintiff filed a First Amended Complaint to add a cause of action for civil
8 penalties under PAGA. Plaintiff then dismissed the class and individual claims, and filed a
9 Second Amended Complaint on July 27, 2021 with a single cause of action for PAGA penalties.

10 3. On October 18, the Parties participated in a day-long mediation with mediator
11 Steven Mehta, Esq. In preparation for the mediation, Plaintiff's counsel requested and
12 Defendant's counsel provided sample time and payroll data for the purported Aggrieved
13 Employees, personnel and employment documents. With Mr. Mehta's assistance, the Parties
14 agreed to fully and finally resolve the Action and the PAGA Released Claims as to Plaintiff, the
15 State of California, the LWDA and the Aggrieved Employees.

16 **III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT**

17 The Parties agree as follows:

18 1. **Non-Admission.** Nothing in this Settlement Agreement nor action taken in
19 implementation thereof shall be construed to be an admission or concession by Plaintiff that his
20 claims do not have merit or by Defendant of any liability or wrongdoing as to Plaintiff, Aggrieved
21 Employees, or any other person, and Defendant specifically disclaims any such liability or
22 wrongdoing. Nor will any of the foregoing be used in any way in any other judicial, arbitral,
23 administrative, investigative or other forum or proceeding, as evidence of any violation of any
24 federal, state or local law, statute, ordinance, regulation, rule or executive order, or any obligation
25 or duty at law or in equity. Notwithstanding the foregoing, this Settlement Agreement may be
26 used in any court proceeding that has as its purpose the interpretation, implementation, or
27 enforcement of the settlement or any orders or judgments of the Court entered into in connection
28 therewith. The Parties have entered into this Settlement Agreement with the intention to avoid

1 further disputes and litigation with the attendant inconvenience, expenses, and risks. This
2 Settlement Agreement and any related Court documents or orders are not and may not be cited or
3 admitted as evidence of liability. If the Court does not grant approval of this settlement, then the
4 Parties revert to their previous positions and Republique will contend that a representative action
5 is not appropriate.

6 2. **Gross Settlement Amount.** Baker shall pay \$200,000.00 as the Gross Settlement
7 Amount. Baker will not pay more than the Gross Settlement Amount. Baker represents that there
8 are approximately 16,763 pay periods worked by Aggrieved Employees in California ("Affected
9 Pay Periods") from the July 2, 2020 to October 8, 2021. If the actual number of Affected Pay
10 Periods from July 2, 2020 to October 8, 2021 is more than 10% greater than this number (i.e., if
11 there are more than 18,439 Affected Pay Periods from July 2, 2020 to October 8, 2021, Baker
12 shall increase the Gross Settlement Amount in proportion to the increase in Affected Pay Periods
13 over 16,763 (e.g., if the number of Affected Pay Periods from July 2, 2020 to October 8, 2021 is
14 12% greater than 16,763, Baker will increase the Gross Settlement Amount by 2%)). In the event
15 that the escalator clause is triggered, the Parties shall cooperate to obtain an amended judgment
16 which reflects the increased Gross Settlement Amount.

17 Baker shall deposit the Gross Settlement Amount with the Settlement Administrator
18 within 30 days of the Effective Date.

19 3. **Net Settlement Amount.** The Parties agree that the Net Settlement Amount shall
20 be distributed to the LWDA and Aggrieved Employees as follows: Seventy-five percent (75%) of
21 the Net Settlement Amount shall be distributed to the LWDA (i.e., the LWDA Payment) and
22 twenty-five percent (25%) of the Net Settlement Amount shall be distributed to the Aggrieved
23 Employees on a *pro rata* basis, based on their respective number of pay periods worked for Baker
24 during the PAGA Period. Each Aggrieved Employee will be paid a non-wage check for their
25 Employee Payment, and will receive an IRS Form 1099 for said payment.

26 4. **Attorneys' Fees Payment and Litigation Costs Payment.** Baker will not oppose
27 Plaintiff's request for an award of attorneys' fees in the amount up to \$66,666.67 ("Attorneys'
28 Fees") and litigation costs and expenses in the amount up to \$20,000.00 incurred in prosecuting

1 this Action ("Litigation Costs"), to Plaintiff's Counsel. In the event the Court approves a
2 payment of less than \$66,666.67 for Attorneys' Fees and/or less than \$20,000.00 for Litigation
3 Costs to Plaintiff's Counsel, the difference will be a part of the Net Settlement Amount. The
4 Attorneys' Fees and Litigation Costs payments will be reported on an IRS Form 1099 issued to
5 Plaintiff's Counsel. Except as set forth in this Paragraph, the Parties shall each bear their own
6 attorneys' fees and costs.

7 5. **Plaintiff's Individual Release of All Claims.** Baker will not oppose Plaintiff's
8 request for an Enhancement Payment in the amount up to \$ 10,000 as a general release fee in
9 connection with the release and waivers provided by Plaintiff, in his individual capacity
10 ("General Release Fee"). In the event the Court approves a payment of less than \$10,000 as a
11 General Release Fee award to Plaintiff, the difference will be a part of the Net Settlement
12 Amount. The General Release Fee will be reported on an IRS Form 1099 issued to Plaintiff.

13 6. **Settlement Administration Costs.** Baker will not oppose Plaintiff's request for
14 payment in the amount up to \$7,370 to the Settlement Administrator for administering the
15 settlement. In the event the Court approves a payment of less than \$7,370 for Settlement
16 Administration Costs, the difference will be a part of the Net Settlement Amount. Settlement
17 Administration Costs will be reported on an IRS Form 1099 issued to the Settlement
18 Administrator.

19 7. **Plaintiff's Release of Claims and Waiver of California Civil Code section**
20 **1542.** In consideration of payment under the settlement, and upon the Effective Date and payment
21 of all funds due under this Settlement, Plaintiff for himself only shall be deemed to release the
22 Released Parties from any and all PAGA Claims and any other claims that he may have against
23 the Released Parties, including and not limited to, all complaints, claims, liabilities, obligations,
24 promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands,
25 costs, losses, debts, and expenses (including attorneys' fees and costs actually incurred, other than
26 as otherwise provided herein) of any nature whatsoever, known or unknown, suspected or
27 unsuspected, including, but not limited to, any claim for damages related to Plaintiff's
28 employment with Baker or the Released Parties, the separation of his employment, rights arising

out of alleged violations of any contracts, express or implied, any covenant of good faith and fair dealing, express or implied, or any tort including defamation, any claim of wrongful termination, retaliation, or wage and hour violations, or any legal restrictions of Defendant's right to terminate employees, or any federal, state or other governmental statute, regulation or ordinance, including, without limitation: (1) the Civil Rights Act of 1964, as amended; (2) 42 U.S.C. § 1981; (3) the California Government Code; (4) section 503 of the Rehabilitation Act of 1973; (5) the Americans with Disabilities Act; (6) the Fair Labor Standards Act (including the Equal Pay Act); (7) the California Constitution; and (8) the California Labor Code, which Plaintiff now has, owns or holds, or claims to have, own or hold, or which Plaintiff at any time heretofore had, owned or held, or claimed to have owned or held against any of the Released Parties relating to any conduct occurring prior to and including the date of execution of this Settlement Agreement (collectively, "Plaintiff's Released Claims"). Plaintiff represents that he is not aware of any claims he may have against the Released Parties other than the PAGA Claims. As a material inducement for Baker to enter into this settlement, Plaintiff waives any and all rights and benefits conferred by the provisions of section 1542 of the California Civil Code and any similar law of any state or territory of the United States or other jurisdiction. Section 1542 of the California Civil Code provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Plaintiff understands and acknowledges that this Settlement Agreement is meant to include, to the fullest extent, all PAGA Claims and other claims which Plaintiff does not know or suspect to exist in his favor against the Released Parties.

8. **PAGA Released Claims.** Upon the Effective Date and payment of all funds due under this Settlement, Plaintiff, Aggrieved Employees, the State of California and the LWDA will

be forever barred from pursuing any and all PAGA Released Claims defined in Section I.16 herein against Defendant and the Released Parties. Upon entry of the Order approving the settlement and judgment entered thereon, Plaintiff, the State of California, the LWDA and all Aggrieved Employees will be forever barred from pursuing any and all of the PAGA Released Claims that arose during the PAGA Period against Defendant and the Released Parties. The PAGA Released Claims only covers those civil penalties which are recoverable under PAGA alleged in the operative complaint in the Action and in the LWDA Letter for civil penalties during the PAGA Period, and does not otherwise cover individual, underlying claims or causes of action that Aggrieved Employees other than Plaintiff may have under the law against Released Parties for violations of the California Labor Code.

9. **Covenants and Representations by Plaintiff and Plaintiff's Counsel.** Plaintiff represents and warrants that he has not assigned or transferred or purported to assign or transfer to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Settlement Agreement. Plaintiff acknowledges that he has read this Settlement Agreement, that he fully understands his rights, privileges, and duties under the Settlement Agreement, and enters into this Settlement Agreement freely and voluntarily. Plaintiff further acknowledges that he has had the opportunity to consult with his attorneys to explain the terms of this Settlement Agreement and the consequences of signing this Settlement Agreement.

10. **Limited Disclosure and No Publicity.** Except as provided below, to the extent necessary to effectuate the settlement or as required by the PAGA statute, a court of law, or legal process, neither Plaintiff nor Plaintiff's Counsel will publicize the terms of this Settlement Agreement or issue a press release, hold a press conference, publish information about the settlement on any website or through any social media, or otherwise publicize the settlement or communicate its terms in public or in private, unless ordered by the Court.

11. **Obligation of Plaintiff's Counsel to Submit Settlement Agreement to the LWDA.** To permit judicial review and approval of the PAGA Payment, as required by Labor Code section 2698, et seq., Plaintiff's Counsel will file the Settlement Agreement with the Court and submit the Settlement to the LWDA as part of the parties' seeking Court approval of the

Settlement, per Lab. Code § 2699(1)(2).

12. **Filing of Joint Stipulation of Settlement by Plaintiff's Counsel.** Plaintiff's Counsel shall be responsible for preparing the Joint Stipulation for Approval of the Settlement ("Stipulation") and providing Defendant's Counsel with sufficient opportunity to propose revision to the Stipulation prior to filing. Plaintiff's Counsel will file the Stipulation, which is mutually agreed to by the Parties, as soon as practicable. Plaintiff's Counsel will serve the Stipulation on Defendant's Counsel. Pursuant to California Labor Code section 2698, *et seq.*, Plaintiff's Counsel shall undertake all required submissions and disclosures to the Court to obtain approval of the Settlement. The Stipulation and order approving the Settlement shall include a provision that the Action is dismissed with prejudice, which shall constitute a final and binding resolution of Plaintiff's claims herein.

Should the Court not allow approval of the Settlement by Stipulation, Plaintiff's Counsel shall be responsible for preparing and filing a motion for court approval of the Settlement. Plaintiff's counsel shall provide Defendant's Counsel with sufficient opportunity to propose revisions to the motion prior to its filing with the court.

13. **Termination of Settlement Agreement.** If the Court does not approve the settlement, if the Court does not enter judgment as provided for in this Settlement Agreement, or if appellate review is sought and, on such review, the Court's decision is materially modified or reversed, or if one or more of the material terms of the Settlement Agreement is not approved or is materially modified or reversed or found to be invalid, then either of the Parties shall have the right within 10 days of written notice thereof to elect to terminate the Settlement Agreement, in which case the Settlement Agreement shall have no force or effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Settlement Agreement. However, if the Court declines to approve the Settlement Agreement as drafted, the Parties agree to attempt in good faith to amend the Settlement Agreement to resolve the Court's concerns with the Settlement Agreement, before either Party terminates the Settlement Agreement.

14. **Judgment.** As part of the Joint Stipulation of Settlement to approve the

1 Settlement, Plaintiff shall submit a proposed order and judgment which enters judgment in the
2 Action in accordance with the terms of the Settlement, retains jurisdiction over the Action for the
3 purpose of enforcing the terms of the Settlement following approval of the Settlement, and
4 enjoins the prosecution of any of the PAGA Released Claims against Baker and the Released
5 Parties. The judgment will release and bar Plaintiff's Released Claims and the PAGA Released
6 Claims as to Plaintiff, the State of California, and Aggrieved Employees.

7 **IV. ADMINISTRATION OF SETTLEMENT**

8 1. **Settlement Administrator.** The Parties have mutually selected ILYM, Inc. to
9 handle the administration of this settlement, subject to approval by the Court.

10 2. **Notice to Aggrieved Employees.**

11 a. No later than fourteen (14) days after the Effective Date, Defendant shall
12 provide the Settlement Administrator with a list of the Aggrieved Employees (the "Aggrieved
13 Employees List"). The Aggrieved Employees List shall include each Aggrieved Employee's full
14 name, last known mailing address, total pay periods worked for Baker in California during the
15 PAGA Period, and Social Security number, to the extent available from Baker's records. Because
16 Social Security numbers are included in the list, the Settlement Administrator will maintain the
17 list in confidence, and shall only access and use the list to administer the settlement in conformity
18 with the Court's orders. Baker will in good faith compile from its records the Aggrieved
19 Employees List and provide it to the Settlement Administrator in a computer-readable format,
20 such as a Microsoft Excel spreadsheet.

21 No later than twenty-one (21) calendar days after receipt of the Gross Settlement Amount
22 from Defendant, the Settlement Administrator will mail the Employee Payments under cover
23 letter, substantially in the form attached hereto as "**Exhibit A**" ("Cover Letter"), to each of the
24 Aggrieved Employees identified on the Aggrieved Employees List. Prior to mailing the Cover
25 Letter, the Settlement Administrator shall check the addresses provided in the Aggrieved
26 Employees List using the United States Postal Service's National Change of Address database,
27 and update the addresses for known address changes.
28

Should any of the mailings to the Aggrieved Employees of their Cover Letter and Employee Payments be returned as undeliverable within thirty (30) calendar days of mailing, the Settlement Administrator will have five (5) calendar days after it receives the returned undeliverable mail to search for a more current address for the Aggrieved Employee (via a skip trace or other reasonable method) and re-mail the Cover Letter and Employee Payments to any alternative or updated address obtained by the Settlement Administrator.

The Settlement Administrator shall distribute payments for the General Release Fee, the Attorneys' Fees, the Litigation Costs, the Settlement Administration Costs, the Employee Payments, and the LWDA Payment within thirty (30) calendar days after the Gross Settlement Amount is deposited with the Settlement Administrator. All payments provided for by this Settlement Agreement shall be made by the Settlement Administrator in accordance with this Settlement Agreement and the Court's order approving this settlement.

Each Aggrieved Employee will be issued one check for his or her Employee Payment which will expire one hundred and eighty (180) calendar days from the date the checks are issued by the Settlement Administrator. After the 180 day-period, the Settlement Administrator shall cancel all checks that have not been cashed or deposited and remit funds associated with such canceled checks to the State Controller's Office, Unclaimed Property Division, in the name associated with each Aggrieved Employee whose Employee Payment checks are canceled.

V. MISCELLANEOUS PROVISIONS

1. **No Impact on Employee Benefit Plans.** Neither the Settlement Agreement nor any amounts paid to Plaintiff, any Aggrieved Employee, or the LWDA under the settlement will modify any previously credited hours or service under any employee benefit plan, policy, or bonus program sponsored by Baker. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under Baker's sponsored benefit plans, policies, or bonus programs. The payments made under the terms of this Settlement Agreement shall not be applied retroactively, currently, or on a going-forward basis, as salary, earnings, wages, or any other form of compensation for the purposes of any Baker benefit plan, policy, or bonus program. Baker retains the right, if necessary, to modify the

language of its benefit plans, policies, and bonus programs to effect this intent, and to make clear that any amounts paid pursuant to this Settlement Agreement are not for “hours worked,” “hours paid,” “hours of service,” or any similar measuring term as defined by applicable plans, policies, and bonus programs for purposes of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Settlement Agreement.

2. **Tax Consequences.** Plaintiff and Aggrieved Employees will be solely responsible for correctly characterizing any compensation received under the settlement on his/her personal income tax returns for tax purposes, and paying all appropriate taxes due for any and all amounts paid to them under the settlement. Plaintiff, Baker, Plaintiff’s Counsel, and Defendant’s Counsel make no representations or warranties with respect to tax consequences of any payment under this Settlement Agreement, do not intend anything contained in this Settlement Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Settlement Agreement be relied upon as such.

3. **Governing Law.** This Settlement Agreement shall be construed under and governed by the laws of the State of California. This Settlement Agreement shall be deemed to have been entered into in California, and all questions of validity, interpretation, or performance of any of its terms or of any rights or obligations of the Parties to this Settlement Agreement shall be governed by California law. If any legal or equitable action or arbitration is necessary to enforce the terms of this Settlement Agreement, it shall be brought in the State of California, County of San Diego.

4. **Entire Agreement.** This Settlement Agreement constitutes the entirety of the Parties’ settlement terms. No other prior or contemporaneous written or oral agreements may be deemed binding on the Parties. The Parties each acknowledge and represent that no promise or representation not contained in this Settlement Agreement has been made to them, and acknowledge and represent that this Settlement Agreement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the Action and PAGA Released Claims.

5. **Judgment and Continued Jurisdiction.** The Parties agree that this Settlement

1 Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure
2 section 664.6, and the Court, to the fullest extent of the law, shall retain exclusive and continuing
3 jurisdiction over this Action, over all Parties, and the Aggrieved Employees to interpret and
4 enforce the terms, conditions, and obligations of the Settlement Agreement.

5 6. **Amendment or Modification.** This Settlement Agreement may be amended or
6 modified only by a written instrument, signed by either the Parties or their successors-in-interest
7 or counsel for all Parties, subject to approval by the Court.

8 7. **Authorization to Enter into Binding Settlement Agreement.** Defendant
9 represents and warrants that the undersigned has the authority to act on behalf of Baker and to
10 bind Baker to the terms of this Settlement Agreement. Plaintiff represents and warrants that he
11 has the capacity to act on his own behalf and on behalf of all who might claim through him to
12 bind him to the terms and conditions of this Settlement Agreement. Counsel for all Parties
13 warrant and represent that they are expressly authorized by the Parties whom they represent to
14 negotiate this Settlement Agreement and to take all appropriate action required or permitted to be
15 taken by such Parties pursuant to this Settlement Agreement to effectuate its terms, and to execute
16 any other documents required to effectuate the terms of this Settlement Agreement. The Parties
17 warrant that they understand and have full authority to enter into this settlement, and further
18 intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and
19 agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms,
20 notwithstanding any settlement and/or mediation privileges and/or confidentiality provisions that
21 otherwise might apply under federal or state law.

22 8. **Binding on Successors and Assigns.** This Settlement Agreement will be binding
23 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
24 defined.

25 9. **Execution and Counterparts.** This Settlement Agreement may be executed in
26 one or more counterparts. All executed counterparts, and each of them, including facsimile and
27 scanned copies of the signature page, will be deemed to be one and the same instrument provided
28 that counsel for the Parties will exchange among themselves original signed counterparts.

1 10. **Acknowledgement of Mutual Drafting and that the Settlement is Fair,**
2 **Adequate, and Reasonable.** The Parties believe this Settlement Agreement is a fair, adequate,
3 and reasonable settlement of the Action, and have arrived at this settlement after arm's-length
4 negotiations by experienced counsel. The Parties further acknowledge that they are each
5 represented by competent counsel and that they have had an opportunity to consult with their
6 counsel regarding the fairness and reasonableness of this settlement. The Parties agree that the
7 terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm's-
8 length negotiations and that neither Party shall be considered the "drafter" of this Settlement
9 Agreement for purposes of having terms construed against that Party. The Parties have had a full
10 opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly,
11 this Settlement Agreement will not be construed more strictly against one Party merely by virtue
12 of the fact that it may have been prepared by counsel for one of the Parties, it being recognized
13 that, because of the arm's-length negotiations between the Parties, all Parties have contributed to
14 the preparation of this Settlement Agreement.

15 11. **Invalidity of Any Provision.** Before declaring any provision of this Settlement
16 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
17 extent possible consistent with applicable precedents, so as to define all provisions of this
18 Settlement Agreement valid and enforceable.

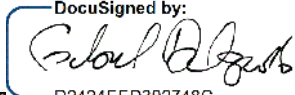
19 12. **Severability.** If any term or provision of this Settlement Agreement is held to be
20 invalid or unenforceable, provided that the essential terms and conditions of this Settlement
21 Agreement for each Party remain valid, binding and enforceable, the remaining portions of this
22 Settlement Agreement will continue to be valid, and will be performed, construed, and enforced
23 to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed
24 amended and limited in accordance with the intent of the Parties, as determined from the face of
25 the Settlement Agreement, to the extent necessary to permit the maximum enforceability or
26 validation of the term or provision.

27 13. **No Waiver.** No waiver of any condition or covenant contained in this Settlement
28 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered

to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right, or remedy.

14. **Cooperation and Execution of Necessary Documents.** All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to implement the settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

Dated: 2/24/2022

DocuSigned by:

 D2424EED392748C...
 Gabriel Delgado

BAKER COMMODITIES, INC.

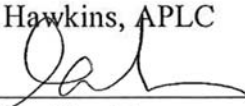
Dated: 2-24-2022


 By: Jeff Wilson
 Its: VP-General Counsel

APPROVED AS TO FORM:

Dated: 02-25-2022

James Hawkins, APLC

By: 
 James Hawkins
 Gregory Mauro
 Michael Calvo
 Attorneys for Plaintiff, Gabriel Delgado

HILL, FARRER & BURRILL LLP
 A LIMITED LIABILITY PARTNERSHIP
 ATTORNEYS AT LAW
 ONE CALIFORNIA PLAZA, 37TH FLOOR
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300 SOUTH GRAND AVENUE
LOS ANGELES, CALIFORNIA 90071-3147

1
2 Dated: 2/24/22

HILL, FARRER & BURRILL, LLP

3 By:

James A. Bowles

Elissa L. Gysi

Richard S. Zuniga

Attorneys for Defendant, Baker Commodities, Inc.

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EXHIBIT A

[ILYM, INC. LETTERHEAD]

Mailing Date

Name

Address

Re: Payment from Gabriel Delgado v. Baker Commodities, Inc.
San Diego County Superior Court Case No. 37-2021-00018865-CU-OE-CTL

Dear [NAME]

Enclosed you will find a check made payable to you. This is your payment from the court-approved settlement of the lawsuit entitled *Gabriel Delgado vs. Baker Commodities, Inc.*, San Diego County Superior Court Case No. 37-2021-00018865-CU-OE-CTL (the "Action"). The court approved the settlement on _____, 2022.

ILYM, Inc. is the third-party administrator who has been appointed by the court to administer the settlement

The Action was filed by Gabriel Delgado ("Plaintiff") against Baker Commodities, Inc. ("Baker") pursuant to the California Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* (called "PAGA"). Plaintiff's claim was brought on behalf of the State of California and all "aggrieved employees" who worked as non-exempt employees of Baker employed by Baker in the State of California at any time during the period from July 2, 2020 through December 31, 2021 (the "PAGA Period"). You have been identified as one of the aggrieved employees because you were employed as a non-exempt employee by Baker during the PAGA Period.

Plaintiff claimed that Baker owed penalties under PAGA for certain California Labor Code violations. Baker denies that it did anything wrong or that it owes any penalties. The parties agreed to resolve the case, and as part of that settlement, Baker agreed to pay a certain amount of money categorized as PAGA penalties. Under the PAGA statute, the penalties are divided between the State and the aggrieved employees. The amount allocated to aggrieved employees is being distributed on a *pro rata* basis, based on the respective number of pay periods the employee worked for Baker during the PAGA Period.

The enclosed check for \$_____, 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 aggrieved employee.

As a result of the court-approved settlement, all aggrieved employees including you, Plaintiff, the State of California, and the Labor Workforce Development Agency ("LWDA") have fully released and forever discharged Baker Commodities, Inc. and its former, present and future owners, parents, subsidiaries, affiliated companies and all of their current, former and future officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, agents, successors, assigns, accountants, insurers, or legal representatives ("Released Parties"), from all claims, rights, demands, liabilities and causes of action that arose during the PAGA Period for civil penalties under the PAGA, based on the factual allegations pled in the operative complaint in the Action and in Plaintiff's notice of claims to the LWDA, with respect to the following claims: (1) failure to pay wages including overtime; (2) failure to provide meal periods; (3) failure to provide rest periods; (4) failure to timely pay wages; (5) failure to provide accurate itemized wage statements; (6) failure to accurately record and pay sick leave; (7) payment of wages in a non-labor code compliant instrument; and (8) failure to indemnify necessary business expenses, including any related claims for attorneys' fees, costs, or interest resulting therefrom

If you have questions, please contact ILYM, Inc. at _____.

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EXHIBIT 2

Matter Billing Detail

Report Date: 3/10/2022
 Report Time: 9:10AM
 Page: 1 of 2
 User ID: Gonzales

JAMES HAWKINS APLC

Date Range: 01/01/2013 to 03/10/2022
 Client: BAKERCOM002 - Gabriel Delgado
 Matter: BAKERCOM001 - Baker Commodities Inc.-Gabriel Delgado

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
		Balance Forward:	\$0.00						
04/29/2021	ONE	One Legal Services- Complaint, Summons, Civil Case Cover- in#03257650	\$1,489.69		Unbilled				
06/04/2021	FIL	Filing Fee - 04.28.2021 LWDA Filing Fee	\$75.00		Unbilled				
06/28/2021	FST	First Legal Network- Processed- Complaint, Summons, Civil Cover Sheet, Notice of Assignment- IN#30162706	\$182.80		Unbilled				
06/29/2021	ONE	One Legal Services- Proof of Service- in#03378087	\$12.35		Unbilled				
07/09/2021	MED	Mediation Services -Mediation office of Steven G. Mehta CK#9321 IN#18014	\$5,750.00		Unbilled				
07/15/2021	ONE	One Legal Services- Amended Complaint- In#03410463	\$12.35		Unbilled				
07/28/2021	ONE	One Legal Services- Amended Complaint In#03438691	\$12.35		Unbilled				
08/06/2021	ONE	One Legal Services-Notice and Acknowledgment of Receipt- In#03459624	\$12.35		Unbilled				
08/19/2021	POS	Postage- 04.28.21- cert mail re LWDA letter	\$6.99		Unbilled				
08/19/2021	POS	Postage- 04.30.21- cert mail re LWDA letter	\$8.99		Unbilled				
10/01/2021	ONE	One Legal Services-Case Management Statement- In# 03574223	\$12.35		Unbilled				
11/28/2021	EXA	Expert Analysis IN#20816 CK#9639	\$2,425.00		Unbilled				
12/23/2021	ONE	One Legal Services-Notice of Settlement- In#03745646	\$12.35		Unbilled				
01/04/2022	ONE	One Legal Services- Stipulation and proposed order- In#03761559	\$32.94		Unbilled				
01/18/2022	MED	Mediation Services Post Mediation CK#9718 IN#18374	\$1,050.00		Unbilled				
01/28/2022	EXA	Expert Analysis CK#9763 IN#20639	\$1,125.00		Unbilled				
		Total:	<u>\$12,220.51</u>	<u>\$0.00</u>					
		Balance:	<u>\$12,220.51</u>						

Matter Billing Detail

JAMES HAWKINS APLC

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
Total Fees Billed- - - - -			\$0.00						
Total Fees Unbilled : - - - - -			\$0.00						
Total Fees Received : - - - - -			\$0.00						
Total Soft Cost Billed : - - - - -			\$0.00						
Total Soft Cost Unbilled : - - - - -			\$0.00						
Total Soft Cost Received : - - - - -			\$0.00						
Total Hard Cost Billed : - - - - -			\$0.00						
Total Hard Cost Unbilled : - - - - -			\$12,220.51						
Total Hard Cost Received : - - - - -			\$0.00						
Total Taxes Billed : - - - - -			\$0.00						
Total Taxes Unbilled : - - - - -			\$0.00						
Total Taxes Received : - - - - -			\$0.00						
Total Late Charges Billed : - - - - -			\$0.00						
Total Late Charges Unbilled: - - - - -			\$0.00						
Total Late Charges Received : - - - - -			\$0.00						
Trust Balance: - - - - -			\$0.00						