

PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT
AGREEMENT AND RELEASE

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff Angel De La Torre ("Plaintiff"), for himself and on behalf of the State of California Labor Workforce Development Agency ("LWDA") and all Private Attorneys General Act ("PAGA") Settlement Members (as defined below), on the one hand, and Defendant Jacobs & Cushman San Diego Food Bank ("Defendant"), on the other (collectively, the "Parties"), subject to the approval of the Court in accordance with California Labor Code section 2699(1)(2), that the Settlement of this Action shall be effectuated upon and subject to the terms and conditions set forth in this settlement agreement ("Agreement").

The Parties agree that the Action (as defined in Section I below) shall be, upon approval by the Court, ended, settled, resolved, and concluded without any admission of fault or liability, as set forth in this Agreement and for the consideration set forth herein, including but not limited to a release of claims by Plaintiff and the PAGA Settlement Members as set forth herein.

I. DEFINITIONS

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

- (a) "Action" means the civil action, *ANGEL DE LA TORRE, individually and on behalf of all others similarly situated, Plaintiff, v. JACOBS & CUSHMAN SAN DIEGO FOOD BANK; and DOES 1 through 20, inclusive, Defendants*, pending in the Superior Court of California in and for the County of San Diego, Case No. 37-2021-00020703-CU-OE-CTL.
- (b) "Agreement" or "Settlement" means the arm's-length settlement agreement reached between the Parties as set forth in this Private Attorneys General Act Settlement Agreement and Release, and the terms, conditions and requirements set forth herein, including any attached exhibits.
- (c) "Approval Date" means the date the Court grants approval of this Agreement by signing and filing the Approval Order.
- (d) "Approval Order" means the Court order entered in this Action in accordance with the terms herein, the Court adopting and approving this Agreement (and the terms of Settlement described herein) under the specific terms requested, and the Court retaining jurisdiction over the enforcement, implementation, construction, administration, and interpretation of the Settlement.
- (e) "Complaint" means the operative Complaint, which was filed on or about July 26, 2021, in the Action.
- (f) "Court" means the Superior Court for the State of California, County of San Diego. Court shall also mean any other Court that acquires proper jurisdiction of the Action.

(g) “Defendant” means the Defendant in this Action, Jacobs & Cushman San Diego Food Bank.

(h) “Defense Counsel” or “Counsel for Defendant” means:

Julie Vogelzang
Janelle Thornton
Carl Lehman
SCHOR, VOGELZANG, & CHUNG, LLP
2170 Fourth Ave.
San Diego, CA 92101
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(i) “Effective Date” means the date by which all of the following have occurred: (1) the Court has signed and entered the Approval Order and (2) the Defendant has fully funded the Settlement.

(j) “Gross Settlement Amount” means the total gross settlement amount of Two Hundred Thousand Dollars and Zero Cents (\$200,000.00), subject to the possible invocation of the escalator clause (as provided in Paragraph II, Section C, Subsection (b) of this agreement), to be paid by Defendant as provided by this Agreement to fully and finally settle, resolve and conclude this Action as provided under this Agreement, without any admission of fault or liability.

(k) “LWDA” means the State of California Labor and Workforce Development Agency.

(l) “Named Plaintiff” or “Plaintiff” mean Angel De La Torre.

(m) “PAGA” means the Private Attorneys General Act of 2004, California Labor Code section 2698 *et seq.*

(n) “PAGA Claims” means claims for civil penalties alleged in the Complaint, or that reasonably could have been alleged based on the facts in the Complaint from alleged violations of the following Labor Code provisions: 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and 2698 *et seq.*

(o) “PAGA Representative Payment” means the amount up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) Defendant has agreed to pay Plaintiff, subject to Court approval, as the named PAGA representative in exchange for a general release of claims under Civil Code section 1542. The PAGA Representative Payment to Plaintiff will be deducted from the Gross Settlement Amount. Any portion of the PAGA Representative Payment not approved by the Court will revert to the Net Settlement Amount, as defined in this Agreement below.

- (p) “PAGA Settlement Members” or singularly, “PAGA Settlement Member” mean Plaintiff and all current and former non-exempt employees employed by Jacobs & Cushman San Diego Food Bank who worked for Defendant in the State of California at any time during the Settlement Period.
- (q) “PAGA Settlement Member Payment” means the portion of the Gross Settlement Amount that shall be paid to each PAGA Settlement Member per the terms and conditions of this Agreement.
- (r) “Parties” means and refers to, collectively, Plaintiff and Defendant, and “Party” means and refers to Parties, individually.
- (s) “Pay Periods” means the total number of pay periods that each PAGA Settlement Member worked as a non-exempt employee for Defendant during the PAGA Settlement Period.
- (t) “Plaintiff’s Counsel” means:

AEGIS LAW FIRM, PC
Kashif Haque (SBN 218672)
Samuel A. Wong (SBN 217104)
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- (u) “Released Claims” means (a) all claims for civil penalties under PAGA that were actually alleged or that could have reasonably been alleged based on the facts in the Complaint, the LWDA letter, and mediation discussions, which arose during the Settlement Period, including but not limited to: (a) penalties pursuant to Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and 2699 et seq., (b) PAGA penalties for alleged violations of the applicable wage order sections regarding the protections in the above code sections, claims for the attorney’s fees and costs incurred in the prosecution of this Action on behalf of the PAGA Settlement Members; (c) any other PAGA penalties based on the facts alleged in the Complaint; and (d) all claims that Plaintiff and/or the PAGA Settlement Members may have against the Released Parties relating to: (i) the payment, taxation, and allocation of attorney’s fees and costs to Plaintiff’s Counsel pursuant to this Agreement; and (ii) the payment, taxation, and allocation of PAGA Representative Payment pursuant to this Agreement. The release of the Released Claims shall be effective as to the Settlement Period (defined below).
- (v) “Released Parties” means Defendant and its past, present, and future parent companies, affiliates, predecessors, successors, subsidiaries, divisions, partners, joint venturers, affiliated organizations, shareholders, insurers, reinsurers and assigns, and each of their past, present and future officers, directors, trustees, agents, employees, attorneys, contractors, representatives, benefit plans sponsored or administered by the Released

Parties, divisions, units and branches, and any other persons or entities acting on behalf or in concert with any of the foregoing.

(w) “Settlement Administrator” means Phoenix Class Action Administration Solutions.

(x) “Settlement Period” means the time period from May 10, 2020 through July 9, 2022.

II. APPROVAL AND IMPLEMENTATION OF SETTLEMENT

A. Cooperation

The Parties will cooperate in seeking approval of the Settlement described in this Agreement. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, including responding to challenges by any third parties, and shall take all steps that may be requested by the Court relating to the approval and implementation of the Settlement described in this Agreement.

B. Court Approval

Because this Action includes PAGA claims, this Agreement requires review and approval by the Court. *See* Cal. Lab. Code § 2699(1)(2). This Agreement is expressly contingent upon the Court’s approval of this Settlement and the terms and material conditions of this Agreement (including, but not limited to, issuance of the Approval Order in a form agreed to by the Parties and entry of the Approval Order in accordance therewith). The Parties recognize that a judgment with respect to the Action is binding with respect to non-party PAGA Settlement Members upon Court approval, pursuant to California Labor Code § 2699(1) and *Arias v. Superior Ct.* (2009) 46 Cal.4th 969. The Parties further recognize that a settlement of a PAGA action is not subject to class action procedural rules, and that PAGA Settlement Members do not have the right to opt-out of or otherwise exclude themselves from the Settlement, or object to the Settlement, and upon approval of the Settlement by the Court and funding of the Settlement, all PAGA Settlement Members will have released the Released Parties of and for the Released Claims and PAGA Settlement Members will be entitled to receive payment, in conformity with the Settlement.

Plaintiff will prepare, file, and serve a motion requesting the Court approval the Settlement and for an Order approving this Agreement. With Plaintiff’s motion for approval of Settlement, Plaintiff shall submit a proposed Approval Order which shall seek approval of this Settlement and the terms herein. If the Court does not grant the request for approval and issue the Approval Order, under the specific terms requested, the Parties agree to meet and confer to address the Court’s concerns and determine whether resolution of the Action can be obtained in a manner consistent with the Court’s concerns. Before Plaintiff applies to the Court for approval of the Settlement, Plaintiff’s Counsel shall submit the Agreement to the LWDA in conformity with California Labor Code § 2699(1)(2).

Plaintiff shall submit to the LWDA a copy of the Approval Order in this Action and a copy of any other order providing for or denying an award of civil penalties within 10 days after entry of the Approval Order, in compliance with section 2699(1)(3) of the California Labor Code.

C. Gross Settlement Amount Payment Procedures

(a) Gross Settlement Amount

In exchange for the releases, obligations, and promises set forth in this Agreement (and subject to the terms and conditions contained in this Agreement), Defendant agrees to pay the Gross Settlement Amount, which is the total and all-inclusive amount Defendant will be obligated to pay under the Settlement embodied by this Agreement (with the express exception of any increase to the Gross Settlement Amount required pursuant to the potential invocation of the Escalator Clause / Pro Rata Increase as set forth in subsection (b) below). The Gross Settlement Amount shall be allocated as follows:

- (1) Attorneys' Fees and Costs: Plaintiff's Counsel may apply to the Court for up to one-third (1/3) of the total Gross Settlement Amount ("Fee Amount") as attorneys' fees and will request up to Fourteen Thousand Dollars and Zero Cents (\$14,000.00) in actual costs ("Actual Costs") pursuant to PAGA, which provides for the recovery of attorneys' fees and costs (together, "Attorneys' Fees and Costs"). The Attorneys' Fees and Costs shall be paid from the Gross Settlement Amount, subject to approval by the Court. Should Plaintiff's Counsel request a lesser amount for Attorneys' Fees and Costs and/or the Court approve a lesser amount, the difference will revert to the Net Settlement Amount to be distributed to the LWDA and PAGA Settlement Members as described below. Payment of Attorneys' Fees and Costs will be reflected in a Form 1099 to Plaintiff's Counsel who shall assume full responsibility and liability for the payment of taxes due on such payments. Any modification of such application by the Court shall not (i) affect the enforceability of the Agreement, (ii) provide any of the Parties with the right to terminate the Agreement, or (iii) impose any obligation on the Defendant to increase the consideration paid in connection with the Settlement.
- (2) Settlement Administration Fees: All Settlement Administration expenses shall be paid from the Gross Settlement Amount and shall not exceed Two Thousand Five Hundred Dollars (\$2,500.00). Settlement Administration expenses paid to an outside Settlement Administration service must come out of the Gross Settlement Amount. The Parties agree to retain Phoenix Class Action Administration Solutions ("Settlement Administrator") to serve as the Settlement Administrator in this matter. If the Settlement Administration Fees are less than the estimated amount of \$2,500.00, the remainder will revert to the Net Settlement Amount to be distributed to the LWDA and PAGA Settlement Members as described below.
- (3) PAGA Representative Payment: Defendant agrees not to oppose a request for a PAGA Representative Payment to Plaintiff in an amount not to exceed \$7,500.00. Any portion of the PAGA Representative Payment allocation not approved by the court will revert to the Net Settlement Amount to be distributed to the LWDA and PAGA Settlement Members as described below.
- (4) Payment of PAGA Penalties: The total sum available for payment of PAGA penalties for distribution to the LWDA and PAGA Settlement Members shall be

calculated by deducting the Court-approved Attorneys' Fees and Costs, PAGA Representative Payment, and Settlement Administration Fees from the \$200,000.00 Gross Settlement Amount (this will yield the "Net Settlement Amount"). Seventy-five percent (75%) of the Net Settlement Amount will be paid to the LWDA ("LWDA Payment") and the remaining twenty-five percent (25%) shall be distributed to the PAGA Settlement Members ("PAGA Settlement Member Fund").

Each PAGA Settlement Member's *pro rata* share of the PAGA Settlement Member Fund ("PAGA Settlement Member Payment") will be determined by the Settlement Administrator, by converting the PAGA Settlement Member Fund into a pay period value. The pay period value will be established by dividing the PAGA Settlement Member Fund by all Pay Periods worked by all PAGA Settlement Members during the Settlement Period ("Pay Period Value"). The Pay Periods worked by PAGA Settlement Members during the Settlement Period will be derived by analysis of the time and payroll data in Defendant's records and extrapolation as needed, and/or estimates based on PAGA Settlement Members' hire and termination dates. The PAGA Settlement Member Payment for each PAGA Settlement Member will be determined by multiplying the Pay Period Value by each PAGA Settlement Member's individual number of Pay Periods. All payments are for penalties and will be reported on IRS 1099 forms, if required. There will be no reversion to Defendant and no claims process for PAGA Settlement Members to receive payment.

(b) Escalator Clause / Pro Rata Increase

Defendant estimated that, at the time of mediation (May 31, 2022), there were approximately 3,345 pay periods worked by PAGA Settlement Members from May 20, 2020 through May 31, 2022, and this estimation served as one of the bases for the Parties' Settlement. If the number of Pay Periods worked by PAGA Settlement Members during the Settlement Period exceeds 3,679 (i.e., 10% more than 3,345), the Gross Settlement Amount will increase pro rata \$59.79 per additional Pay Period.

(c) Funding and Distribution Process

Within sixty (60) days of the Approval Date, Defendant will transmit to the Settlement Administrator the entirety of the Gross Settlement Amount (including any required increase to the Gross Settlement Amount pursuant to the Escalator Clause / Pro Rata Increase indicated in subsection (b), above).

Within forty-five (45) days after the Approval Date, Defendant shall also provide the Settlement Administrator with a list of the names, Social Security Numbers, last known mailing addresses, and total number of Pay Periods of the PAGA Settlement Members ("PAGA Settlement Member List"). The contact information is being provided confidentially to the Settlement Administrator only, and the Settlement Administrator shall treat the information as private and confidential and take all necessary precautions to maintain the confidentiality of contact information of the PAGA Settlement Members. This information is to be used only to carry out the Settlement Administrator's duties as specified in this Settlement.

Within ten (10) business days of receipt of the Gross Settlement Amount, the Settlement Administrator will mail via U.S. First Class Mail PAGA Settlement Member Payments to each PAGA Settlement Member to the last known mailing address in the PAGA Settlement Member List or a more updated address from the National Change of Address Database. Prior to this disbursement, the Settlement Administrator shall run a skip trace for every separated PAGA Settlement Member. PAGA Settlement Members will receive along with their PAGA Settlement Member Payments a notice letter explaining the reason for the payment, the content of which will be mutually-agreed upon and approved by the Court in substantially the form that is attached hereto as **Exhibit A** (“Notice”). Should any of the PAGA Settlement Member Payments and/or Notices be returned as undeliverable, the Settlement Administrator will have ten (10) calendar days after it receives the returned undeliverable mail to search for a more current address for the PAGA Settlement Member (via a skip trace or other reasonable method) and to re-mail Employee Notices to the traced address. Such mailing as described in this paragraph shall be conclusive evidence of payment of the PAGA Settlement Member Payments, and shall satisfy any and all due process requirements. All funds not claimed within 180 days of original mailing of PAGA Settlement Member Payments and Notices and will thereafter be cancelled. If any funds remain in the PAGA Settlement Member Fund as a result of cancelled PAGA Settlement Member Payments, such funds shall be sent to the California State Controller’s Office Unclaimed Property Fund with an identification of the amount of unclaimed funds attributable to each PAGA Settlement Member.

Within ten (10) business days of receipt of the Gross Settlement Amount, the Settlement Administrator shall send a check to the LWDA for the LWDA Payment, in the amount calculated pursuant to the terms of this Settlement.

Within ten (10) business days of receipt of the Gross Settlement Amount, the Settlement Administrator will disburse from the Gross Settlement Amount an amount sufficient to pay the Attorneys’ Fees and Costs and PAGA Representative Payment described in II(C)(a), in the form of: (1) a check or wire for the Attorneys’ Fees and Costs amount made payable to “Aegis Law Firm, PC” delivered to Plaintiff’s Counsel; and (2) a check for the PAGA Representative Payment to Plaintiff, made payable in his name, delivered to Plaintiff’s Counsel.

(d) No Additional Contribution by Defendant

Defendant’s monetary obligation under this Agreement is limited to the Gross Settlement Amount (with the express exception of any increase to the Gross Settlement Amount pursuant to the potential invocation of the Escalator Clause / Pro Rata Increase as set forth herein in subsection (b), above). If the Escalator Clause / Pro Rata Increase is not triggered, Defendant shall not be required to pay more than the Gross Settlement Amount to obtain the relief (including, but not limited to, the Settlement, releases of claims, issuance of the Approval Order, dismissal all of Plaintiff’s claims with prejudice in their entirety) provided in this Agreement or to fully and finally settle and resolve the PAGA Claims.

Notwithstanding the above, in the event that this Agreement is voided or nullified, in whole or in part, however that may occur, or the Settlement of the Action is barred by operation of law, or invalidated, or ordered not to be carried out by a Court of competent jurisdiction, Defendant will cease to have any obligation to pay any portion of the Gross Settlement Amount to anyone under the terms of this Agreement.

(e) Tax Indemnity

The PAGA Settlement Member Payments are penalties, shall be reported on an IRS Form 1099 (to the extent required by law), and will not be subject to local, state or federal tax withholdings. Plaintiff and each PAGA Settlement Member will be responsible for paying all applicable state, local and federal income taxes on all amounts received pursuant to this Settlement, and they shall not seek any indemnification from the Released Parties in this regard. Plaintiff and Plaintiff's Counsel shall cooperate with Defendant and provide documentation to the extent possible and as reasonably requested to demonstrate any payment of taxes made by Plaintiff and/or any PAGA Settlement Member should any taxing authority challenge the allocation of the PAGA Settlement Member Payments. Nothing in this Agreement is intended to constitute legal advice regarding federal, state, and/or local tax obligations. Plaintiff and PAGA Settlement Members shall be deemed to acknowledge that they have not obtained any tax advice from Released Parties, Counsel for Defendant, or Plaintiff's Counsel, and that neither Released Parties, Counsel for Defendant, nor Plaintiff's Counsel have made any representation concerning the tax consequences, if any, of any payments made pursuant to this Agreement. To the extent that this Agreement or its Exhibit(s) are interpreted to contain or constitute advice regarding any U.S. or Federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code.

(f) No Effect on Employee Benefits

The payments made to Plaintiff and other PAGA Settlement Members pursuant to this Agreement are not intended to count as earnings by Plaintiff or the PAGA Settlement Members, and will not entitle Plaintiff or the PAGA Settlement Members to any additional compensation and/or benefits under any retirement, benefit, bonus, incentive, pension, welfare, and/or any other plan of or sponsored by Defendant. Defendant shall not make as part of this Agreement, nor be required to make, any deductions, nor pay any monthly contributions for any insurance, retirement, bonuses, 403(b), or profit-sharing plans related to monies paid as a result of this Agreement. The PAGA Settlement Members Payments paid to PAGA Settlement Members shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g. bonuses, vacation, holiday pay, retirement plans, etc.) of PAGA Settlement Members. The Parties agree that any PAGA Settlement Member Payments paid to PAGA Settlement Members under the terms of this Agreement do not represent any modification of PAGA Settlement Members' previously credited hours of service or other eligibility criteria under an employee benefit plan sponsored by Defendant. Further, any PAGA Settlement Member Payments are penalties and thus shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, and employee benefit plan or bonus plan sponsored by Defendant.

III. LIMITATIONS ON USE OF THIS SETTLEMENT

A. No Admission

Defendant disputes that Plaintiff or any PAGA Settlement Member are entitled to any penalties, dispute the allegations and each and every cause of action in the Action, and dispute that the Action may be maintained on a representative basis. It is acknowledged by Defendant that they are

participating in this settlement to avoid the expense, inconvenience and delay of further litigation of these disputed claims. This Agreement and the payment of the Gross Settlement Amount and the other considerations recited herein represent the compromise of disputed claims. Nothing in this Agreement is intended as or may be construed as an admission of liability, unlawful conduct, or wrongdoing by Defendant (and/or any of the Released Parties) in any way, shape or form, and Defendant and the Released Parties deny any such liability or wrongdoing.

B. Non-Evidentiary Use

Except for purposes of effectuating the Settlement pursuant to this Agreement and/or for Defendant (and/or a Released Party) to establish that a PAGA Settlement Member has resolved any of their claims released through this Agreement, and regardless of whether the Approval Order occurs, neither this Agreement nor any of its terms (including, but not limited to, the payment of the Gross Settlement Amount) nor the Settlement itself will be construed as, offered, or admitted in evidence as, received as, or deemed to be evidence, in any further proceeding in the Action, or any other civil, criminal, and/or administrative action or proceeding, for any purpose adverse to Defendant or any of the Released Parties, including but not limited to, evidence of a presumption, concession, indication, or admission by Defendant or any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage.

C. No Press Release or Publicity Regarding The Terms of Settlement

Plaintiff and Plaintiff's Counsel, as well as Defendant and Defense Counsel, agree not to issue a press release or otherwise notify the media about the terms of the Settlement or advertise or market any of the terms of the Settlement through written, recorded, or electronic communications. In addition, Plaintiff's Counsel will not put details about the settlement on their website. However, this will not prevent Plaintiff's Counsel from undertaking submissions and disclosures that are required to obtain approval of the Settlement, including and not limited to, submission of the Settlement to the LWDA in conformity with PAGA. Additionally, for the limited purpose of allowing Plaintiff's Counsel to prove adequacy as class counsel in other actions for purposes of seeking approval of an unrelated settlement, Plaintiff's Counsel may refer to any information in the public record for such purposes. Defendant shall be allowed to report the Gross Settlement Amount 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.

D. Effect of Non-Approval by Court and Nullification

Should the Court not approve the Settlement, the Parties shall request leave and work jointly to make reasonable efforts to remedy the Settlement in order to obtain the Court's approval. If the Parties cannot resolve the issues identified by the Court in denying approval, the Parties shall be restored to their litigation positions as of May 31, 2022 and all funds returned to Defendant. In order for the Parties to be restored to their litigation positions as of May 31, 2022, either party shall file a written notice with the Court detailing the reasons why any Court-identified issues cannot be resolved by reasonable efforts. The written notice shall be filed no earlier than twenty-one (21) days after the Court enters an order denying approval. If the Court ultimately fails to grant approval after the Parties' joint attempt to remedy the issues, or if the Court's approval is reversed

or materially modified on appellate review, the Parties' Settlement and this Agreement shall be deemed null and void, shall be of no force or effect whatsoever, and shall not be referred to or used for any purpose whatsoever.

In the event that this Agreement does become null and void under the circumstances described in the preceding paragraph: (i) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect; and (ii) all Parties to this Agreement and the pleadings in this Action shall stand in the same position they were the day prior to the May 31, 2022 mediation in this Action, without prejudice to either Party; and (iii) Defendant will not have any obligation to pay any portion of the Gross Settlement Amount to anyone under the terms of this Agreement.

IV. RELEASE AND WAIVER OF CLAIMS

A. Claims Released By Plaintiff, the State of California, the LWDA, and All PAGA Settlement Members

Upon the Effective Date, Plaintiff, the LWDA, all PAGA Settlement Members, and the State of California shall be deemed to have fully, finally, and forever waived, released, relinquished, and discharged Defendant and each and all of the Released Parties from any and all of the Released Claims. The Parties acknowledge that under this release, the right of the LWDA to investigate the Released Claims is not released, but the Released Claims do include any claims for penalties by a PAGA Settlement Member.

B. General Release By Named Plaintiff

Upon the Effective Date, in addition to the claims being released by all PAGA Settlement Members, Plaintiff will release and forever discharge the Released Parties, to the fullest extent permitted by law, of and from any and all claims, known and unknown, asserted and not asserted, which Plaintiff has or may have against the Released Parties as of the date of execution of this Agreement. In consideration for the promises set forth in this Agreement, the named Plaintiff Angel De La Torre, does hereby – for himself and for his heirs, representatives, attorneys, executors, administrators, successors, and assigns – release, acquits, and forever discharges Defendant and each and all of the Released Parties from any and all actions, cause of actions, obligations, costs, expenses, damages, penalties, losses, claims, liability, suits, debts, demands, and benefits (including attorneys' fees and costs), of whatever character, in law or in equity, known or unknown, suspected or unsuspected, matured or unmatured, of any kind or nature whatsoever, now existing or arising in the future, based on any act, omission, event, occurrence, or non-occurrence from the beginning of time to the date of execution hereof, including but not limited to any claims or causes of action arising out of or in any way relating to Plaintiff's employment with Defendant, and claims which have been or could have been made in the Complaint.

Plaintiff and Defendant agree that this release of claims includes, but is not limited to, claims for breach of any implied or express contract or covenant; claims for promissory estoppel; claims of entitlement to any pay, including commissions; claims of wrongful denial of insurance and employee benefits; claims for wrongful termination, retaliatory discharge or public policy violations of whatever kind or nature, defamation, invasion of privacy, fraud, misrepresentation,

emotional distress or other common law or tort matters; claims for any penalties; claims of harassment, retaliation or discrimination based on race, color, religion, sex, sexual orientation, national origin, ancestry, physical or mental disability, medical condition, marital status, age, or any other protected status under federal, state, or local law; claims under the California Labor, Government, Business and Professions, and Health and Safety Codes; claims based upon the California Constitution; claims under the Fair Labor Standards Act (“FLSA”), claims based on any federal, state or other governmental statute, regulation or ordinance, including, without limitation, the California Confidentiality of Medical Information Act, the California Fair Employment & Housing Act, the California Unfair Competition Law, disputed claims under the California Wage Orders, the California Family Rights Act, the Age Discrimination in Employment Act (“ADEA”), the Older Workers Benefits Protection Act (“OWBPA”), Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Labor Management Relations Act, and the Family Medical Leave Act, all as amended.

For the purpose of implementing a full and complete release, Plaintiff expressly acknowledges that the release he gives in this Agreement is intended to include in its effect, without limitation, claims that he did not know or suspect to exist in his favor at the time of final execution of this Agreement, regardless of whether the knowledge of such claims, or the facts upon which they might be based, would materially have affected the settlement of this matter, and that the consideration given under the Agreement was also for the release of those claims and contemplates the extinguishment of any such unknown claims. In furtherance of the settlement, Plaintiff waives any right he may have under California Civil Code § 1542 (and other similar statutes and regulations), which states:

“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 the significance and consequences of a California Civil Code Section 1542 waiver, and understands that he hereby waives all claims, known or unknown, suspected or unsuspected against the Released Parties. Plaintiff alone shall assume full responsibility for any damages or losses caused by this waiver.

Excluded from this release are any claims for breach of this Settlement Agreement and any claims that cannot be waived by applicable federal, state or local law, including but not limited to (a) unemployment, disability and paid family leave insurance benefits pursuant to the terms of applicable California law; (b) workers’ compensation insurance injury or pay benefits pursuant to Division 4 of the California Labor Code, under the terms of any worker’s compensation insurance policy or fund of the Plaintiff; (c) the right to file a charge with, or participate in an investigation conducted by, the Equal Employment Opportunity Commission (“EEOC”) and/or the Department of Fair Employment and Housing (“DFEH”). Plaintiff waives, however, his right to any monetary recovery or other relief should any agency pursue claims on Plaintiff’s behalf that arose on or before the date of this Settlement Agreement.

C. No Additional Attorneys' Fees or Costs

The Parties agree to bear its/their own attorneys' fees and costs related to this Action, except as specifically provided in Paragraph I(C)(a)(1) above, with respect to Plaintiff's Counsel's Attorneys' Fees and Costs.

V. MISCELLANEOUS PROVISIONS

A. Voluntariness

This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any of the Parties, or of any other person, firm or other entity.

B. Amendments

The terms and provisions of this Agreement may be amended or modified only by an express written agreement that is signed by the Plaintiff and an authorized representative of Defendant.

C. Assignment

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, PAGA Settlement Member, the State of California, Plaintiff's Counsel, or Defense Counsel without the express written consent of each Party. Plaintiff individually and expressly warrants that he has not transferred to any person or entity, any right or cause of action, or claim released by this Agreement.

D. Governing Law

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California, irrespective of the State of California's choice of law principles.

E. Entire Agreement

This Agreement contains the entire understanding of the Parties hereto in respect of the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants, or undertakings governing the subject matter of this Agreement other than those expressly set forth or referred to herein. This Agreement, once fully executed by the Parties, supersedes all prior agreements and understandings among the Parties hereto with respect to the subject matter hereof, including, without limitation, the Memorandum of Understanding executed by the Parties.

F. Waiver of Compliance

A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

G. Counterparts

This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or its/their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. A fax or PDF signature on this Agreement shall be as valid as an original signature.

H. Meet and Confer Regarding Dispute(s)

Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, Plaintiff's Counsel and Defense Counsel shall meet and confer in an attempt to resolve such disputes prior to submitting such disputes to the Court.

I. Agreement Binding on Successors

This Agreement shall bind and inure to the benefit of the Parties hereto and to their respective successors, assigns, legatees, heirs, and personal representatives.

J. Cooperation in Drafting

The Parties have cooperated in the negotiation and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party, or the Party's counsel, was the drafter or participated in the drafting of this Agreement.

K. Fair Settlement

Plaintiff, Defendant, Plaintiff's Counsel, and Defense Counsel believe that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms' length negotiation, taking into account all relevant factors, current and potential, and is consistent with public policy, and fully complies with applicable provisions of law.

L. Headings

The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement and shall not be considered in interpreting this Agreement.

M. Continuing Jurisdiction

The Parties agree that upon the occurrence of the Approval Order pursuant to the terms of this Agreement, this Agreement shall be enforceable by the Court pursuant to Code of Civil Procedure section 664.6 and the Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties and the PAGA Settlement Members to the fullest extent to interpret, enforce and effectuate the terms, conditions, intents and obligations of the Agreement.

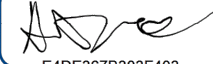
N. No Reliance on Representations

The Parties have made such investigation of the facts and the law pertaining to the matters described herein and to this Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other Parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of making and executing this Agreement, or with respect to any such matters. No representations, warranties, or inducements have been made to any Party concerning this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth below.

APPROVED AND ACCEPTED.

Dated: September 8, 2022

DocuSigned by:

E4DE367D383F403...

ANGEL DE LA TORRE, Plaintiff and PAGA
Representative

Dated: _____, 2022

Jacobs & Cushman San Diego Food Bank

By _____
_____, its _____

**APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONS ONLY**

Dated: _____, 2022

AEGIS LAW FIRM, PC

By _____
KASHIF HAQUE
JESSICA L. CAMPBELL
ALEXANDER G.L. DAVIES
Attorneys for Plaintiff

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APPROVED AND ACCEPTED.

Dated: _____, 2022

ANGEL DE LA TORRE, Plaintiff and PAGA
Representative

Dated: _____, 2022

Jacobs & Cushman San Diego Food Bank

By _____

_____, its _____

**APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONS ONLY**

Dated: September 8, 2022

AEGIS LAW FIRM, PC

By  _____
KASHIF HAQUE
JESSICA L. CAMPBELL
ALEXANDER G.L. DAVIES
Attorneys for Plaintiff

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IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth below.

APPROVED AND ACCEPTED.

Dated: _____, 2022

ANGEL DE LA TORRE, Plaintiff and PAGA
Representative

Dated: 9/9/2022, 2022

Jacobs & Cushman San Diego Food Bank

DocuSigned by:
Casey Castillo
By _____
7854AB2020FB4D1...
CASEY CASTILLO, CEO

**APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONS ONLY**

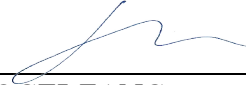
Dated: _____, 2022

AEGIS LAW FIRM, PC

By _____
KASHIF HAQUE
JESSICA L. CAMPBELL
ALEXANDER G.L. DAVIES
Attorneys for Plaintiff

Dated: 9/9/2022, 2022

SCHOR VOGELZANG & CHUNG LLP

By 

JULIE VOGELZANG
JANELLE THORNTON
CARL LEHMAN
Attorneys for Defendant

EXHIBIT A

<<DATE>>

<<FIRST_NAME>> <<LAST_NAME>>

<<ADDRESS 1>>

<<ADDRESS 2>>

Re: *De La Torre v. Jacobs & Cushman San Diego Food Bank, et al.*
Notice of PAGA Settlement, Settlement Payment, and Release of Claims

Dear <<FIRST_NAME>> <<LAST_NAME>>:

Enclosed you will find a check made payable to you. This is your payment from the settlement of the lawsuit entitled *De La Torre v. Jacobs & Cushman San Diego Food Bank, et al.*, San Diego County Superior Court Case No. 37-2021-00020703-CU-OE-CTL. (the “Action”)

I. NOTICE OF PAGA SETTLEMENT AND PAYMENT

The San Diego County Superior Court (the “Court”) has approved a settlement in the above-referenced Action filed by a Plaintiff, on behalf of himself and all other aggrieved non-exempt employees. That case was filed against Jacobs & Cushman San Diego Food Bank pursuant to the California Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* (called “PAGA”). The claim was brought on behalf of the State of California, and all current and former non-exempt employees employed by Jacobs & Cushman San Diego Food Bank who worked for Jacobs & Cushman San Diego Food Bank in the State of California at any time between May 10, 2020 and July 9, 2022 (the “Settlement Period”) (the “PAGA Settlement Members”). You have been identified as one of the employees on whose behalf the case was brought.

The Plaintiff in the case alleged that Jacobs & Cushman San Diego Food Bank violated certain California Labor Code violations. Specifically, Plaintiff’s PAGA Action alleged that Defendant: (1) failed to pay minimum wages; (2) failed to pay overtime wages; (3) failed to provide meal periods; (4) failed to authorize and permit rest breaks; (5) failed to provide accurate itemized wage statements; (6) failed to maintain accurate and complete records; and (7) failed to pay all wages due upon separation of employment. Plaintiff was solely seeking civil penalties on behalf of the California Labor and Workforce Development Agency (“LWDA”) and other non-exempt employees under PAGA. The Court has not made a ruling on the merits of the case. Jacobs & Cushman San Diego Food Bank denies that it did anything wrong or that it owes any penalties whatsoever. Jacobs & Cushman San Diego Food Bank maintains that it was at all relevant times, in compliance with the California Labor Code. Solely the purpose of compromising and settling the case to avoid the cost and operational burden of continued litigation, the Parties agreed to resolve the case, and as part of that settlement, Jacobs & Cushman San Diego Food Bank agreed to pay a Gross Settlement Amount of \$200,000.00, categorized as PAGA penalties. The settlement of this action does not constitute an admission by Jacobs & Cushman San Diego Food Bank of any of the matters alleged in the case or an admission of liability.

The settlement includes a payment to Plaintiff’s Counsel (the Representative Plaintiff’s attorneys) for the services they have rendered and will render to the PAGA Settlement Members in the Action in the amount of \$66,666.67 in fees and no more than \$14,000.00 in costs. The settlement also includes a PAGA Representative Payment Award in the amount of \$7,500.00 to the Named Plaintiff, for his efforts on behalf of the other non-exempt employees. Additionally, the settlement includes a payment to the Settlement Administrator, Phoenix Class Action Administration Solutions, in an amount not to exceed \$2,500.00 to issue this Notice and to administer the payment of the settlement funds. Finally, the settlement also includes

a payment to the Labor and Workforce Development Agency (“LWDA”), as required under PAGA statute, in the amount of seventy-five percent (75%) of the remaining portion of the settlement funds.

After deducting the payment to Plaintiff’s Counsel for their reasonable attorneys’ fees and costs, payment of the Named PAGA Representative’s Award, payment to the Settlement Administrator, and payment to the LWDA, the balance of the settlement will be allocated to each PAGA Settlement Members.

The enclosed check represents your pro rata portion of the settlement allocated to the PAGA Settlement Members. Based on Jacobs & Cushman San Diego Food Bank’ records, it is estimated that you worked [] pay periods during the Settlement Period as a non-exempt employee, and therefore a check in the amount of [\$] is enclosed (the amount representing a portion based upon the number of pay periods you worked as compared to the total number of pay periods worked by all PAGA Settlement Members during the Settlement Period).

The enclosed check is valid for 180 days from the date of issuance. It is strongly recommended that you cash or deposit this check as soon as possible following receipt. Funds attributable to any uncashed checks after 180 days will be sent to the State of California, Controller’s Office, Unclaimed Property Fund for further handling.

II. RELEASE OF CLAIMS

The Court has approved the Parties’ Settlement. By operation of the Settlement’s terms, all PAGA Settlement Members release Jacobs & Cushman San Diego Food Bank and Released Parties from civil penalties under PAGA claims that were and/or could have reasonably been asserted based on the facts alleged in the Plaintiff’s operative complaint (the “Complaint”), the LWDA letter, and mediation discussions, which arose during the Settlement Period, including but not limited to: (a) penalties pursuant to Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and 2699 et seq., (b) PAGA penalties for alleged violations of the applicable wage order sections regarding the protections in the above code sections, claims for the attorney’s fees and costs incurred in the prosecution of this Action on behalf of the PAGA Settlement Members; (c) any other PAGA penalties based on the facts alleged in the Complaint; and (d) all claims that Plaintiff and/or the PAGA Settlement Members may have against the Released Parties relating to: (i) the payment, taxation, and allocation of attorney’s fees and costs to Plaintiff’s Counsel pursuant to this Agreement; and (ii) the payment, taxation, and allocation of PAGA Representative Payment pursuant to this Agreement. (“Released Claims”). The release of the Released Claims shall be effective as to the Settlement Period. The “Released Parties” include Jacobs & Cushman San Diego Food Bank, and its past, present, and future parent companies, affiliates, predecessors, successors, subsidiaries, divisions, partners, joint venturers, affiliated organizations, shareholders, insurers, reinsurers and assigns, and each of their past, present and future officers, directors, trustees, agents, employees, attorneys, contractors, representatives, benefit plans sponsored or administered by the Released Parties, divisions, units and branches, and any other persons or entities acting on behalf or in concert with any of the foregoing.

Upon entry of an order by the Court approving the Settlement, any non-exempt employee covered by the Settlement will be barred from proceeding with any claims released by the Settlement. Because this is a settlement of PAGA claims, you do not have a statutory right to exclude yourself from the settlement.

* * *

PLEASE DO NOT CONTACT THE COURT ABOUT THIS NOTICE. This Notice is just a summary of the proposed settlement. More details are in the Private Attorneys General Act Settlement Agreement and Release that the Court has reviewed and approved. You can get a copy of that document by contacting the Settlement Administrator or Plaintiff's Counsel.

<u>Contacting Plaintiff's Counsel:</u> AEGIS LAW FIRM, PC Kashif Haque Samuel A. Wong Jessica L. Campbell Alexander G.L. Davies 9811 Irvine Center Drive, Suite 100 Irvine, CA 92618 Telephone: (949) 379-6250 Fax: (949) 379-6251 Email: adavies@aegislawfirm.com	<u>Contacting the Settlement Administrator:</u> Phoenix Class Action Settlement Administration Solutions PO Box 7208 Orange, CA 92863 Telephone: (800) 523-5773
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Very Truly Yours,

[administrator]