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7 *Attorneys for Plaintiff Leonel Garcia*

8 [Additional Counsel on Following Page]

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN JOAQUIN**

12 LEONEL GARCIA, individually. and on behalf
13 of all others similarly situated,

14 **Plaintiff,**

15 **vs.**

16
17 ECKERT COLD STORAGE COMPANY, a
California corporation; BALANCE STAFFING
18 WORKFORCE LLC, a limited liability
company; and DOES 1 through 10. inclusive,
19

20 **Defendants**

Case No. STK-CV-UOE-2021-10495

[Honorable Jayne Lee]

**SETTLEMENT AGREEMENT AND
RELEASE OF PAGA CLAIMS**

Complaint filed: November 12, 2021
Trial date: Not Set

1 **SETTLEMENT AGREEMENT AND RELEASE OF PAGA CLAIMS**

2 Plaintiff LEONEL GARCIA ("Plaintiff"), individually and in his capacity as a representative of
3 the State of California on behalf of other allegedly aggrieved employees, defendant ECKERT COLD
4 STORAGE COMPANY ("Defendant Eckert"), and defendant BALANCE STAFFING
5 WORKFORCE, LLC ("Defendant Balance"), hereby enter into this Settlement Agreement and Release
6 of Private Attorneys General Act of 2004 Claims ("Settlement") as follows:

7 **DEFINITIONS**

8 1. **"Action"** means and refers to *Garcia v. Eckert Cold Storage Company, et al.* Case
9 No. STK-CV-UOE-2021-10495, which is currently pending in the San Joaquin County Superior
10 Court of the State of California.

11 2. **"PAGA Members"** The PAGA Members (also referred to herein as the "Aggrieved
12 Employees") included in the Settlement are non-exempt hourly paid employees of Defendant
13 Balance Staffing Workforce, LLC assigned to work at Defendant Eckert Cold Storage in California
14 for the period from November 12, 2020 to the earlier of June 1, 2022, or the date the settlement is
15 approved by the Court ("Covered Period").

16 3. **"Settled Claims"** This Settlement is a settlement of all PAGA claims identified in
17 Plaintiff's PAGA notice letter, dated November 6, 2021 ("Settled Claims") and the Operative
18 Complaint in this Action.

19 4. The terms **"Agreement," "Settlement,"** and **"Settlement Agreement"** mean this
20 Agreement for PAGA Representative Action Settlement, which the Parties acknowledge sets forth
21 all material terms and conditions of the Settlement between them, and which is subject to Court
22 approval pursuant to Section 2699(1) of the California Labor Code Private Attorneys General Act
23 of 2004, Labor Code §§ 2698, *et seq.*

24 5. **"Court"** means the California Superior Court, County of San Joaquin.

25 6. **"Defendants"** means ECKERT COLD STORAGE COMPANY and BALANCE
26 STAFFING WORKFORCE, LLC.

27 7. **"Effective Date"** The Effective Date of this Agreement shall be the date the Court
28 signs an order approving this Agreement.

1 8. **"PAGA Period"** shall mean November 12, 2020 to the earlier of June 1, 2022, or
2 the date the settlement is approved by the Court.

3 9. **"Payment Date"** The Payment Date of the settlement funds under this Agreement
4 shall be 45 days after the Effective Date of this Agreement.

5 10. **"Gross Settlement Amount"** means a maximum total of \$85,000.00, which includes
6 all payments owing as a result of this Agreement and includes: the Net Settlement Amount;
7 Settlement Administration Costs; Plaintiff's service payment; and PAGA Counsel Attorneys' Fees
8 and Costs as awarded by the Court.

9 11. **"LWDA Payment"** means a payment to the California Labor Workforce and
10 Development Agency in an amount equal to 75% of the Net Settlement Amount.

11 12. **"Net Settlement Amount"** is the Gross Settlement Amount less (1) PAGA
12 Counsel's Attorneys' Fees and Costs, (2) Settlement Administration Costs, and (3) Plaintiff's
13 service payment.

14 13. **"PAGA Aggrieved Employee Payment"** means a payment of 25% of the Net
15 Settlement Amount, which the Parties have agreed to pay the Aggrieved Employees in connection
16 with the settlement of the PAGA Claim.

17 14. **"PAGA Claim"** means the claim for civil penalties under the California Labor Code
18 Private Attorneys General Act of 2004 (Cal. Lab. Code sections 2698 *et seq.*, "PAGA") alleged in
19 the Operative Complaint in this Action and stated in Plaintiff's November 6, 2021 notice letter to
20 the LWDA.

21 15. **"PAGA Counsel"** means Moon & Yang, APC.

22 16. **"Released Claims"** means all claims for relief under PAGA, of whatever kind or
23 nature, whether known or unknown, arising during the Covered Period, based on the facts alleged
24 by Plaintiff in the Action and Plaintiff's notice letter to the LWDA including, but not limited to,
25 Labor Code sections 201, 201.3, 202, 203, 204, 205.5, 218, 218.6, 226, 226.3, 226.7, 246, 256, 510,
26 511, 512, 558, 558.1, 1174, 1174.5, 1175, 1193.6, 1194, 1194.2, 1197, 1197.1, 1198, 2802, 2699,
27 and the applicable IWC Wage Orders, and any resulting claim for attorneys' fees and costs under
28 PAGA.

17. **“Released Parties”** shall mean Defendants, and each of its respective current and former, direct and indirect owners, parents, subsidiaries, brother-sister companies, and all other affiliates and related entities, and their current and former partners, officers, directors, employees, attorneys, agents, and other related parties.

18. **“Representative Plaintiff”** means Plaintiff Leonel Garcia.

19. **"Settlement Administrator"** shall mean ILYM Group, Inc., a neutral third-party administrator chosen by the Parties, subject to approval by the Court.

RECITALS

20. On November 6, 2021, Plaintiff sent a PAGA Notice to the Labor Workforce and Development Agency (“LWDA”), with a copy to Defendants. On November 12, 2021, Plaintiff filed a class action complaint in the Superior Court of the State of California, County of San Joaquin in a case titled *Garcia v. Eckert Cold Storage Company, et al.* Case No. STK-CV-UOE-2021-10495.

21. On January 24, 2022, Plaintiff filed a first amended complaint in the Action to add the PAGA Claim. On February 14, 2022, the Court entered an order dismissing the class allegations, staying the first through eight causes of action for purposes of arbitration, and staying the ninth cause of action pending resolution of the first through eighth causes of action.

22. The PAGA Claims seek civil penalties and an award of reasonable attorneys' fees and costs.

23. The Parties have conducted a thorough investigation into the facts of the Action. This included exchanging data and information as well as documents relating to the underlying alleged violations. After attending a mediation with Lisa Klerman, Esq. on May 5, 2022, the Parties subsequently entered into an agreement, formalized herein, which they believe is fair, reasonable, and adequate. The Parties understand, acknowledge, and agree that this Settlement Agreement constitutes a compromise of Representative Plaintiff's and the Aggrieved Employees' PAGA Claim, and that it is the desire and intention of the Parties to effect a final and complete resolution of the PAGA Claim that the Representative Plaintiff and the Aggrieved Employees have against Defendants or any persons or companies affiliated with Defendants.

24. The Parties enter into this Settlement Agreement on a conditional basis. In the event the Court does not enter a Final Order and Judgment as defined in this Settlement Agreement, this Settlement Agreement will be deemed null and void *ab initio* and will be of no force or effect whatsoever, and will not be referred to or utilized for any purpose whatsoever.

25. Defendants deny all of the claims in the Action, and do not waive, but rather expressly reserve, all rights to challenge all such claims and allegations upon all legal, procedural and factual grounds should this Settlement Agreement not become final. This Settlement Agreement reflects a compromise reached to end litigation.

26. The Parties stipulate and agree to the following terms of this Settlement Agreement with the intent that this Agreement finally disposes of the Action with prejudice.

TERMS AND CONDITIONS

27. **Settlement Payments and Calculation of Claims.** The following table summarizes the allocation of the Gross Settlement Amount:

Gross Settlement Amount of \$85,000.00 Is Broken Down As Follows:

- PAGA Counsel Attorneys' Fees not to exceed 35% (or \$29,750.00).
- PAGA Counsel Costs not to exceed \$15,000.00.
- Settlement Administration Costs not to exceed \$15,000.00.
- Service Award to the Plaintiff for \$7,000.00
- Approximately \$18,250.00 for the Net Settlement Amount:
 - 25% of the Net Settlement Amount for the PAGA Aggrieved Employee Payment (approximately \$4,562.50)
 - 75% of the Net Settlement Amount for the LWDA Payment (approximately \$13,687.50)

28. Subject to final Court approval and the conditions specified in this Agreement, and in consideration of the mutual covenants and promises set forth in this Agreement, Defendants agree to pay the Gross Settlement Amount of \$85,000.00. The Gross Settlement Amount includes payments to be made to PAGA Counsel's attorneys' fees and costs, LWDA Payment, Payment to Plaintiff for the resolution of his individual claims, and Settlement Administration Costs.

29. Escalator Clause: The Parties agree that in the event of an increase in workweeks of more than 15% from original estimates of 298 pay periods (if the number of pay periods is 343 or

more), the settlement amount shall be increased by the percentage that that actual number of aggrieved employees or pay periods exceeds 343, and Defendants will pay their proportionate share of the increased Gross Settlement Amount based on their respective initial contribution percentages.

30. The Parties agree, subject to Court approval, that the Gross Settlement Amount shall be apportioned as follows:

a. Settlement Administration Fees And Costs: The fees and costs associated with settlement administration (e.g., preparing and mailing payments to the Aggrieved Employees, tax documentation, etc.) (the "**Settlement Administration Costs**") will be paid from the Gross Settlement Amount and are estimated not to exceed \$15,000.00. The Parties agree to use ILYM Group, Inc. as the Settlement Administrator. Any unused portion of the settlement administration fees shall be distributed to the Aggrieved Employees and LWDA on a pro-rata basis.

b. PAGA Counsel's Attorneys' Fees and Costs: The Parties agree that, subject to the Court's review and approval, PAGA Counsel will be paid from the Gross Settlement Amount an amount that is up to 35% of the Gross Settlement Amount for attorneys' fees (\$29,750.00), plus actual litigation costs), not to exceed \$15,000.00. Any unused portion of the attorneys' costs shall be distributed to the Aggrieved Employees and LWDA on a pro-rata basis.

c. Service Award To Named Plaintiff: Subject to Court approval, Defendants agree to pay Plaintiff a Service Award of Seven Thousand Dollars (\$7,000.00) to be paid from the Gross Settlement Amount, for his service as the PAGA representative and for the release of his individual claims. Upon receipt of the service awards, Plaintiff will be deemed to have fully released and discharged Defendants and the Released Parties from any and all claims, demands, obligations, causes of action, rights, or liabilities of any kind which have been or could have been asserted against Defendants and the Released Parties arising out of, or relating to, Plaintiff's employment with Defendants or termination thereof. This release is intended to have the broadest possible effect under the law, and specifically includes any and all claims, demands, obligations and/or causes of action for wages, damages, liquidated damages, benefits, fringes, equitable relief, restitution, penalties, interest, and attorneys' fees and costs (except provided by the Settlement) relating to or in any way connected with the matters referred to herein, whether or not known or suspected to exist, and

1 whether or not specifically or particularly described herein. Specifically, Plaintiff will be deemed to
2 have waived all rights and benefits afforded by California Civil Code Section 1542, which provides:

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

9 Defendants will not oppose Plaintiff's request for the Service Award. Plaintiff will be
10 responsible for correctly characterizing this compensation for tax purposes and for paying any taxes
11 owing on said amount. The Parties agree that a reduction by the Court of the requested Service
12 Award is not a basis for rendering the entire Settlement voidable or unenforceable.

13 d. Plaintiff's Release of Claims. Except as otherwise provided herein, in
14 exchange for the consideration described herein, Plaintiff, on his own behalf and on behalf of his
15 descendants, dependents, heirs, executors, administrators, agents, assigns, and successors
16 (collectively, "Plaintiff's Releasors"), hereby covenants not to sue and fully and unconditionally
17 forever release and discharge Defendants, their past, present, and future representatives, directors,
18 officers, employees, agents, attorneys, affiliates, members, and shareholders, as well as all parent
19 companies, affiliated companies, subsidiary companies, affiliates, clients, client facilities,
20 consultants, agents, attorneys, predecessors, assignors, and/or assigns (collectively, "Defendants'
21 Released Parties"), from and against any and all claims, causes of action, judgments, liens, demands,
22 damages, obligations, suits, contracts, liabilities, losses, costs, and expenses, including, but not
23 limited to, attorneys' fees and disbursements, or offsets of any nature whatsoever (collectively,
24 "Claims") that Plaintiff's Releasors now have, have had, or may hereafter have against Defendants'
25 Released Parties arising out of the Parties' relationship, the cessation of this relationship, including
26 but not limited to those claims arising out of or relating to (i) Plaintiff's performance and reputation,
27 (ii) harassment, (iii) discrimination, (iv) retaliation, and (v) any Claims arising under the Title VII
28 of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Americans with Disabilities Act,

1 the Age Discrimination in Employment Act, the Federal Rehabilitation Act, the Employee
2 Retirement Income Security Act, the Family and Medical Leave Act, the Fair Labor Standards Act,
3 the California Fair Employment and Housing Act, the California Family Rights Act, the California
4 Labor Code, and any other applicable state or federal law which took place prior to the Effective
5 Date. Except for any rights created by this agreement, this General Release is intended to be
6 interpreted as broadly as possible and to apply to any and all claims available to Plaintiff in any
7 forum, including, but not limited to, any claims for unpaid wages, expense reimbursement, unpaid
8 penalties or premiums, liquidated damages, class or representative actions governing employment
9 (to the fullest extent allowed by applicable law), constructive termination, negligent or intentional
10 infliction of emotional distress, harassment, discrimination, wrongful termination, negligence,
11 breach of contract, breach of the covenant of good faith and fair dealing, promissory estoppel, fraud,
12 negligent or intentional misrepresentation, negligent or intentional interference with contract or
13 prospective economic advantage, unfair business practices, defamation, libel, slander, personal
14 injury; assault, battery, invasion of privacy, false imprisonment, conversion, disability benefits,
15 claims under Labor Code section 132(a), violation of any provision of federal or state law governing
16 employment, and any claim for attorneys' fees or costs. All such claims are forever barred by this
17 Agreement. However, this release shall not apply to claims for workers' compensation benefits or
18 unemployment insurance benefits or any other claims that Plaintiff cannot, by statute, lawfully
19 waive by this Agreement.

20 e. Net Settlement Amount: After deducting PAGA Counsel's Attorneys' Fees
21 and Costs, Plaintiff's Service Award, and Settlement Administration Costs from the Gross
22 Settlement Amount, the remaining amount will comprise the Net Settlement Amount. The Net
23 Settlement Amount is comprised of the LWDA Payment and the PAGA Aggrieved Employee
24 Payment. The Net Settlement Amount of approximately \$18,250 shall be allocated 75% to the
25 LWDA Payment, which is estimated to total \$13,687.50. The remaining 25% of the Net Settlement
26 Amount, estimated to total \$4,562.50, shall be allocated to the PAGA Aggrieved Employee Payment
27 to be paid to the Aggrieved Employees on a *pro rata* basis as noted below, which shall be referred
28 to as the Aggrieved Employee's "**Individual PAGA Payment.**"

1 f. Taxes and Reporting: The Individual PAGA Payments will be treated as non-
2 wage income to the Aggrieved Employees and reported by the Settlement Administrator on IRS
3 Form 1099.

4 31. Release By PAGA Members

5 a. PAGA Members Limited Release. Each PAGA Member (including Plaintiff)
6 shall, for the Covered Period, fully release and forever discharge Defendants from any and all claims
7 for PAGA penalties that were asserted pursuant to Labor Code Section 2699 for civil penalties
8 (excluding wages) in Plaintiff's PAGA Notice, submitted on November 6, 2021 and the Operative
9 Complaint in this Action.

10 b. No Claims Based On Agreement. No Aggrieved Employee will have any
11 claim against any of the Released Parties, Defendants' counsel, the Representative Plaintiff, or
12 PAGA Counsel, based on errors in administering claims or performing the mailing and skip-tracing
13 requirements of the Settlement Administrator under this Agreement.

14 32. Settlement Funding

15 Subject to Court approval of the Settlement, payment shall be made to the administrator
16 within 30 days of Court approval (assuming that the LWDA has not intervened or indicated in
17 anyway that it intends to intervene in the settlement). If the LWDA has intervened, or indicated that
18 it may intervene, payment will be due 30 days after any such intervention is resolved, or the LWDA
19 indicates that it is no longer going to intervene in the Action.

20 33. PAGA List.

21 Within 10 days after the Effective Date, Defendant Balance will compile a PAGA Member
22 list containing: (1) name; (2) last known home address and telephone number; (3) number of pay
23 periods as a PAGA Member during the Covered Period; and (4) social security number. The PAGA
24 Members shall receive a pro rata share of the 25 percent of the PAGA Penalties Payment allocated
25 to PAGA Members, which will be calculated using a ratio of (a) the number of pay periods worked
26 by the PAGA Member during the Covered Period to (b) the total number of pay periods worked by
27 all PAGA Members during the Covered Period according to Defendant Balance's records.

28 34. List Of Individual Settlement Amounts.

1 Within 10 days after the Settlement Administrator receives the PAGA List, the Settlement
2 Administrator will provide to PAGA Counsel and Defendants' counsel a Proceeds List reflecting
3 the Individual PAGA Payment for each Aggrieved Employee ("Proceeds List"). The Proceeds List
4 provided to PAGA Counsel will not include the Aggrieved Employees' names, social security
5 numbers or contact information.

6 35. PAGA Payments to Aggrieved Employees.

7 a. On the Payment Date, the Settlement Administrator will mail to each
8 Aggrieved Employee, via first-class United States Mail, the following: (a) the PAGA Settlement
9 Notice in English and Spanish, attached as Exhibit A to this Agreement and (b) their Individual
10 PAGA Payment (collectively, the "PAGA Packet").

11 b. Prior to mailing, the Settlement Administrator will update all addresses using
12 the National Change of Address System (NCOA). In the event that a PAGA Packet is returned to
13 the Settlement Administrator with a forwarding address, the Settlement Administrator will re-send
14 the PAGA Packet to the forwarding address identified. If no forwarding address is provided, then
15 the Settlement Administrator will promptly conduct a "standard search," sometimes called, "Skip
16 Trace" or "Credit Header" searches, to locate a better address. If a better address is found, the
17 Settlement Administrator will promptly re-send the PAGA Packet. If a better address is not found
18 or the PAGA Packet is ultimately returned without a forwarding address, neither the Settlement
19 Administrator, Defendants, or PAGA Counsel shall be required to take further action.

20 c. Aggrieved Employees shall have 180 calendar days after the date the PAGA
21 Packet is mailed to them to cash their settlement payment checks. If any Aggrieved Employee's
22 check is not cashed within that period, the settlement payment check will be voided and a stop-
23 payment will be issued. Neither Defendants, Defendants' counsel, Plaintiff, nor PAGA Counsel
24 will have any liability for lost or stolen settlement payment checks, forged signatures on settlement
25 payment checks, unauthorized negotiation of settlement payment checks or failure to timely cash a
26 settlement payment check within the 180 day period.

27 d. Any unpaid cash residue or unclaimed Aggrieved Employee funds, plus any
28 accrued interest that has not otherwise been distributed pursuant to order of the Court, shall be

transmitted to California State Controller's Office for Unclaimed Property in the name of each Aggrieved Employee who failed to cash their Individual PAGA Payment prior to the void date.

36. **Payments Of Attorneys' Fees And Costs, and the LWDA Settlement Payment.**

a. On the Payment Date, the Settlement Administrator will pay from the Gross Settlement Amount to PAGA Counsel its Court-approved Attorneys' Fees and Costs.

b. On the Payment Date, the Settlement Administrator will pay the LWDA Payment from the Net Settlement Amount by issuing a check payable to "California Labor Workforce and Development Agency."

37. **Deadlines.**

If any deadline specified in this Agreement falls on a Saturday, Sunday, or Court holiday, the deadline will be automatically extended to the next regular business day. Unless specified otherwise, all references to "days" shall mean calendar days.

38. **Enforcement and Continuing Jurisdiction of the Court.**

Pursuant to the Parties agreement, this Settlement Agreement will be approved by the Court and will be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6. Even after the entry of the Final Order and Judgment, this Court will have and retain continuing jurisdiction over the Action and over all Parties and the Aggrieved Employees, to the fullest extent necessary or convenient to enforce and effectuate the terms and intent of this Settlement Agreement and all matters provided for in it, and to interpret it.

39. **Mutual Full Cooperation.**

The Parties will fully cooperate with each other to accomplish the terms of this Settlement Agreement, including, but not limited to, execution of such documents and taking such other action as may be reasonably necessary or convenient to implement it.

40. **Non-Admission Of Liability.**

The Parties enter into this Agreement to resolve the dispute that has arisen between them and to avoid the burden, expense and risk of continued litigation. In entering into this Agreement, Defendants do not admit, and specifically denies, that they have violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other

1 applicable laws, regulations or legal requirements; violated or breached any duty; engaged in any
2 misrepresentation or deception; or engaged in any other unlawful conduct with respect to the Action.
3 Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected
4 with it, shall be construed as an admission or concession by Defendants of any such violations or
5 failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms
6 of this Agreement, this Agreement and its terms and provisions shall not be offered or received as
7 evidence in any action or proceeding to establish any liability or admission on the part of Defendants
8 or to establish the existence of any condition constituting a violation of, or a non-compliance with,
9 federal, state, local or other applicable law.

10 41. **Effective Date Of Defendants' Obligations Under This Agreement.**

11 Defendants' obligations under this Settlement Agreement will become final and effective
12 only upon the occurrence of the Effective Date. In the event that any of the conditions specified in
13 this Settlement Agreement are not satisfied, or in the event that this Settlement does not obtain
14 approval of the Court for any reason, all matters covered by this Agreement will be null and void.
15 In such event, neither this Agreement nor any negotiations leading to this Settlement will be used
16 or construed by or against any Party as a determination, admission, or concession of any issue of
17 law or fact in the litigation; and the Parties do not waive, and instead expressly reserve, their
18 respective rights regarding the prosecution and defense of the Action, including all available
19 defenses and affirmative defenses, and to challenge any claim, as if this Settlement Agreement never
20 existed.

21 42. **Nullification.**

22 If: (1) the Court should for any reason fail to enter the Final Order and Judgment; or (2) the
23 Court's Final Order and Judgment is reversed or modified as to any material term as defined above,
24 or declared or rendered void as to any material term as defined above, then (a) the Settlement
25 Agreement shall become null and void; (b) the Parties will revert to their respective positions
26 immediately prior to reaching the settlement; and (c) Defendants will share equally in their
27 responsibility for any Settlement Administration Costs.

28 43. **Invalidation.**

1 Invalidation of any material term of this Settlement Agreement will invalidate this
2 Agreement in its entirety unless the Parties subsequently agree in writing that the remaining
3 provisions will remain in full force and effect.

4 44. **Entire Agreement.**

5 This Settlement Agreement constitutes the entire integrated agreement between the Parties
6 relating to the Action, and no oral representations, warranties, or inducements have been made to
7 any party concerning this Settlement Agreement other than the representations, warranties, and
8 covenants contained and memorialized in this Settlement Agreement.

9 45. **Authorization To Act.**

10 PAGA Counsel warrants and represents that they are authorized by the Representative
11 Plaintiff, and counsel of record for Defendants warrant that it is authorized by Defendants, to take
12 all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement
13 Agreement to effectuate its terms, and to execute any other documents required to effectuate the
14 terms of this Settlement Agreement, except for any documents, including but not limited to this
15 Settlement Agreement, that are required to be executed by the Parties.

16 46. **Modification Only In Writing.**

17 This Settlement Agreement may be amended or modified only by a written instrument signed
18 by all Parties or their successors in interest.

19 47. **Binding On Successors.**

20 This Settlement Agreement is binding upon and will inure to the benefit of the Parties to this
21 Agreement, as well as their respective attorneys, past, present, and future predecessors, successors,
22 shareholders, officers, directors, employees, agents, trustees, representatives, administrators,
23 fiduciaries, assigns, insurers, executors, partners, parent corporations, subsidiaries, and related or
24 affiliated entities.

25 48. **No Prior Assignments.**

26 The Aggrieved Employees are deemed by operation of the Final Order and Judgment to
27 represent, covenant, and warrant that they have not directly or indirectly assigned, transferred,
28 encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any

1 liability, claim, demand, cause of action, or rights released and discharged by this Agreement.

2 49. **Governing Law.**

3 All terms of this Settlement Agreement will be governed by and interpreted according to the
4 laws of the State of California, without giving effect to conflicts of laws principles.

5 50. **Counterparts.**

6 This Settlement Agreement may be executed in one or more counterparts. All executed
7 counterparts and each of them will be deemed to be one and the same instrument. Counsel for the
8 Parties will exchange among themselves signed counterparts.

9 51. **Headings For Convenience Only.**

10 The descriptive headings of any paragraphs or sections of this Settlement Agreement are
11 inserted for convenience of reference only and do not constitute a part of this Settlement Agreement.

12 52. **Construction Of This Agreement.**

13 The Parties agree that the terms and conditions of this Settlement Agreement are the result
14 of arms-length negotiations between the Parties and that this Settlement Agreement will not be
15 construed in favor of or against any Party by reason of the extent to which any Party, or his or its
16 counsel participated in the drafting of this Agreement. This Settlement Agreement constitutes the
17 entire agreement between the Parties. Except as expressly provided in this Agreement, this
18 Settlement Agreement has not been executed in reliance upon any other oral or written
19 representations or terms and no such extrinsic oral or written representations or terms will modify,
20 vary or contradict the terms of this Settlement Agreement. In entering this Settlement Agreement,
21 the Parties explicitly recognize California Civil Code section 1625 and California Code of Civil
22 Procedure section 1856(a), which provide that a written agreement is to be construed according to
23 its terms and may not be varied or contradicted by extrinsic evidence. The Representative Plaintiff
24 and Defendants had available to it the advice and assistance of independent counsel. As such,
25 neither Representative Plaintiff nor Defendants may claim that any ambiguity in this Settlement
26 Agreement should be construed against the other.

27 53. **Corporate Signatories.**

28 Any person executing this Settlement Agreement or any related document on behalf of a

1 corporate signatory warrants and promises for the benefit of all Parties that such person has been
2 duly authorized by such corporation to execute this Settlement Agreement or any related document.

3 54. **Representation By Counsel.**

4 All of the Parties hereto acknowledge that they have been represented by counsel throughout
5 all negotiations which preceded the execution of this Settlement Agreement and that this Agreement
6 has been executed with the consent and advice of counsel.

7 55. **Attorneys' Fees And Costs.**

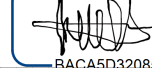
8 Except as otherwise provided in this Agreement, the Parties will bear responsibility for their
9 own attorneys' fees and costs, taxable or otherwise, incurred by them or arising out of this Action
10 and will not seek reimbursement thereof from any Party to this Settlement Agreement. In the event
11 of a proven breach of this Agreement, the breaching party will be required to pay the prevailing
12 Party's reasonable attorneys' fees and costs incurred in enforcing this Agreement.

13 **IT IS SO AGREED:**

14 Dated: 6/8/2022
15 _____

PLAINTIFF LEONEL GARCIA

DocuSigned by:

16 

17 BACA5D320854474...

18 Leonel Garcia

19 Dated: _____
20

DEFENDANT ECKERT COLD STORAGE
COMPANY

21 By: _____

22 Its: _____

23 Dated: _____
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DEFENDANT BALANCE STAFFING
WORKFORCE, LLC

25 By: _____

26 Its: _____
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APPROVED AS TO FORM ONLY:

Dated: June 8, 2022

MOON & YANG, APC



Allen Feghali
Attorneys for Plaintiff

APPROVED AS TO FORM ONLY:

Dated: _____

KOREY RICHARDSON, LLP

Ronald Z. Gomez

Attorneys for Defendant
Balance Staffing Workforce, LLC

APPROVED AS TO FORM ONLY:

Dated: _____

BARSAMIAN & MOODY

Catherine M. Houlihan

Attorneys for Defendant
Eckert Cold Storage Company

1 corporate signatory warrants and promises for the benefit of all Parties that such person has been
2 duly authorized by such corporation to execute this Settlement Agreement or any related document.

3 54. Representation By Counsel.

4 All of the Parties hereto acknowledge that they have been represented by counsel throughout
5 all negotiations which preceded the execution of this Settlement Agreement and that this Agreement
6 has been executed with the consent and advice of counsel.

7 55. Attorneys' Fees And Costs.

8 Except as otherwise provided in this Agreement, the Parties will bear responsibility for their
9 own attorneys' fees and costs, taxable or otherwise, incurred by them or arising out of this Action
10 and will not seek reimbursement thereof from any Party to this Settlement Agreement. In the event
11 of a proven breach of this Agreement, the breaching party will be required to pay the prevailing
12 Party's reasonable attorneys' fees and costs incurred in enforcing this Agreement.

13 **IT IS SO AGREED:**

14 Dated: _____

PLAINTIFF LEONEL GARCIA

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Leonel Garcia

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20 Dated: 6-9-22

DEFENDANT ECKERT COLD STORAGE
COMPANY

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By: _____
Its: CEO

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Dated: _____

DEFENDANT BALANCE STAFFING
WORKFORCE, LLC

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By: _____
Its: _____

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APPROVED AS TO FORM ONLY:

Dated: _____

MOON & YANG, APC

Allen Feghali
Attorneys for Plaintiff

APPROVED AS TO FORM ONLY:

Dated: _____

KOREY RICHARDSON, LLP

Ronald Z. Gomez

Attorneys for Defendant
Balance Staffing Workforce, LLC

APPROVED AS TO FORM ONLY:

Dated: June 9, 2022

BARSAMIAN & MOODY



Catherine M. Houlihan

Attorneys for Defendant
Eckert Cold Storage Company

1 corporate signatory warrants and promises for the benefit of all Parties that such person has been
2 duly authorized by such corporation to execute this Settlement Agreement or any related document.

3 54. Representation By Counsel.

4 All of the Parties hereto acknowledge that they have been represented by counsel throughout
5 all negotiations which preceded the execution of this Settlement Agreement and that this Agreement
6 has been executed with the consent and advice of counsel.

7 55. Attorneys' Fees And Costs.

8 Except as otherwise provided in this Agreement, the Parties will bear responsibility for their
9 own attorneys' fees and costs, taxable or otherwise, incurred by them or arising out of this Action
10 and will not seek reimbursement thereof from any Party to this Settlement Agreement. In the event
11 of a proven breach of this Agreement, the breaching party will be required to pay the prevailing
12 Party's reasonable attorneys' fees and costs incurred in enforcing this Agreement.

13 **IT IS SO AGREED:**

14 Dated: _____ PLAINTIFF LEONEL GARCIA

15
16
17 _____
18 Leonel Garcia

19 Dated: 6-9-22
20 DEFENDANT ECKERT COLD STORAGE
21 COMPANY

22 By: _____
23 Its: CEO

24 Dated: 6/16/22
25 DEFENDANT BALANCE STAFFING
26 WORKFORCE, LLC

27 By: _____
28 Its: General Counsel

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June 14, 2022

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Dated: June 9, 2022

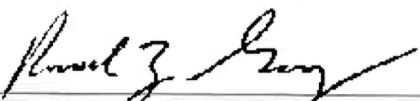
APPROVED AS TO FORM ONLY:

MOON & YANG, APC

Allen Feghali
Attorneys for Plaintiff

APPROVED AS TO FORM ONLY:

KOREY RICHARDSON, LLP



Ronald Z. Gomez

Attorneys for Defendant
Balance Staffing Workforce, LLC

APPROVED AS TO FORM ONLY:

BARSAMIAN & MOODY



Catherine M. Houlihan

Attorneys for Defendant
Eckert Cold Storage Company

EXHIBIT A

[CLAIMS ADMINISTRATOR LETTERHEAD]

Mailing Date

NOTICE OF SETTLEMENT

Re: Garcia v. Eckert Cold Storage Company, et al. Case No. STK-CV-UOE-2021-10495 filed on November 12, 2021 (the "Lawsuit")

[claims admin info]

You have received the enclosed check in connection with the Settlement of the above-referenced lawsuit brought by a former employee Leonel Garcia ("Plaintiff") against ECKERT COLD STORAGE COMPANY and BALANCE STAFFING WORKFORCE, LLC ("Defendants") for civil penalties pursuant to the Private Attorneys General Act, Labor Code § 2698 et seq. ("PAGA").

Plaintiff claimed he and other non-exempt employees of Defendant BALANCE STAFFING WORKFORCE, LLC employed anytime from November 12, 2020 through [DATE] (the "PAGA Period"). who were assigned to ECKERT COLD STORAGE COMPANY were subjected to various Labor Code violations.

Defendants deny, all allegations and liability, but to avoid further time and expense of protracted and uncertain litigation, Defendants and Plaintiff have agreed to settle the lawsuit for civil penalties. The settlement, approved by the Court on [DATE], resolves the alleged claims brought on behalf of all past and present non-exempt hourly employees of Defendant BALANCE STAFFING WORKFORCE, LLC who were assigned to ECKERT COLD STORAGE COMPANY in California at any time from November 12, 2020 and [DATE] ("PAGA Members").

Pursuant to the Court's Order, a payment of \$85,000.00 was approved in settlement of this lawsuit. Upon the date of entry of that Order approving this Settlement, and payment of all funds due under this Settlement, the Labor Workforce Development Agency ("LWDA") and PAGA Members, including Plaintiff, fully release and forever discharge the Released Parties from any and all Released Claims defined as all claims for relief under PAGA, of whatever kind or nature, whether known or unknown, arising during the PAGA Period, based on the facts alleged by Plaintiff in the Action and Plaintiff's notice letter to the LWDA including, but not limited to, Labor Code sections 201, 201.3, 202, 203, 204, 205.5, 218, 218.6, 226, 226.3, 226.7, 246, 256, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1175, 1193.6, 1194, 1194.2, 1197, 1197.1, 1198, 2802, 2699, and the applicable IWC Wage Orders, and any resulting claim for attorneys' fees and costs under PAGA. The release does not extend to any individual claims.

After accounting for Plaintiff's Counsel's attorneys' fees of \$29,750.00 and reimbursement of litigation costs of \$ [REDACTED], settlement administration costs of \$ [REDACTED], and \$7,000.00 as a service award and individual settlement Plaintiff, the remaining sum called the "PAGA Payment" will be divided pursuant to California law as follows: \$ [REDACTED] (75%) to the State of California Labor Workforce Development Agency and \$ [REDACTED] (25%) to all PAGA Members to be shared on a proportionate basis. The enclosed check represents your share based upon the number of pay periods you worked any time during the PAGA Period, that is the period from November 12, 2020 through [DATE], based on Defendant BALANCE STAFFING WORKFORCE, LLC's records. An IRS 1099 form is enclosed. You will be solely responsible for paying federal, state, or local taxes, if any, on the amount of your check.

Regardless of whether you negotiate the enclosed check, by way of this Settlement and the corresponding Final Order, for the PAGA Period, each PAGA Member shall fully release Defendant for all claims for civil penalties under PAGA as alleged in the LWDA Letter and Plaintiff's Operative Complaint filed in this Action or reasonably

could have been asserted under Labor Code § 2698 et seq. based upon the facts alleged in the LWDA Letter and Plaintiff's Operative Complaint filed in this Lawsuit.

Your enclosed check is valid for 180 days from the date of its issuance. **It is strongly recommended that you cash or deposit this check immediately.** After that date, you cannot cash the check and it will be null and void and the amount forwarded to the State of California Controller's Office Unclaimed Property Division for further handling. **Even if you fail to cash the enclosed check, you will still be deemed to have waived all claims arising from the Lawsuit, including all claims set forth in the release of claims described above.**

If the check is lost or misplaced, please contact the Administrator immediately, [xxx-xxx-xxxx] to have it reissued. If you have any questions about your check, please contact the [insert administrator information].