

KEVIN VALLE URENA V. RAYPAK, INC. MEMORANDUM OF AGREEMENT

1. Defendant Raypak, Inc. (“Raypak” or “Defendant”) and Plaintiff Kevin Valle Urena (hereinafter “Plaintiff”) hereby set forth the terms of a Memorandum of Agreement (“MOA” or “Agreement”) designed to bind the parties to terms of a settlement to be thereafter memorialized further in a long form Stipulation of Settlement, the provisions of which will be consistent with this MOA.
2. For purposes of this Agreement, the “Action” is defined as *Urena v. Raypak, Inc.*, Ventura County Superior Court, Case No. 56-2022-00563198-CU-OE-VTA. This MOA memorializes the settlement reached in the mediation on November 8, 2022 between Plaintiff, the Settlement Class, and Defendants (the “Parties”). This MOA confirms the essential terms of the settlement reached between the Parties with the assistance of mediator David Rotman.
3. The Parties intend to enter into a more formal long form agreement (the “Stipulation of Settlement”) not inconsistent with the terms of this MOA, but if they fail to execute a more formal agreement, this MOA will be final, binding and enforceable pursuant to California Code of Civil Procedure Section 664.6 and admissible pursuant to California Evidence Code Section 1123. The Parties shall have 30 days from the date of this MOA to agree to the Stipulation of Settlement, including a proposed Notice form, Share form, and preliminary/final approval orders. Plaintiff shall prepare the initial draft.
4. The parties agree to cooperate fully with each other to accomplish the terms of the Agreement by entering into the long-form Stipulation of Settlement, to use their best efforts to finalize the Agreement, and to use any other efforts that may become necessary by order of the Court, or otherwise, to effectuate the Agreement. In the event that the Parties do not execute the Stipulation of Settlement within 30 days of both parties’ approval of the finalized Stipulation of Settlement, either party may move for preliminary approval of this class action settlement on the basis of the terms set forth in this MOA. In that event, Plaintiff will propose customary terms and procedures for the notice process and settlement administration as part of any motion for approval. The Parties may extend this deadline by mutual agreement in writing.
5. The Parties will stipulate to class certification for purposes of settlement only. If the Court does not grant either preliminary or final approval of this settlement, the Parties stipulate that class certification will be revoked without prejudice.
6. The Parties agree that the proper scope and definition of the Class as alleged in the operative complaint and the definition of the Settlement Class Members for purposes of this agreement are “*All persons who worked at least one shift as a non-exempt employee in the State of California for Defendant from February 25, 2018 through preliminary approval, or 90 days after the date of this MOA, whichever comes first.*” For the purpose of this paragraph “Defendant” shall mean and refer to Raypak and Class Members shall include direct-hire and agency/temporary hire employees.
7. The Release Period starts on February 25, 2018 and runs through preliminary approval, or 90 days after the date of this MOA, whichever comes first. The PAGA Release Period starts on February 25, 2021 and runs through preliminary approval, or 90 days after the date of this MOA, whichever comes first .

8. The Parties and their counsel agree that the consideration described in the subparagraphs below constitute their good faith compromise of the Action based upon their assessment of the value of the case, and the mutual risks and costs of further litigation. Specifically, the consideration provided by Defendants consist of the following:
 - a. Raypak shall pay the Settlement Fund Amount (“Settlement Fund Amount” or “MSA”) of \$2,125,000.00 in full and complete settlement of this matter. Raypak shall also pay the employer’s portion of all payroll taxes separate and in addition to the Settlement Fund Amount.
 - b. Raypak shall fund the MSA within 10 calendar days of being provided the final accounting of funds by the administrator, which shall be within 10 calendar days of the “Effective Date.”
 - c. The Effective Date as defined in the long form Stipulation shall contemplate, among other things, the date when the court’s order of final approval and judgment have been affirmed on appeal, should any appeal be taken by an objecting class member.
 - d. This is a non-reversionary settlement. All funds represented by uncashed checks remaining in the Qualified Settlement Fund shall be tendered to the State Bar’s Justice Gap Fund as *cy pres* provided the Court approves the Fund as a *cy pres* recipient.
9. The Parties agree that the consideration described in Paragraph 8, above, constitutes adequate consideration for the settlement and release described immediately below.
 - a. *Release by Plaintiff*: The Plaintiff shall be bound by a complete Section 1542 release and waiver of all claims known and unknown, without exception, against the “Released Parties” (below), except as may be prohibited by law. Defendants shall not oppose a request for an enhancement award for Plaintiff up to the amount of \$20,000, which Plaintiff will seek for his work in resolving the case and for his signing of a general release.
 - b. *Release by Settlement Class Members*: All Settlement Class Members who do not opt out of the Settlement will be bound by a limited release that releases all claims against the Released Parties, whether known or unknown, within the definition of “Released Claims” (below).
 - c. *Definition of “Released Claims”*: All claims arising out of the claims and allegations made in the Complaint or that reasonably could have been alleged based on the factual allegations contained in the operative complaint or LWDA letter, including but not limited to all of the following claims for relief: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods or premium pay in lieu thereof, (4) failure to provide meal periods or premium pay in lieu thereof, (5) failure to reimburse necessary business expenses (6) failure to provide accurate itemized wage statements, (7) failure to pay wages when due or at the end of employment, (8) civil penalties under the Private Attorneys General Act (“PAGA”), and (9) unfair business practices. The period of the Release shall extend to the limits of the Release Period.
10. Definition of “Released Parties”: “Released Parties”, shall mean Defendant Raypak, its parents, subsidiaries, affiliates, insurers, related entities and divisions, and its: (i) predecessors, successors, and assigns, and (ii) current and former agents, including but not limited to Bendure, heirs,

executors, administrators, principals, officers, directors, shareholders, employees, founders, members, assigns, insurers, and attorneys.

11. Defendants will not oppose a request by the named Plaintiff to be appointed Class Representative and for an enhancement payment of up to \$20,000 as referenced in Paragraph 9(a), to be deducted from the Settlement Fund Amount, in exchange for his service as Class Representative. This enhancement payment is in addition to the payment to which he is entitled as Settlement Class Member. In the event that the Court reduces or does not approve the requested Class Representative enhancement payment, Plaintiff shall not have the right to revoke this MOA or the Stipulation of Settlement, and it will remain binding.
12. The Parties designate that \$250,000 of the Settlement Fund Amount will be allocated for violations of PAGA. This amount will be allocated as follows: 75% will be payable to the LWDA and the remaining 25% will be payable to the Settlement Class.
13. Defendants will not oppose an application for an award to Class Counsel, from the Settlement Fund Amount, of up to one-third of the Settlement Fund Amount in attorneys' fees, plus actual costs and expenses, of up to \$25,000, as supported by declaration. Even in the event that the Court reduces or does not approve the requested Class Counsel Award and costs, Plaintiff's Counsel shall not have the right to revoke this MOA or this settlement, and it will remain binding.
14. The Parties will select a Settlement Administrator on the basis of cost and competence, with the best interests of the Class in mind. Defendant and Defendant's counsel shall not enter into any contractual relationship with the Settlement Administrator. Fees of the Settlement Administrator shall be paid out of the Settlement Fund Amount, in the amount up to \$25,000. The Stipulation of Settlement shall make clear that Plaintiff, Plaintiff's counsel, Defendant, and Defendant's' counsel shall not bear any responsibility for errors or omissions in the calculation or distribution of the settlement payments or development of the list of recipients of settlement payments or any increase in the fees of the Settlement Administrator that may result from such errors or omissions.
15. The Class Notice will contain an estimated individual settlement payment, dates of employment, how to opt-out of the settlement, how to contest the workweek calculation (*i.e.*, a "Share" form), and how to object to the settlement. Settlement Class Members will be mailed a Class Notice and return postage-paid envelope. Settlement Class Members shall have 30 days to respond to the mailing.
 - a. Settlement Class Members who submit timely requests to opt out of the settlement will not participate in the settlement and will not be bound by the terms of the proposed settlement or the final judgment except as to that portion of the settlement and final judgment dedicated to alleged violations of the PAGA and associated penalties.
 - b. After reductions for the PAGA Claim, attorneys' fees, costs, administrative costs, and class representative enhancement payment, (including without limitation any penalties and interest payable thereon), the remaining balance of the Settlement Fund Amount (the "NSA") shall be distributed on a pro rata basis to Settlement Class Members, based on a reasonable allocation method to be proposed by Class Counsel, such as by shifts worked or weeks worked. Payments shall be reduced as necessary to account for mandatory tax

withholdings. Recipients of payments pursuant to this Agreement are exclusively responsible for all other tax obligations. The Parties agree that the minimum payment to any given Class Member shall be no less than \$100 dollars.

- c. Raypak shall transmit the names and contact information confidentially for all Settlement Class members to a mutually agreed upon claims administrator 10 calendar days after the entry of a Court order preliminarily approving the Settlement (the “Class List”). To comply with Paragraph 18, the Class List provided by Defendants to the administrator as part of the administration process shall also the start and ends dates of employment for Class Members, as well as Defendants’ best estimates of workweeks worked by each Class Member.
16. The settlement payment for each individual claimant shall be allocated as follows: (a) 33% as wages; (b) 33% as penalties and 34% as interest. The Settlement Administrator will be responsible for issuing to claimants a form W-2 for amounts deemed “wages” and an IRS Form 1099 for the portions allocated to penalties and interest.
17. Defendants maintain the right, in their sole discretion, to revoke the settlement and its stipulation to class certification prior to the final fairness hearing in the event that 15% or more of Settlement Class Members opt out of the settlement. In such case, they shall be solely responsible for all administration fees incurred through that date.
18. Raypak has represented that there are 340 direct-employee and 994 agency/temporary employee Class Members who worked from the beginning of the Class Period through the date of mediation (November 8, 2022)—for a total of 1,334 Class Members. Plaintiff has relied upon this material representation in entering into this MOA. Should the actual number of Class Members who worked within the Release Period increase beyond 15%, the MSA shall increase proportionately for each additional Class Member. In the alternative, should the actual number of Class Members who worked within the Release Period increase beyond 15%, Defendant shall have the option of shortening the PAGA and Class Release Periods to end as of the date of mediation (November 8, 2022).
19. The Parties agree not to issue press releases, communicate with, or respond to, any media or publication entities concerning the Settlement, including the fact of the Settlement, its terms or contents, and the negotiations underlying the Settlement prior to final approval and Entry of Judgment, except as required by law or as shall be contractually required to effectuate the terms of the Settlement as set forth herein. Nothing stated herein shall prohibit Class Counsel from discussing the Settlement, the fact of Settlement, and its terms and conditions: (i) with Class Members and/or (ii) in court filings, including in their respective firm resumes, and/or (iii) in all necessary motions and supporting memoranda related to preliminary and final approval of the Settlement, or for other class action settlements. This provision also does not limit Class Counsel (i) from complying with ethical obligations; or (ii) from posting a neutral description of publicly available facts regarding the Settlement, provided that such posting does not expressly identify Defendant by name.
20. All Settlement Class Members who have not validly opted out by the stated time period will be subject to the Release.

21. The Parties and their counsel agree not to take any action to encourage, support, or induce any Settlement Class Members to opt out of and/or object to the Settlement. This includes requiring or asking Class Members to sign any arbitration agreements that purport or could be read to limit a Class Member's right to participate in this Settlement prior to Entry of Judgment and disbursement of the MSA.
22. Defendant expressly denies any liability. Neither this MOA nor the Stipulation of Settlement shall constitute an admission of liability or the accuracy of any allegation made by Plaintiff or his counsel.
23. Neither Defendant nor its counsel shall have any liability for any tax implications related to the receipt of settlement funds herein, including by the claims administrator. Any and all such liability and/or obligations shall be borne solely by the recipients of any funds to be paid by Raypak herein, except that in no case shall any Class Member be required to pay, reimburse, or indemnify Raypak for any amounts characterized or recharacterized as employer-side tax liabilities. The Parties acknowledge neither Defendant's nor Plaintiff's counsel have provided any tax-related advice whatsoever.
24. The Parties shall present the Stipulation of Settlement to the Court for Approval through a noticed motion requesting approval of the settlement. Plaintiff shall move expeditiously to file a Motion for Preliminary Approval after the Parties execute the long-form Settlement.
25. Defendant agrees to provide Plaintiff with reasonable confirmatory discovery to allow Plaintiff to verify the information relied upon in agreeing to settle. This discovery shall include the provision of additional, per-shift timekeeping data and contact information for all agency employees (whether through subpoena or otherwise and Defendant's cooperation in obtaining that data should it not have it itself); a sworn statement from Defendant's Person Most Knowledgeable, subject to the mediation privilege, relating to the rounding policy and meal/rest period policies. Defendant shall also not object to Class Counsel being provided with the Class List after preliminary approval is granted, without any social security number for Defendant's or the agency employees. Plaintiff's counsel agrees to treat the personal contact information as strictly confidential.
26. Any disputes arising from the preparation of a final Stipulation of Settlement shall be resolved by David Rotman.

IT IS SO AGREED.

Dated: 11/09/22

PLANTIFF


Kevin Valle Urena (Nov 9, 2022 20:19 PST)

Kevin Valle Urena

DEFENDANTS

Dated: _____

By _____
Raypak, Inc.

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PLANTIFF

Dated: _____

Kevin Valle Urena

DEFENDANTS

Dated: 11/9/2022



By David Rotman
Raypak, Inc.