

PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT
AGREEMENT AND LIMITED RELEASE

This Private Attorneys General Act Settlement Agreement and Limited Release (“Agreement”) is made by and between Daniel Rosales (“Plaintiff”), on behalf of himself and as an authorized agent for the California Labor and Workforce Development Agency (“LWDA”), on the one hand and Kelly Paper Company (“Defendant”) on the other. Plaintiff and Defendant are collectively referred to as the “Parties” and each may be individually referred to as a “Party.” This Agreement is made in consideration of the following facts:

A. WHEREAS, certain disputes have arisen between the Parties concerning Defendant’s compensation, meal period, rest period, and related employment practices, as applied to Plaintiff and all non-exempt employees employed by Defendant in California between March 1, 2015 and October 12, 2017, including 137 employees who executed individual settlement and release agreements prior to the execution of this Agreement. Such disputes are set forth in Plaintiff’s March 1, 2016 letter to the LWDA, to which the LWDA did not respond. These current and former employees are referred to below as the “Aggrieved Employees.”

B. WHEREAS, Plaintiff filed the action currently pending in the Superior Court of California, County of Los Angeles entitled *Rosales v. Kelly Paper Company* and bearing the case number BC617205, based on the disputes described in Paragraph A above (the “Lawsuit”).

C. WHEREAS, in the Lawsuit’s operative Complaint, Plaintiff asserts a representative claim for civil penalties, including underpaid wages, and an award of reasonable attorneys’ fees and costs, pursuant to the Private Attorneys General Act of 2004 (“PAGA”), California Labor Code § 2698 *et seq.*, based on alleged predicate violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 1197, and 1198, and including but not limited to sections 11 and 12 of the applicable IWC Wage Order (“the PAGA Claim”).

D. WHEREAS, Defendant denies all of the allegations in the Lawsuit, and specifically the PAGA Claim, and denies that it has violated any provision of the Labor Code or the applicable IWC Wage Order in relationship to the Aggrieved Employees.

E. WHEREAS, the Parties understand, acknowledge, and agree that this Agreement constitutes a compromise of Plaintiff’s PAGA Claim, and that it is the desire and intention of the Parties to effect a final and complete resolution of the PAGA Claim against Defendant. The Parties

further acknowledge that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission by Defendant of liability or wrongdoing.

F. WHEREAS, the Parties believe and agree that this Agreement provides for a fair, adequate, and reasonable resolution of the PAGA Claim, and have arrived at the settlement after extensive, arms-length negotiations in a full day private mediation facilitated by Steven Pearl as neutral, taking into account all relevant factors, present and potential (“Settlement”).

G. WHEREAS, under California Law, the State may assess and collect civil penalties from “employers” for violations of certain provisions of the Labor Code. *See* Cal. Lab. Code §§ 2699 *et seq.* Under PAGA, however, if an “aggrieved employee” “give[s] written notice by online filing with the [LWDA] and by certified mail to the employer of the specific provisions of [the Labor Code] alleged to have been violated,” and the State thereafter decides not to investigate, as was the case here, or does investigate and determines that a citation against the employer should not issue, the employee may, “as an alternative” to enforcement by the State, act as a proxy or agent of the state’s labor law enforcement agencies and bring a civil action under PAGA to recover civil penalties “on behalf of himself or herself and other current or former employees.” *Id.* “[C]ivil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the [LWDA]...and 25 percent to the aggrieved employees.” *Id.*

H. WHEREAS, California Labor Code section 558 allows Plaintiff, as the LWDA’s proxy, to recover for himself and absent Aggrieved Employees underpaid wages as civil penalties awarded under PAGA, and whereas one-hundred percent of the recovered penalty amounts equal to such wages are paid to the “aggrieved employees.” *See Thurman v. Bayshore Transit Mgmt.*, 203 Cal. App. 4th 1112 (2012).

I. WHEREAS, California Labor Code section 2699(1)(2) requires Court approval of “any settlement of any civil action filed” pursuant to PAGA.

J. THEREFORE, in consideration of the promises and agreements below, the Parties agree and covenant as follows:

1. **EFFECTIVE DATE:** The effective date of this settlement (“Effective Date”) shall be the date the Court signs the order approving the Settlement (“Court Approval Order”) and enters Judgment in the Lawsuit as described below.

2. **RELEASE:**

2.1 **Release by LWDA and Plaintiff:** Upon the Effective Date, the LWDA and Plaintiff, shall fully release and forever discharge all claims for civil penalties based on the allegations against Defendant in Plaintiff's Complaint, occurring between March 1, 2015 and November 30, 2017 ("Release Period") for civil penalties under PAGA that were alleged in the operative Complaint against Defendant or that reasonably could have been alleged based solely upon the facts alleged in the operative Complaint against Defendant ("Released Claims").

2.2 **Judgment:** The Court Approval Order shall provide for Judgment to be entered in the Lawsuit. The Judgment shall provide that it binds Plaintiff, the State of California and its LWDA and each Aggrieved Employee. The Judgment shall have *res judicata* effect and bar Plaintiff, all Aggrieved Employees, the State of California and its LWDA, and any other person acting on behalf of the State of California or its LWDA, from seeking or recovering any civil penalties alleged in the action provided by the Labor Code, including any civil penalty provided by Labor Code sections 558 or 2699(a) or (f), from Defendant based on any act or omission alleged in the Complaint.

2.3 **Declaration from Defendant:** The Release is dependent upon Plaintiff receiving a declaration by a representative of Defendant with first-hand knowledge confirming that Defendant obtained 137 individual releases as represented at mediation.

2.4 **General Release by Plaintiff:** In exchange for the Service Award described below, Plaintiff will also release all claims that were alleged or that could have been alleged based on the facts of Plaintiff's operative Complaint. This includes all claims for unpaid overtime wages, meal and rest period premiums, waiting time penalties, wage statement violations, penalties, interest, injunctive relief, claims under California's Private Attorneys General Act, attorneys' fees and any and all other types of relief available based on the allegations in Plaintiff's operative Complaint. The release waives and releases all claims against Defendant and its respective parent companies, subsidiaries, affiliates, shareholders, members, agents, predecessors, successors, and assigns.

3. **SETTLEMENT APPROVAL BY COURT:** The parties shall file a request for approval of the Settlement Agreement pursuant to California Labor Code §2699(l)(2) through a joint stipulation or application.

4. **NOTICE TO PAGA EMPLOYEES:**

4.1 Plaintiff's Counsel will choose a third party administrator, subject to Defendant's Counsel's approval ("Settlement Administrator"). No later than ten (10) business days after the Effective Date, Defendant will provide the Settlement Administrator with an "Aggrieved Employee List" based on its business records, identifying the names of the Aggrieved Employees, their last known home addresses, Social Security numbers or, as applicable, other taxpayer identification numbers, and their dates of employment during the Release Period. No later than ten (10) business days after receipt of the settlement funds, the Settlement Administrator will calculate the settlement shares of each Aggrieved Employee and send the settlement checks to Aggrieved Employees with the Notice of Settlement substantially in the form attached hereto as Exhibit A.

5. **SETTLEMENT PAYMENT PROCEDURES:**

5.1 **Total Settlement Amount.** Provided that the Order of Approval is entered by the Court, and in exchange for the Releases set forth in Paragraph 2.1 and 2.2 above, Defendant agrees to make a payment as set forth herein in the amount of Two Hundred and Fifteen Thousand Dollars (\$215,000.00) ("Total Settlement Amount" or "TSA") which shall encompass (i) payments to the LWDA and Aggrieved Employees; (ii) attorneys' fees and costs to Plaintiff's counsel; (iii) settlement administration costs; and (iv) Plaintiff's service award. Defendant agrees to fund the Total Settlement Amount within ten (10) business days after the Effective Date.

5.1.1 **Pro Rata Increase:** If the number of Aggrieved Employees increases by more than ten percent (10%), the Total Settlement Amount will be increased proportionately as follows:

If the number of Aggrieved Employees exceeds 261 by more than ten percent (10%), the Total Settlement Amount will be increased proportionately, by \$823.75 per Aggrieved Employee.

5.2 **Attorneys' Fees and Costs:** Defendant will not oppose a request by Plaintiff for Attorneys' Fees of up to one-third of the TSA, which is currently \$71,666.67, and Costs Payment of up to \$10,000 to Plaintiff's Counsel ("Attorneys' Fees/Cost

Payment”) as compensation for the reasonable attorneys’ fees and costs incurred in connection with work performed to litigate the Lawsuit.

5.3 **Settlement Administration Costs.** Defendant will not oppose a request for reimbursement of costs associated with administration of the Settlement in the amount of not more than \$10,000, to be paid to the Settlement Administrator.

5.4 **Service Award.** Defendant will not oppose a request for an award to Plaintiff in the amount of up to \$5,000.00 in recognition of Plaintiff’s efforts in assisting with the Lawsuit and in exchange for a general release of Plaintiff’s claims.

5.5 **Net Settlement Amount.** Once Attorneys’ Fees and Costs, Settlement Administration Costs, and Plaintiff’s Service Award have been subtracted from the TSA, the resulting remaining funds (currently \$118,333.33), will be referred to as the “Net Settlement Amount.”

5.5.1 Fifty percent of the Net Settlement Amount (currently \$59,166.67), is designated as penalties to recover underpaid wages pursuant to Cal. Lab. Code § 558 (the “Underpaid Wage Penalty Fund”). Each Aggrieved Employee shall receive a pro rata share of these amounts as further detailed in Paragraph 5.6 below.

5.5.2 The remaining fifty percent of the Net Settlement Amount (currently \$59,166.67), shall be designated as payment for PAGA penalties, with 75% (currently \$44,375.00) paid to the Labor Workforce Development Agency, representing of the PAGA penalties, and 25% (currently \$14,791.67) distributed to the Aggrieved Employees on a *pro rata* basis, as detailed in Paragraph 5.6 below.

5.6 **Funding and Allocation of Net Settlement Amount.** No later than ten (10) business days after the Effective Date, Defendant will deliver the Total Settlement Amount to the Settlement Administrator. No later than ten (10) business days after receipt of the settlement funds from Defendant, the Settlement Administrator will calculate the Aggrieved Employees’ settlement shares and send the settlement checks to Aggrieved Employees with the Notice of Settlement.

The settlement shares will be calculated on a per person basis with each Aggrieved Employee receiving an equal share, except that the Aggrieved Employee who signed

individual releases, will have \$108.37 subtracted from their share and redistributed to the Aggrieved Employee who did not sign individual releases. The Settlement Administrator shall take the total amount available to the Aggrieved Employees under 5.5.1 and 5.5.2 above and shall divide that amount by the total number of Aggrieved Employees, which should equal approximately \$283.37 per person. The per person amount under 5.5.1 and 5.5.2 shall be added together to calculate the total settlement share for each Aggrieved Employee. Each Aggrieved Employee who signed an individual release, will have \$108.37 subtracted from their share, which will be redistributed to the Aggrieved Employee who did not sign individual releases. As a result, the Aggrieved Employees who signed individual releases will receive approximately \$175.00 per person, and the Aggrieved Employees who did not sign individual releases will receive approximately \$403.10 per person.

5.7 **Distribution and Taxes:** No later than ten (10) business days after receipt of the settlement funds from Defendant, the Settlement Administrator shall distribute the Notice and a check to each Aggrieved Employee in the amount of that employee's Individual Settlement Share, and a check to the LWDA for its share of PAGA penalties. The Notice sent with the checks to the Aggrieved Employees shall be in substantially the same form as, and contain the same language as, the Notice letter attached as Exhibit A. All settlement payments to Aggrieved Employees constitute penalties and will be reported on an IRS Form-1099. Within ten (10) calendar days of distributing the pro rata shares of the Net Settlement Fund to each Aggrieved Employee, the Settlement Administrator shall provide written confirmation to the parties that it effected disbursement of the Net Settlement Fund pursuant to the terms of this Agreement. Defendant's share of payroll taxes, if any, will not be deducted from the employees' shares, but will be paid from the Settlement Administrator's costs.

5.8 **Expiration of Settlement Checks:** Settlement checks issued to Aggrieved Employees pursuant to this Agreement will expire one hundred and eighty (180) days from the date they are issued by the Settlement Administrator. After the 180-day period, the Settlement Administrator shall remit any unclaimed funds to the Unpaid Wages Fund at the Department of Industrial Relations with an identification of the Aggrieved Employees and the amounts allocated to each.

5.9 **Disputes Relating to Settlement Administration.** Any disputes concerning administration of the Settlement which cannot be resolved by the Parties shall be submitted to and resolved by the Court.

6. **IMPACT OF NON-APPROVAL BY COURT:** Should the Court not approve this Settlement in its entirety, 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 October 12, 2017.

7. **ENFORCEMENT AND CONTINUING JURISDICTION OF THE COURT:** Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain continuing jurisdiction over this Lawsuit and over all Parties, to the fullest extent to enforce and effectuate the terms and intent of the Settlement and this Agreement and to enforce the Judgment.

8. **REPRESENTATIONS AND WARRANTIES:** In further consideration for payment of the PAGA settlement amounts, Plaintiff represents and warrants that he has the right and exclusive authority to execute this Agreement. Each Party to this Agreement also represents and warrants to, and agrees with, each other Party hereto as follows:

8.1 Each Party has carefully read, and knows and understands the full contents of this Agreement and is voluntarily entering into this Agreement after having received independent legal advice from his or its attorneys with respect to the advisability of making the settlement provided for herein and the advisability of executing this Agreement.

8.2 Each Party to this Agreement has investigated the facts relevant to this settlement and this Agreement, and all matters pertaining thereto, to the fullest extent that each Party deems necessary.

8.3 Each separately-numbered term of this Agreement is contractual, not merely a recital.

8.4 Each of the Parties has participated in the drafting of all provisions of this Agreement, has had an adequate opportunity to read, review, and consider the effect of the language of this Agreement, and has agreed to its terms.

9. **NO ADMISSION OF WRONGDOING:** Defendant denies that it has engaged in any unlawful activity, that it has failed to comply with the law in any respect, or that it has any liability to anyone under the claims asserted in the Lawsuit. The Parties agree that this Agreement does not constitute an admission by Defendant or any of the Released Parties of any of the matters alleged in the Lawsuit or of any violation by any of them of any federal, state or local law, ordinance or regulation, or of any violation of any policy or procedure, or of any liability or wrongdoing whatsoever. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Neither this Agreement nor anything in this Agreement shall be construed to be or shall be admissible in any proceeding as evidence of liability or wrongdoing by Plaintiff, Defendant or any of the Released Parties.

10. **NON-EVIDENTIARY USE:** Neither this Agreement nor any of its terms nor the Settlement itself shall be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Plaintiff, the LWDA, Defendant or any other of the Released Parties, including but not limited to, evidence of a presumption, concession, indication, or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to, or offered in evidence against Plaintiff, the LWDA, or any of the Released Parties in any further proceeding in the Action, or any other civil, criminal, or administrative action or proceeding except for the purposes of effectuating the Settlement pursuant to this Agreement or for Defendant to attempt to enforce the Judgment or establish that Plaintiff or the LWDA or any Aggrieved Employee is barred from asserting Released Claims or has been compensated for any claims made by Plaintiff or the LWDA or such Aggrieved Employee.

11. **CHOICE OF LAW:** The rights and obligations of the Parties under this Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of California. California law shall govern the interpretation of this Agreement even if a choice of law analysis under state or federal law would dictate that another forum's law be applied.

12. **COOPERATION:** Each Party, on behalf of themselves, and their respective business entities, heirs, executors, and assigns, agrees that they will abide by this Agreement and will do all such acts, and prepare, execute, and deliver all such documents, as may be reasonably required to carry out the stated objectives of this Agreement.

13. **SEVERABILITY:** If any provision of this Agreement is held to be invalid by a court of competent jurisdiction, that provision shall be deemed severed and deleted from this

Agreement, and neither that provision nor its severance and deletion shall affect the validity of the remaining provisions.

14. **EXECUTION:** This Agreement may be executed in counterparts. A signature by way of facsimile shall serve as an original for all purposes.

15. **ENTIRE AGREEMENT:** This Agreement sets forth the entire agreement between the Parties hereto and fully supersedes any and all prior and/or supplemental understandings, whether written or oral, between the Parties concerning the subject matter of this Agreement. Any modification to this Agreement must be in writing and signed by Plaintiff and an authorized officer of Defendant.

16. **NOTICES:** All notices, requests, demands and other communications required or permitted to be given pursuant to this Settlement shall be in writing and shall be delivered personally or mailed, postage prepaid, by first-class mail, to the undersigned persons at their respective addresses as set forth herein:

Counsel for Plaintiff

Kashif Haque
Samuel A. Wong
Jessica L. Campbell
Shelly D. Song
Aegis Law Firm, PC
9811 Irvine Center Drive, Ste. 100
Irvine, CA 92618

Counsel for Defendant

E. Sean McLoughlin
Hill, Farrer & Burrill LLP

300 S. Grand Avenue
37th Floor
Los Angeles, CA 90071

IN WITNESS WHEREOF, the parties knowingly and voluntarily executed this Private Attorneys General Act Settlement Agreement and Limited Release as of the date set forth below.

Dated: 4/6/1, 2018

PLAINTIFF DANIEL ROSALES


Daniel Rosales

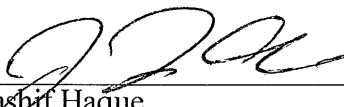
DEFENDANT KELLY PAPER
COMPANY

Dated: _____, 2018

Name: _____
Title: _____

APPROVED AS TO FORM AND CONTENT

Dated: Apr 10, 2018 _____ AEGIS LAW FIRM, P.C. _____



Kashif Haque
Samuel A. Wong
Jessica L. Campbell
Shelly D. Song
Attorneys for Plaintiff

Dated: _____, 2018

HILL, FARRER & BURRILL LLP

E. Sean McLoughlin
Attorneys for Defendant

HFB 1889827.1 K3694028

Dated: _____, 2018

PLAINTIFF DANIEL ROSALES

Daniel Rosales

Dated: _____, 2018

DEFENDANT KELLY PAPER
COMPANY

Name: _____
Title: _____

APPROVED AS TO FORM AND CONTENT

Dated: _____, 2018

AEGIS LAW FIRM, P.C.

Kashif Haque
Samuel A. Wong
Jessica L. Campbell
Shelly D. Song
Attorneys for Plaintiff

Dated: April 6, 2018

HILL, FARRER & BURRILL LLP

E. Sean McLoughlin
Attorneys for Defendant

HFB 1898125.1 K3694028

EXHIBIT A

[INSERT SETTLEMENT ADMINISTRATOR INFORMATION]

<<DATE>>

<<FIRST_NAME>> <<LAST_NAME>>

<<ADDRESS 1>>

<<ADDRESS 2>>

Re: Payment From *Rosales v. Kelly Paper Company*

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 *Rosales v. Kelly Paper Company*, Los Angeles County Superior Court Case No. BC617205 (“the Action”).

The Action was filed against Kelly Paper Company (“Kelly Paper”) 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 similarly situated “aggrieved employees” of Kelly Paper, including 137 employees who executed individual settlement and release agreements. You have been identified as one of the employees on whose behalf the case was brought.

The Plaintiff in the Action claimed that Kelly Paper owed penalties under PAGA for violations of the California Labor Code related to overtime compensation, meal periods, rest periods, and related employment practices. Kelly Paper denies that it did anything wrong or that it owes any penalties. The parties agreed to resolve the case, and as part of that settlement, Kelly Paper agreed to pay PAGA penalties to the State and the employees. The enclosed check represents your portion of the penalties allocated to the employees under the PAGA statute and the parties’ settlement agreement, which was approved by the Court.

By cashing or depositing the enclosed check, you will acknowledge that the enclosed payment is in full satisfaction of any penalties sought under PAGA in the Action, including those under Labor Code § 558. You further understand that these PAGA penalties are based on alleged violations of Labor Code §§ 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 1197, and 1198, and including but not limited to sections 11 and 12 of the applicable IWC Wage Order, but that the enclosed payment does not provide satisfaction for or affect any claims you may have for violations of those statutes separate from the PAGA penalties.

If you have any questions, you can contact the Settlement Administrator (whose contact information is at the top of this letter).

Very Truly Yours,

[Administrator]