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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JAN 23 2024

BY 
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MOISES PEREZ

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

MOISES PEREZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

HEIMARK DISTRIBUTING, LLC, a
California corporation; and DOES 1 through
100, inclusive

Defendants.

Case No. CIVSB2228849

[Assigned for All Purposes to Hon. Jessica Morgan,
Dept. S-26]

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR APPROVAL OF
SETTLEMENT OF CLAIMS BROUGHT
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT AND REASONABLE
ATTORNEYS' FEES, COSTS, AND
ENHANCEMENT AWARD**

Date: January 23, 2024
Time: 8:30 a.m.
Department: S-26

Filed: December 28, 2022
Trial: Not Set

1 This matter came on regularly for hearing before this Court on January 23, 2024 at 8:30 a.m.
2 Having considered the parties' PAGA Settlement Agreement ("Settlement"), the documents and
3 evidence presented in support thereof, and recognizing the disputed factual and legal issues involved
4 in this case, the risks of further prosecution, the substantial benefits to be received by the State of
5 California and the Aggrieved Employees pursuant to the Settlement, the fair, reasonable, and adequate
6 nature of the settlement obtained as a result of good faith arm's-length negotiations between the parties,
7 the Court hereby makes a final ruling that the settlement is approved pursuant to Labor Code § 2699(l).
8 Good cause appearing therefor, the Court hereby GRANTS Plaintiff's Motion for Approval Settlement
9 of Claims Brought under the Private Attorneys General Act and Reasonable Attorneys' Fees, Costs,
10 and Enhancement Award and ORDERS as follows:

11 1. The "Aggrieved Employees" shall be defined as:

12 All current and former hourly, non-exempt employees of Defendant Heimark
13 Distributing, LLC who worked in California at any time from September 16, 2021
through September 21, 2023.

14 2. The "PAGA Period" means the time period from September 16, 2021 through
15 September 21, 2023.

16 3. The Court hereby approves the Settlement as set forth in the Settlement as fair,
17 reasonable, and adequate, and directs the parties to effectuate the Settlement according to the terms of
18 the Settlement.

19 4. Defendant shall deposit the Gross Settlement Amount of Two Hundred Thirty-Two
20 Thousand Six Hundred Eighty Dollars and Zero Cents (\$232,680.00) with the Settlement
21 Administrator by no later than thirty (30) calendar days of the Effective Date, which is defined as the
22 latter of: (a) the Court's final approval of the Settlement or (b) the final resolution of any appeal that
23 has been filed.

24 5. If the Gross Settlement is increased pursuant to Paragraph III.3 of the Settlement(the
25 Escalator Clause), the increase shall be paid by Defendant by no later than thirty (30) calendar days
26 of the Effective Date, which is defined as the latter of: (a) the Court's final approval of the Settlement
27 or (b) the final resolution of any appeal that has been filed. Specifically, the Escalator Clause in Section

1 III.3 of the Settlement provides that there are an estimated 6,648 pay periods worked by the Aggrieved
2 Employees during the PAGA Period. If the number of pay periods worked by the Aggrieved
3 Employees during the PAGA Period is 10% or greater than this figure, Defendant agrees to increase
4 the Gross Settlement Amount on a proportional basis equal to the percentage increase in the number
5 of pay periods worked by the PAGA Period above the 10% (i.e., if there was an 11% increase in the
6 number pay periods during the PAGA Period, Defendant agrees to increase the Gross Settlement
7 Amount by 1%).

8 6. The Court hereby approves, as to form and content, the Notice of PAGA Settlement and
9 Release of Claims attached to the Settlement as Exhibit B.

10 7. The Court hereby appoints Phoenix Settlement Administrators as Settlement
11 Administrator.

12 8. Within fourteen (14) business days of the Effective Date, Defendant shall provide the
13 Settlement Administrator with information for Aggrieved Employees. Defendant will in good faith
14 compile from its records a list of Aggrieved Employees that will be in a computer-readable format,
15 such as a Microsoft Excel spreadsheet, and shall include each Aggrieved Employee's full name, last
16 known mailing address, total number of pay periods worked during the PAGA Period, and Social
17 Security number. The list shall also include the sum total of all pay periods worked by Aggrieved
18 Employees during the PAGA Period.

19 9. Within seven (7) business days of receiving the Aggrieved Employees' information
20 from Defendant, the Settlement Administrator will circulate to counsel for both Parties an anonymized
21 spreadsheet containing the estimated individual settlement payments to each Aggrieved Employee and
22 the sum total of all pay periods worked by Aggrieved Employees during the PAGA Period. The
23 Settlement Administrator shall also determine whether the Escalator Clause in Section III.3 has been
24 triggered. The Settlement Administrator shall obtain approval from all counsel of the calculations
25 before mailing Individual PAGA Payments.

26 10. Within two (2) business days of receiving approval from counsel of the payment
27 calculations as provided above, the Settlement Administrator shall mail copies of the explanatory letter,
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1 which has been mutually approved by the Parties in both English and Spanish, along with Individual
2 PAGA Payments to all Aggrieved Employees via regular First-Class U.S. Mail. A copy of the
3 proposed Notice agreed upon by the Parties to be mailed to the Aggrieved Employees attached hereto
4 as **Exhibit A** is approved.

5 11. The Court finds that attorneys' fees in the total amount of \$77,560.00 for Haines Law
6 Group, APC and Lidman Law, APC (collectively, "Plaintiff's Counsel") (or the increased amount as a
7 result of the Escalator Clause in Section III.3 of the Settlement being triggered), and reimbursement of
8 litigation costs of \$14,522.00 to Haines Law Group, APC is fair, reasonable, and adequate, and orders
9 that the Settlement Administrator distribute these payments to Plaintiff's Counsel as provided for in
10 the Settlement. Within two (2) business days of receiving approval from counsel of the payment
11 calculations Phoenix Settlement Administrators is directed to distribute to Plaintiff's counsel the Court-
12 approved attorneys' fees and costs.

13 12. The Court orders that the Settlement Administrator shall be paid \$3,500.00 for all of its
14 work done and to be done until the completion of this matter and finds that sum appropriate.

15 13. The Court finds that enhancement award of \$5,000.00 to Plaintiff Moises Perez, is fair
16 and reasonable in recognition of the unique contributions he has made, the risks he undertook on behalf
17 of the Aggrieved Employees and the State of California, and orders that the Settlement Administrator
18 distribute this payment to Plaintiff as provided for in the Settlement Agreement. Within two (2)
19 business days of receiving approval from counsel of the payment calculations Phoenix Settlement
20 Administrators is directed to distribute to Plaintiff the Court-approved enhancement award.

21 14. The Court finds that the amount from the Gross Settlement Amount remaining after
22 deductions for: (i) Plaintiff's Counsel's attorneys' fees and costs, (ii) enhancement award to Plaintiff;
23 and (iii) Settlement Administrator fees ("Net Settlement Amount") of \$132,098.00 shall be distributed
24 as follows: 75% or \$99,073.50 shall to be paid to the California Labor and Workforce Development
25 Agency ("LWDA") and 25% or \$33,024.50 to be distributed to the 213 Aggrieved Employees pro rata
26 based on the proportional number of pay periods worked by each Aggrieved Employee during the
27 PAGA Period, as provided for in the Settlement. The Court finds that these amounts and the
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1 distribution formula as set forth in the Settlement is fair, adequate, and reasonable, and orders that
2 payment be made to the LWDA and Aggrieved Employees in accordance with the terms of the
3 Settlement.

4 15. The Court hereby approves the limited scope of the release as set forth in the Settlement.
5 Specifically, upon the Effective Date and payment of all funds due under this Settlement, Plaintiff,
6 Aggrieved Employees, the State of California and the LWDA will release the Defendant and its former,
7 present and future owners, parents, subsidiaries, and all of their current, former and future officers,
8 directors, members, managers, employees, consultants, partners, shareholders, joint venturers, agents,
9 successors, assigns, accountants, insurers, or legal representatives ("Released Parties") from any and
10 all claims, rights, demands, liabilities and causes of action for civil penalties under the Labor Code and
11 PAGA, against the Released Parties as pled in the Action, or which could have been pled in the Action
12 based on the factual allegations therein and alleged in the LWDA Letters, that arose during the PAGA
13 Period, with respect to the following claims: (a) failure to pay all wages owed based on rounding only;
14 (b) failure to provide meal periods or pay premium pay for non-compliant meal periods; (c) failure to
15 authorize and permit rest periods or pay premium pay for non-complaint rest periods; (d) failure to
16 provide accurate, itemized wage statements; (e) failure to timely pay wages upon separation of
17 employment; (f) failure to reimburse necessary business expenditures ("PAGA Released Claims") and
18 will be forever barred from pursuing all PAGA Released Claims against Defendant and the Released
19 Parties. The PAGA Released Claims expressly exclude any potential non-PAGA claims held
20 individually by Aggrieved Employees other than Plaintiff.

21 16. The releases identified herein shall be null and void if Defendant fails to fully fund the
22 settlement.

23 17. The releases identified herein shall be effective only after the Court grants approval of
24 the PAGA settlement and Defendant fully funds the settlement.

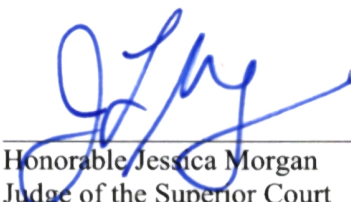
25 18. Without affecting the finality of this Final Order and Judgment in any way, the Court
26 retains jurisdiction to enforce the terms of the Settlement.

27 //

1 19. Plaintiff shall file a declaration confirming the final distribution of funds on or before
2 November 1, 2024.

3 **IT IS SO ORDERED.**

4
5 Dated: 1/23, 2024

By: 

Honorable Jessica Morgan
Judge of the Superior Court

EXHIBIT A

EXHIBIT A

NOTICE OF PAGA SETTLEMENT AND RELEASE OF CLAIMS

Moises Perez v. Heimark Distributing, LLC
San Bernardino County Superior Court Case No. CIVSB2228849

<<Name>>
<<Address>>
<<City>>, <<State>> <<Zip Code>>
XX - XX - _ _ _ _

I. NOTICE OF PAGA SETTLEMENT

The San Bernardino County Superior Court (the “Court”) has approved a settlement in the above-captioned action filed by Moises Perez (“Plaintiff”) on behalf of himself and all other aggrieved employees.

In this lawsuit, Plaintiff sought to recover civil penalties for alleged violations of the California Labor Code on behalf of the California Labor and Workforce Development Agency (“LWDA”) and other aggrieved employees under the California Private Attorneys General Act (the “PAGA”). These civil penalties are based on Plaintiff’s allegations that Heimark Distributing, LLC (“Heimark”): (1) failed to pay all wages owed due to rounding practices; (2) failed to provide legally compliant meal periods; (3) failed to permit and authorize compliant rest periods; (4) failed to reimburse necessary business expenditures; (5) failed to provide accurate, itemized wage statements; (6) failed to maintain accurate records; and (7) failed to pay all wages owed at the time of separation of employment; and as a result is liable for civil penalties under the PAGA.

The Court has ***not*** made a determination about the merits of Plaintiff’s claims. This Notice is not to be understood as an expression of any opinion by the Court as to the merits of Plaintiff’s claims.

Heimark denies all of Plaintiff’s claims and allegations. It maintains that it was in compliance with the California Labor Code at all times and entered into the Settlement with no admission of liability and solely for the purposes of compromising and settling the action to avoid the cost and operational burden of continued litigation.

You are receiving this Notice because you are in the group of employees referred to as “Aggrieved Employees,” which is defined as: “all current and former hourly, non-exempt employees of Defendant Heimark Distributing, LLC who worked in California at any time from September 16, 2021 through September 23, 2023.”

II. INDIVIDUAL PAGA PAYMENT

Each individual PAGA payment was calculated on a pro rata basis (*i.e.*, proportional) based on the number of pay periods worked by each Aggrieved Employee in the PAGA Period. Your individual PAGA payment has been calculated at **\$[AMOUNT PAID TO THIS EMPLOYEE]**. Your payment is enclosed with this Notice.

Please Note: One hundred percent (100%) of your Individual PAGA Payment under this Settlement will be considered penalties reported on an IRS Form 1099, and may be subject to local, state, or federal tax withholdings and will be reported to the IRS and state tax authorities. You should rely on your own tax advisors as to the tax consequences, if any, of your individual PAGA payment. Neither Plaintiff nor Heimark has made any representations or warranties regarding the taxation of your Individual PAGA payment. Nothing within this

notice or any other communication shall constitute or be construed or relied upon as tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended).

III. RELEASE

The Court has approved the Parties' Settlement Agreement ("Settlement"). By operation of the Settlement's terms, Plaintiff, the State of California and all Aggrieved Employees, including you, have released Heimark and its predecessors, franchisees, successors and assigns, parent corporations, subsidiary corporations, affiliates, insurers, reinsurers and the officers, directors, shareholders, partners, employees, independent contractors, attorneys and agents, past or present, of each of the aforesaid entities/individuals, heirs, executors, administrators, assigns, attorneys and agents, and all persons acting under, by, through, or in concert with any of them ("Released Parties") from any and all claims, rights, demands, liabilities and causes of action for civil penalties under the Labor Code and Private Attorneys General Act ("PAGA"), Labor Code § 2698 et seq., against the Released Parties as pled in the Action, or which could have been pled in the Action based on the factual allegations therein and alleged in the letters to the LWDA, that arose during the PAGA Period, with respect to the following claims: (a) failure to pay all wages owed based on rounding only; (b) failure to provide meal periods, or premium pay for non-compliant meal periods; (c) failure to authorize and permit rest periods, or premium pay for non-complaint rest periods; (d) failure to provide accurate, itemized wage statements; (e) failure to timely pay wages upon separation of employment; (f) failure to reimburse necessary business expenditures ("PAGA Released Claims"). The PAGA Released Claims herein does not release the Released Parties from any potential non-PAGA claims held individual by Aggrieved Employees other than Plaintiff.

Upon entry of the Order approving the Settlement, any Aggrieved Employee covered by this Agreement (including you) will be barred from proceeding with any of the PAGA Released Claims released by this Settlement.

IV. SETTLEMENT ADMINISTRATOR

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

You may call the Settlement Administrator, _____ at [ADMINISTRATOR INFO] with any questions.

Settlement checks will be void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall direct all unclaimed funds to the California State Controller's Office under the unclaimed property laws in the name of the Aggrieved Employee to whom the check was issued. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.