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Attorneys for Plaintiff

HOWARD KINCHERLOW

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

HOWARD KINCHERLOW, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

PABCO BUILDING PRODUCTS LLC, a
Nevada limited liability company; and DOES
1 through 100, inclusive,

Defendants.

Case No.: 23STCV07711

[Assigned to Hon. Michael Small, Dept. 57]

**DECLARATION OF SCOTT M.
LIDMAN IN SUPPORT OF MOTION
FOR SETTLEMENT APPROVAL OF
CLAIMS BROUGHT UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT AND REASONABLE
ATTORNEYS' FEES, COSTS, AND
ENHANCEMENT AWARD**

Date: December 12, 2024

Time: 8:30 a.m.

Dept.: 57

Reservation ID: 064764038778

1 I, SCOTT M. LIDMAN, declare as follows:

2 1. I am a shareholder and principal of the law firm Lidman Law, APC, and counsel
3 for the named Plaintiff Howard Kincherlow (“Plaintiff”) and the proposed Aggrieved Employees
4 in the above-captioned matter. I am a member in good standing of the bar of the State of
5 California and am admitted to practice in this Court. I have personal knowledge of the facts stated
6 in this declaration and could testify competently to them if called upon to do so.

7 2. I am a 1998 graduate of Santa Clara University School of Law, where I graduated
8 *summa cum laude*. During law school, I worked as a summer associate for the international
9 employment law firm of Littler Mendelson, P.C., located in Los Angeles, California.

10 3. Since graduating from law school, my practice has focused exclusively on
11 employment litigation. In September 1998, I began working as an associate attorney at the
12 international law firm of Littler Mendelson P.C., at its Los Angeles office, which according to its
13 website is the largest law firm in the world exclusively devoted to representing management in
14 employment, employee benefits and labor law matters.

15 4. In 2000, I left Littler Mendelson to work at the Los Angeles office of Jones Day,
16 which was at the time one of the largest international firms in the world. During my employment
17 at Jones Day, I worked exclusively in the labor and employment department. In or around 2003,
18 I went to work at the law firm of Loeb & Loeb, again working exclusively in the Labor &
19 Employment department. In 2008, I returned to Littler Mendelson, was promoted to Shareholder
20 in 2009, and from 2008 until the end of 2017, I practiced exclusively labor and employment law,
21 with a strong emphasis and most of my time working on wage and hour class actions venued in
22 both state and federal courts. During that time and my legal career in general, I also worked on a
23 number of single and multi-plaintiff wage and hour matters as well.

24 5. During my employment at Littler Mendelson, I played a significant role in the
25 class actions that I was staffed on, and ran many on my own both as an Of Counsel and as a
26 Shareholder. In particular, I received a wide-array of wage and hour class action experience
27 performing the following types of tasks: drafting demurrers, motions to strike and/or dismiss;
28 removing actions from state court to federal court; drafting and responding to written discovery;

1 drafting and opposing discovery related motions; arguing discovery related motions; drafting
2 motions to consolidate related matters; interviewing putative class members and obtaining
3 declarations in connection with class certification; drafting oppositions to motions for class
4 certification; drafting motions for decertification following class certification; conducting
5 exposure analyses to assess the strengths and weaknesses of asserted claims, the likelihood of
6 prevailing at class certification and potential damages resulting from such claims; drafting
7 mediation briefs; serving as the primary contact to in-house counsel; deposing named plaintiffs
8 and putative class members; deposing retained expert witnesses; and defending the depositions
9 of corporate witnesses. I also was involved in the negotiations and settlements of many large
10 wage and hour class actions. In short, I played an integral role in all aspects of litigation from the
11 inception of a matter through and beyond class certification. I also supervised the work of several
12 junior attorneys who were staffed on the same wage and hour class actions.

13 6. Although not exhaustive, below is a list of many of the wage and hour class and
14 PAGA actions that I performed substantial work on while I was a shareholder at Littler
15 Mendelson:

- 16 ► *Ortega v. J.B. Hunt Transport, Inc.*, Case No. 07-cv-8336-RGK-AFMx,
17 United States District Court, Central District of California, Honorable Gary
18 Klausner, presiding¹.
- 19 ► *Aceves v. J.B. Hunt Transport, Inc.*, Case No. CIVDS1306133, California
20 Superior Court, County of San Bernardino, Honorable Michael Sachs,
21 presiding.
- 22 ► *Moreno v. J.B. Hunt Transport, Inc.*, Case No. BC388612, California
23 Superior Court, County of Los Angeles, Honorable Mel Red Recana,
24 presiding.

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26
27 ¹ My work on this matter including proceedings not only in District Court, but also work before the United States
28 Court of Appeals for the Ninth Circuit as well as the United States Supreme Court.

- 1 ▶ *Newcomb v. J.B. Hunt Transport, Inc.*, Case No. RG16815734, California
2 Superior Court, County of Alameda, Honorable Winifred Smith, presiding.
- 3 ▶ *Vaquero v. Stoneledge Furniture, LLC, et al.*, Case No. 12-cv-08590-PA-
4 MAN, United States District Court, Central District of California,
5 Honorable Percy Anderson, presiding.
- 6 ▶ *Vaquero v. Stoneledge Furniture, LLC, et al.*, Case No. BC388612,
7 California Superior Court, County of Los Angeles, Honorable Elihu Berle,
8 presiding.²
- 9 ▶ *Dugan v. Stoneledge Furniture, LLC*, Case No. 16-cv-01125-PA-FFMx,
10 United States District Court, Central District of California, Honorable Percy
11 Anderson, presiding.
- 12 ▶ *Klune v. Stoneledge Furniture, LLC*, Case No. 14-cv-03986-PA-FFMx,
13 United States District Court, Central District of California, Honorable Percy
14 Anderson, presiding.
- 15 ▶ *Diaz v. ABM Industries, Inc.; Ampco Parking*, Case No. BC362932,
16 California Superior Court, County of Los Angeles, Honorable Jane
17 Johnson, presiding.³
- 18 ▶ *Adams v. Luxottica Retail North America, Inc.*, Case No. 07CC01346,
19 California Superior Court, County of Orange, Honorable Thierry Patrick
20 Colaw, presiding.
- 21 ▶ *Sakkab v. Luxottica Retail North America, Inc.*, Case No. 12-cv-00436-
22 GPC-KSC, United States District Court, Southern District of California.⁴

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26 ² My work on this matter included proceedings not only in the trial court, but also before the California Courts of
27 Appeal and the California Supreme Court.

28 ³ This matter was consolidated and litigated collectively with Case Nos. BC380923, BC 381523 and BC 406663.

⁴ The work I performed on this case included work in the United States Court of Appeals for the Ninth Circuit.

- 1 ▶ *Page v. Oakley, Inc.*, Case No. FCS041512, California Superior Court,
2 County of Solano, Honorable Paul Berman, presiding.
- 3 ▶ *Ramirez v. Oakley, Inc.*, Case No. 30-2014-00731617-CU-OE-CJC
4 California Superior Court, County of Orange, Honorable William Claster,
5 presiding.
- 6 ▶ *Ramirez v. Oakley, Inc.*, Case No. 30-2014-00723846-CU-DE-CXC,
7 California Superior Court, County of Orange, Honorable William Claster,
8 presiding.
- 9 ▶ *Sierra v. Oakley, Inc.*, Case No. 13-cv-00319-AG-JPR, United States
10 District Court, Central District of California, Honorable Andrew Guilford,
11 presiding.⁵
- 12 ▶ *Cordova v. Comerica Bank, et al.*, Case No. 09-cv-08905-MMM-PLAx,
13 United States District Court, Central District of California, Honorable
14 Margaret Morrow, presiding.
- 15 ▶ *Cordova v. Comerica Bank, et al.*, Case No. 09-cv-08905-MMM-PLAx,
16 United States District Court, Central District of California, Honorable
17 Margaret Morrow, presiding.
- 18 ▶ *Khelghatian v. Comerica Bank, et al.*, Case No. 11-cv-7689-DSF-FFMx,
19 United States District Court, Southern District of California, Honorable
20 John A. Houston, presiding.
- 21 ▶ *Babasa v. Comerica Bank, et al.*, Case No. 11-cv-0595-JAH-BGS, United
22 States District Court, Central District of California, Honorable Margaret
23 Morrow, presiding.
- 24 ▶ *Bernal v. Comerica Bank, et al.*, Case No. 11-cv-01298-JAH-BGS, United
25 States District Court, Central District of California, Honorable Margaret
26 Morrow, presiding.

⁵ The work I performed on this case included work in the United States Court of Appeals for the Ninth Circuit.

- 1 ▶ *Khalili v. Comerica Bank, et al.*, Case No. 09-cv-08905-MMM-PLAx,
2 United States District Court, Northern District of California.
- 3 ▶ *Granata v. Comerica Bank, et al.*, Case No. 37-2011-00086316-CU-OE-
4 CTL, California Superior Court, County of San Diego, Honorable Jeffrey
5 B. Barton, presiding.
- 6 ▶ *Mathews v. Comerica Bank, et al.*, Case No. 111CV194781, California
7 Superior Court, County of Santa Clara.
- 8 ▶ *Gallegos v. Comerica Bank, et al.*, Case No. BC455515, California
9 Superior Court, County of Los Angeles, Honorable Terry Green, presiding.
- 10 ▶ *Rumohr v. Comerica Bank, et al.*, Case No. CGC-11-508433, California
11 Superior Court, County of San Francisco.
- 12 ▶ *Smith v. Werner Enterprises*, Case No. 15-cv-02978-RS, United States
13 District Court, Northern District of California, Honorable Richard
14 Seeborg, presiding.

15 7. In January 2018, I voluntarily resigned from Littler Mendelson in order to open
16 my own law firm, Lidman Law, APC, to represent employees with work-related claims, including
17 primarily wage and hour claims and almost exclusively on a class-action basis. I am the President
18 and Shareholder of Lidman Law. Currently, over ninety percent (90%) of my practice is
19 dedicated exclusively to the prosecution of wage and hour class actions, and I am currently
20 responsible for prosecuting over sixty-five (65) wage and hour class actions filed in State courts
21 throughout California, with several of them having been removed to Federal courts. I believe that
22 my professional experience renders me more than qualified to serve as class counsel in this
23 lawsuit involving claims of underpaid overtime and minimum wages, meal and rest period
24 violations, and derivative penalty claims. Not only have I litigated dozens of wage and hour cases
25 throughout my career involving similar claims, including the wage and hour class actions
26 identified above, I have litigated similar claims from both plaintiff and defense perspectives. As
27 a result, I am able to realistically assess and evaluate the facts and legal arguments that can be
28 made in pursuit and defense of similar wage and hour claims, as well as those facts and arguments

1 in support and in opposition to class certification. Consequently, I am able to appreciate the
2 significant risks, uncertainties, and delay involved in wage and hour class action litigation.

3 8. I have been appointed Class Counsel in: *Guardado v. Wesley Allen, Inc.*, Case
4 No. BC683027, California Superior Court, County of Los Angeles, Honorable Judge Carolyn B.
5 Kuhl presiding; *Rodriguez v. Satco, Inc.*, Case No. BC682137, California Superior Court,
6 County of Los Angeles, Honorable Judge Ann I. Jones presiding; *Ong v. Howard's Appliances,*
7 *Inc.*, Case No. 30-2017-00964213-CU-OE-CXC, California Superior Court, County of Orange,
8 Honorable Judge William Claster presiding; *Hanke v. C&W Facility Services, Inc.*, Case No.
9 CIVDS1814412, California Superior Court, County of San Bernardino, Honorable Judge David
10 Cohn presiding; *Molina v. Mader News, Inc.*, Case No. BC685960, California Superior Court,
11 County of Los Angeles, Honorable Judge Yvette M. Palazuelos presiding; *Alvarez v.*
12 *Salamander Fire Protection, Inc.*, Case No. BC688326, California Superior Court, County of
13 Los Angeles, Honorable Judge William F. Highberger presiding; *Rodriguez v. H.F. Cox, Inc.*,
14 Case No. BC653164, California Superior Court, County of Los Angeles, Honorable Judge
15 Carolyn B. Kuhl presiding; *Fregoso v. Amerigas Propane, Inc.*, Case No. BC697973, California
16 Superior Court, County of Los Angeles, Honorable Judge Rafael A. Ongkeko presiding; *Teran*
17 *v. Western Plastics, Inc.*, Case No. RIC1722619, California Superior Court, County of Riverside,
18 Honorable Judge Sunshine Sykes presiding; *Villegas de Torres v. El Monte Superstore Inc.*,
19 Case No. BC688477, California Superior Court, County of Los Angeles, Honorable Judge
20 Daniel J. Buckley presiding; *Huynh v. Polypeptide Laboratories, Inc.*, Case No. BC680872,
21 California Superior Court, County of Los Angeles, Honorable Judge Rafael A. Ongkeko
22 presiding; *Guzman v. Century Blinds*, Case No. RIC1723654, California Superior Court, County
23 of Riverside, Honorable Judge Sunshine S. Sykes presiding; *George v. Convergence Marketing,*
24 Case No. CIVDS1901039, California Superior Court, County of San Bernardino, Honorable
25 Judge David S. Cohn presiding; *Coffee, et al. v. Flyers Transportation Energy, LLC*, Case No.
26 34-2017-00222084, California Superior Court, County of Sacramento, Honorable Judge Alan G.
27 Perkins presiding; *Romero v. Fillmore Hospitality, LLC*, Case No. BC705667, California
28 Superior Court, County of Los Angeles, Honorable Judge Maren E. Nelson presiding;

1 *Wennerstrom, et al. v. Giant Inland Empire R.V. Center*, Case No. CIVDS1617291, California
2 Superior Court, County of San Bernardino, Honorable Judge David S. Cohn presiding;
3 *Contreras, et al. v. Letter Ride, LLC*, Case No. 37-2018-00020841-CU-OE-CTL, California
4 Superior Court, County of San Diego, Honorable Judge Eddie C. Sturgeon presiding; *Davis v.*
5 *WeDriveU*, Case No. 18CV322578, California Superior Court, County of Santa Clara,
6 Honorable Judge Brian C. Walsh presiding; *Acuna v. Canton Food Co., Inc.*, Case No.
7 BC685001, California Superior Court, County of Los Angeles, Honorable Judge David S.
8 Cunningham presiding; and *Contreras v. Worldwide Flight Services, Inc.*, Case No. 2:18-cv-
9 06036-PSG-SS, United States District Court for the Central District of California, the Honorable
10 Judge Philip S. Gutierrez presiding.

11 9. As co-lead counsel for Plaintiff, I have been intimately involved in every aspect
12 of this case from its inception through the present, and I believe that the proposed Settlement is
13 a reasonable result for the Aggrieved Employees.

14 10. Defendant PABCO Building Products, LLC is in the business of manufacturing
15 various paper-related products through their various divisions, including PABCO Paper,
16 PABCO Roofing, PABCO Gypsum, and QuietRock.

17 11. On January 31, 2023, Plaintiff sent a written notice pursuant to Labor Code
18 section 2698 *et seq.* to the Labor Workforce Development Agency (“LWDA”) and Defendant
19 asserting claims for civil penalties pursuant to the California Labor Code Private Attorney
20 General Act, Labor Code section 2698, *et seq.* (“PAGA) stemming from Defendant’s failure to
21 pay all wages and provide meal and rest periods to all hourly, non-exempt employees. A true
22 and correct copy of the LWDA letter is attached hereto as **Exhibit 1**.

23 12. On April 7, 2023, Plaintiff filed the operative complaint in this action which
24 asserted a sole claim for civil penalties pursuant to the PAGA Defendant’s alleged violations of
25 the California Labor Code set forth in the LWDA notices – namely, the failure to pay all wages
26 owed and failure to provide meal and rest periods, in violation of the Labor Code.

27 13. After agreeing to participate in a private mediation, Defendant informally
28 produced to Plaintiff information and documents pertaining to Plaintiff and other Aggrieved

Employees, including the metrics regarding the number of allegedly aggrieved employees and number of relevant pay periods, as well as its personnel manuals. After the detailed review of the information and documents produced by Defendant, Plaintiff's Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. This discovery allowed the parties to assess the merits and value of Plaintiff's claims and determine if a settlement could be reached.

14. On July 16, 2024, the Parties participated in mediation with Kevin Barnes, a well-respected wage and hour class and representative action mediator. During mediation, the Parties vigorously debated their opposing legal positions and the likelihood of Plaintiff's ability to proceed on a representative basis and ultimately obtain a judgment in his favor. Ultimately, the Parties reached a settlement, the terms of which were subsequently finalized in writing after mediation. A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit 2** (and the redline of the LA Model PAGA Agreement that led to the executed settlement is attached hereto as **Exhibit 3**). The Proposed Notice of PAGA Settlement and Release of Claims is attached as Exhibit A to the Settlement.

15. The monetary terms of the Settlement are summarized below:

Gross Settlement Amount ("GSA"):	\$300,000.00
Minus Court-approved attorneys' fees (1/3 of the GSA):	\$100,000.00
Minus Court-approved attorneys' costs:	\$15,173.35
Minus Court-approved Enhancement Award:	\$7,500.00
Minus Settlement Administration Costs:	\$4,500.00
Net Settlement Amount ("NSA"):	\$172,826.65
NSA	\$172,826.65
75% to LWDA	\$129,619.99
25% to Aggrieved Employees	\$43,206.66

1 16. Defendant shall fund the GSA within 30 calendar days of the Effective Date.
2 “Effective Date” means the date upon entry of an Order by the Court approving the Settlement.
3 Within ten (10) business days of the Effective Date, Defendant shall provide the Settlement
4 Administrator with information for Aggrieved Employees in order to calculate and distribute
5 checks to Aggrieved Employees. Within seven (7) business days of receiving the Aggrieved
6 Employees’ information from Defendant, the Settlement Administrator will circulate to counsel
7 for both Parties an anonymized spreadsheet containing the estimated individual settlement
8 payments to each Aggrieved Employee and the data used to calculate such payments. The
9 Settlement Administrator shall also determine whether the Escalator Clause in Section III.3 of the
10 Settlement has been triggered. Within two (2) business days of receiving the Parties’ approval,
11 the Settlement Administrator shall mail copies of the explanatory letter to all Aggrieved
12 Employees with their checks.

13 The entire NSA shall be designated as PAGA civil penalties. Of the NSA, 75% of the
14 NSA will be distributed to the LWDA and 25% will be distributed to the Aggrieved Employees
15 pursuant to Labor Code § 2699(i). Based on these distributions, the amount to be paid to the
16 LWDA will be \$129,620.25 and the amount paid to Aggrieved Employees is estimated to be
17 \$43,206.75. This portion of the NSA shall be paid to all Aggrieved Employees pro rata based
18 on the proportional number of pay periods worked by each Aggrieved Employee during the
19 PAGA Period and will be reported on an IRS Form 1099. The average payment to an Aggrieved
20 Employee is estimated to be \$172.13.

21 17. According to Defendant, there are approximately 251 total Aggrieved Employees
22 defined as:

23 All current and former hourly, non-exempt employees of Defendant
24 PABCO Building Products, LLC who worked in California at any time
25 from January 31, 2022 through the date the Court grants approval of this
26 settlement.

26 Defendant estimates that, as of July 16, 2024, there were 9,166 PAGA Pay Periods during
27 the PAGA Period.

1 18. Aggrieved Employees' claims arise from Defendant's common, uniform policies
2 and practices that applied to Aggrieved Employees during the class period. Specifically, Plaintiff
3 alleged that Defendant's common and uniform policies and practices resulted in the following
4 violations: (1) failure to pay all minimum wages owed; (2) failure to pay all overtime wages; (3)
5 failure to provide meal periods; (4) failure to authorize and permit all rest periods; (5) failure to
6 provide accurate, itemized wage statements; (5) failure to pay all wages owed upon termination;
7 and (6) liability for civil penalties under the PAGA.

8 19. As described in the accompanying Motion for Settlement Approval, Plaintiff
9 alleges that Defendant rounded his and other Aggrieved Employees' time records. Plaintiff
10 alleges that Defendant maintained a uniform policy or practice of failing to accurately record all
11 time worked by Plaintiff and other Aggrieved Employees, unlawfully shaving the work time
12 and/or rounding work time such that Plaintiff and other Aggrieved Employees were not fully
13 paid for all time worked. Plaintiff further alleges that Defendant rounded time worked for its
14 non-exempt employees up to approximately August 2023 and was in violation of California law
15 because the rounding predominately favored Defendant. Plaintiff contends that the
16 aforementioned alleged violations occurred in each and every pay period during the relevant time
17 period, which is approximately 8,825 pay periods. Accordingly, pursuant to Labor Code section
18 1198 and the default penalties set forth in the PAGA, Plaintiff calculated Defendant's exposure
19 at \$882,500 (8,825 x \$100 initial violation).

20 20. Defendant contends that it compensated Aggrieved Employees for all of their time
21 worked. Defendant also contends that its rounding practices were lawful, and any unpaid time
22 was *de minimis* and therefore non-compensable. In light of these defenses and Defendant's
23 argument that the Court would exercise its discretion to reduce any civil penalty due to its good
24 faith efforts to comply with applicable law, Plaintiff discounted the maximum recovery on this
25 claim by 60% to account for the risk that Defendant could prevail in its defenses, to arrive at a
26 projected total of approximately \$353,000.

27 21. Plaintiff alleges that he and other Aggrieved Employees were not provided all
28 meal periods due to Defendant's meal period policies and practices. Specifically, first meal

1 periods took place after the fifth hour of work and were oftentimes short, interrupted, missed, or
2 otherwise unlawful. Further, Plaintiff alleges that Defendant did not require its non-exempt
3 employees to clock in and out for their meal periods, and instead unlawfully and automatically
4 deducted thirty minutes from Plaintiff's and other Aggrieved Employees' work time each shift
5 for a purported meal period regardless of whether or not a meal period was taken and regardless
6 of whether the meal period, if taken, was less than 30 minutes in length. Therefore, pursuant to
7 Labor Code section 226.7 and the default penalties set forth in the PAGA, Plaintiff calculated
8 Defendant's exposure at \$672,600.

9 22. Defendant counters that it has always provided non-exempt employees with an
10 opportunity to take legally compliant meal periods, and any non-compliant meal periods reflected
11 in employee timekeeping records were solely the result of employee choice, rather than any policy
12 or practice of Defendant. Defendant points out that under *Brinker Restaurant Corp. v. Superior*
13 *Court* (2012) 53 Cal. 4th 1004, it is only required to "provide" the opportunity to take meal
14 periods, not "ensure" meal periods are taken, and that it has always done so. In light of these
15 defenses and Defendant's argument that the Court would exercise its discretion to reduce any civil
16 penalty due to its good faith efforts to comply with applicable law, Plaintiff discounted the
17 maximum recovery on this claim by 65% to account for the risk that Defendant could prevail in
18 its defenses, to arrive at a projected total of approximately \$235,410.

19 23. Plaintiff alleges that he and other Aggrieved Employees were not authorized and
20 permitted to take all required rest periods due to Defendant's policies and practices and heavy
21 work demands. Pursuant to Labor Code section 226.7 and the default penalties set forth in the
22 PAGA, Plaintiff calculated Defendant's exposure at \$881,800.

23 24. Defendant contends it has always maintained and enforced lawful rest period
24 policies and practices, and that hourly, non-exempt employees were authorized and permitted to
25 take all off-duty rest periods in compliance with California law. In light of these defenses and
26 Defendant's argument that the Court would exercise its discretion to reduce any civil penalty due
27 to its good faith efforts to comply with applicable law, Plaintiff discounted the maximum recovery
28 on this claim by 75% to account for the risk that Defendant could prevail in its defenses, to arrive

1 at a projected total of approximately \$220,450.

2 25. Plaintiff alleges that Defendant issued inaccurate wage statements in violation
3 of Labor Code § 226 as a result of the alleged unpaid minimum wages, overtime wages, and
4 meal and rest period premium wages described above. Plaintiff's data analysis reflected that
5 there were approximately 8,825 wage statements issued during the relevant time period.
6 Accordingly, pursuant to Labor Code section 226 and the default penalties set forth in the
7 PAGA, Plaintiff calculated Defendant's exposure at \$882,500 (8,825 x \$100 initial violation).

8 26. Defendant argues that its alleged wage statement violations could not be shown
9 to be "knowing and intentional," and that Plaintiff cannot show that he or any other employee
10 "suffer[ed] injury" as a result of the alleged wage statement violations, as required by Lab. Code
11 § 226(e) for imposition of penalties. In light of these defenses and Defendant's argument that
12 the Court would exercise its discretion to reduce any civil penalty due to its good faith efforts to
13 comply with applicable law, Plaintiff discounted the maximum recovery on this claim by 85% to
14 account for the risk that Defendant could prevail in its defenses, to arrive at a projected total of
15 approximately \$132,375.

16 27. Plaintiff alleges that as a result of failing to pay all wages and all meal and rest
17 period premium at the end of employment, Defendants are liable for waiting time penalties under
18 Labor Code § 203. There are 268 former employees and as such, Plaintiff calculated Defendants'
19 maximum exposure for waiting time penalties to be approximately \$26,800.

20 28. Defendant asserts it has strong defenses to the waiting time claim because there
21 exist good-faith disputes as to Plaintiff's underlying claims, precluding imposition of penalties.
22 In light of these defenses and Defendant's argument that the Court would exercise its discretion
23 to reduce any civil penalty due to its good faith efforts to comply with applicable law, Plaintiff
24 discounted the maximum recovery on this claim by 40% to account for the risk that Defendant
25 could prevail in its defenses, to arrive at a projected total of approximately \$16,080.

26 29. Using these estimated figures for each of the claims described above, Plaintiff
27 predicted the realistic total recovery for the Settlement Class would be approximately
28 \$957,315.00. The proposed settlement of \$300,000.00 therefore represents approximately

31.33% of the reasonably forecasted minimum recovery for the PAGA Group. Approval is appropriate as the settlement will provide tangible monetary relief to Settlement Class Members, and will still provide an average recovery to Settlement Class Members of approximately \$172.

30. My firm requests one-third of the GSA (currently estimated at \$100,000.00 in attorneys' fees, and a total of \$15,173.35 (including costs associated with the instant motion) in actual litigation costs. This fee request is consistent with my firm's experience in similar wage-and-hour class and PAGA matters. My firm conducted extensive legal research regarding the merits of Plaintiff's claims, Plaintiff's ability to recover penalties under the PAGA, and Defendant's potential defenses. My firm spent significant time reviewing Defendant's informal discovery production. My firm also conducted significant research and analysis of data and information produced informally prior to mediation and used this data and analysis to complete an exposure analysis for PAGA penalties. My firm also expended significant additional effort in preparing subsequent settlement documents, this Motion for settlement approval, and supporting declarations, and will oversee the settlement administration process.

31. My experience in matters similar to this one was integral in evaluating the strengths and weaknesses of this case and the reasonableness of the Settlement. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive state and federal law, as well as the procedural law of class action litigation. This case involved nuanced legal issues regarding both substantive and procedural law, including complex issues with respect to rounding of time, providing meal and rest periods, and the propriety of statutory penalties.

32. Plaintiff's Counsel have a lodestar of \$137,065.00 without the use of any multiplier, which is about \$37,000 more than the \$100,000 fee request. The following is a general summary showing the number of hours of work performed by each attorney and paralegal in my firm and co-counsel's firm on this case:

Name	Rate	Hours	Pre-Multiplier Lodestar
Scott M. Lidman (26 th Year Attorney)	\$900	93.9	\$84,510.00

Milan Moore (9 th Year Attorney)	\$600	60.7	\$36,420.00
Tiara Gose-Hardy (6 th Year Attorney)	\$525	23.7	\$12,442.50
Paralegals	\$175	21.1	\$3,692.50
Total Lodestar			<u>\$137,065.00</u>

33. My proposed hourly rate of \$900, Ms. Moore's proposed hourly rate of \$600, and Ms. Gose-Hardy's proposed hourly rate of \$525 are reasonable in light of our respective skills, wage and hour class action litigation experience, reputation, and fee awards to other attorneys of similar experience in California. Moreover, our requested hourly rates are in line with the *Laffey* Matrix, a true and correct copy of which is attached hereto as **Exhibit 4**.

34. The attorneys' fee award requested is consistent with those routinely awarded by California superior courts. California superior courts frequently grant common fund awards of 33%. *See, e.g., Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, fn. 11 (2008); *see also, In re Pacific Enterprises Securities Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming 33% fee award); *Chavez v. Saticoy Lemon Ass'n*, Case No. 56-2015-00468600-CU-OE-VTA, 2015 WL 5561118 (Ventura Cty. Super. Ct., Aug. 29, 2015) (approving attorneys' fees of one-third of settlement fund in representative PAGA settlement).

35. Indeed, numerous courts have awarded attorneys' fees of up to, or in excess of 40% of the common fund. *Ammari Electronics, et al. v. Pacific Bell Directory*, Alameda County Sup. Ct., Case No. RG05198014 (awarded 43.8%) (2015); *In re California Indirect Purchaser X Ray Film Antitrust Litigation*, San Francisco Sup. Ct. 1998 (citing *Abzug v. Kerkorian*, Los Angeles Sup. Ct., Nov. 19, 1990, Case No. CA-00981 (45%) and *Haitz v. Meyer*, Alameda County Sup. Ct., August 20, 1990, Case No. 5729683 (45%)); *Hall v. Cinema 7, Inc.*, San Francisco Sup. Ct., July 16, 2008, Case No. CGC-01-409105 (53%); and *Rundberg v. Intrawest Napa Dev. Co.*, Napa County Sup. Ct., January 15, 2014, Case No. 26-56886 (40%).

36. Being a private law practice, my firm can only properly litigate a limited number of cases at one time. The professional demands of this case were significant, including a significant number of hours of attorney and paralegal time. This litigation precluded my firm from other employment due to the time and financial commitments required by the case. Indeed,

1 because my firm takes on cases on a purely contingency fee, we are only compensated for our
2 time if we successfully settle a case or prevail at trial. Accordingly, I believe the requested fees
3 are reasonable.

4 37. Since undertaking representation of Plaintiff, my firm has dedicated substantial
5 resources to this litigation, including expending (or will expend) a total of \$15,173.35 (including
6 costs associated with the instant motion) in actual litigation costs, without receiving any
7 compensation to date. A true and correct copy of my firm's costs summary in this matter is
8 attached hereto as **Exhibit 5**. My office conducted legal research regarding the merits of
9 Plaintiff's claims, the ability to recover penalties under the PAGA, and Defendant's potential
10 defenses. Plaintiff's Counsel also analyzed the data and information produced informally prior
11 to mediation and prepared an exposure analysis on the PAGA penalties. Plaintiff's Counsel also
12 expended significant additional effort in preparing subsequent settlement documents, this
13 Motion for settlement approval, and supporting declarations, and will oversee the settlement
14 administration process.

15 38. Plaintiff also seeks an enhancement award of \$7,500.00, which is reasonable
16 given Plaintiff's efforts in this case and the risks he undertook on behalf of the Aggrieved
17 Employees. Plaintiff provided substantial factual information and documents to my firm and
18 attended multiple meetings. Plaintiff also made himself available on the day of the mediation,
19 and responded to all questions that I had as various issues arose. Further, Plaintiff put his future
20 employment prospects at risk by becoming a representative, as the fact that he filed a lawsuit "is
21 searchable on the internet and may become known to prospective employers when evaluating"
22 them for employment.

23 39. On November 11, 2024, Plaintiff submitted the proposed Settlement to the
24 LWDA pursuant to Labor Code § 2699(1)(2). A true and correct copy of the confirmation is
25 attached hereto as **Exhibit 6**.

26 I declare under penalty of perjury under the laws of the State of California that the
27 foregoing is true and correct.
28

Executed on November 12, 2024 at El Segundo, California.



Scott M. Lidman

EXHIBIT 1

EXHIBIT 1

LIDMAN LAW

2155 CAMPUS DRIVE, SUITE 150, EL SEGUNDO, CA 90245

OFFICE: (424) 322-4772

FAX: (424) 322-4775

January 31, 2023

VIA LWDA WEBSITE

Labor and Workforce Development Agency

Attn: PAGA Administrator

1515 Clay Street, Suite 801

Oakland, CA 94612

VIA U.S. CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Pabco Building Products, LLC, a Nevada limited liability company

c/o Daniel S. Yangihara, Jr., Agent for Service of Process

10600 White Rock Road, #100

Rancho Cordova, CA 95670

Re: *Howard Kincherlow v. Pabco Building Products, LLC*

To Whom It May Concern:

Please be advised that this law firm represents Howard Kincherlow in claims arising from his employment with Pabco Building Products, LLC, a Nevada limited liability company (“Defendant”). Mr. Kincherlow is an “aggrieved employee” as defined by Labor Code sections 2699, *et seq.* due to Defendant’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, if the LWDA decides not to investigate, Mr. Kincherlow intends to pursue a lawsuit on behalf of other “Aggrieved Employees”, which should be considered to include all of Defendant’s current and former non-exempt employees in California who have worked for Defendant (including any and all of its divisions, including Pabco Paper, Pabco Roofing Company, Papco Gypsum and QuiteRock), at least in part, during the one year immediately preceding the date of this letter through the date of trial, the date judgment is entered, the date of settlement and/or other date approved by the Court.

Mr. Kincherlow was employed by Defendant as a non-exempt employee from approximately 2001 through approximately January 2023 when his employment was terminated. Mr. Kincherlow worked for Defendant’s Pabco Paper division and held the position of lab technician.

During Mr. Kincherlow’s employment with Defendant, Mr. Kincherlow was generally scheduled to work a 12-hour shift, from approximately 6:00 a.m. until approximately 6:00 p.m. However, Mr. Kincherlow would often clock in and begin work prior to 6:00 a.m. but was not paid for all time worked. Indeed, during Mr. Kincherlow’s employment with Defendant, Defendant maintained a uniform policy or practice of failing to accurately record all time worked by Mr. Kincherlow and other non-exempt employees.

Throughout Mr. Kincherlow's employment with Defendant, Defendant would keep track of Mr. Kincherlow's time worked and would unlawfully shave Mr. Kincherlow's work time and/or round Mr. Kincherlow's work time such that Mr. Kincherlow would not be fully paid for all time worked. This time shaving/rounding practice utilized by Defendant was not-even handed over time and would round and shave in Defendant's favor such that Mr. Kincherlow was routinely underpaid for his time worked. Further, during Mr. Kincherlow's employment with Defendant, he often worked in excess of 8 hours per workday and/or 40 hours per work week, and therefore, had Mr. Kincherlow been properly paid for all of the time that he actually worked, he would have been paid additional minimum, overtime and/or double-time wages. This practice by Defendant resulted in Defendant not properly tracking the time worked by Mr. Kincherlow, and also resulted in Defendant paying Mr. Kincherlow less than he was owed for the work he performed, including failing to pay him all required minimum, overtime and double-time wages.

For a period of time during his employment, Mr. Kincherlow and other non-exempt employees were required to undergo COVID/temperature screening tests prior to commencing their work. However, Defendant failed to compensate Mr. Kincherlow and the other non-exempt employees for this time under which they were under the direction and control of Defendant, resulting in the underpayment of minimum, overtime and double-time wages.

Throughout Mr. Kincherlow's employment with Defendant, Mr. Kincherlow would often work shifts in excess of 12 hours per day. However, Defendant only paid Mr. Kincherlow overtime for hours in excess of 10 hours per day but failed to pay him proper overtime compensation for hours worked in excess of 8 hours per day but less than 10 hours. This resulted in Defendant paying Mr. Kincherlow less than he was owed for the work he performed in violation of California law.

Throughout Mr. Kincherlow's employment with Defendant, Mr. Kincherlow was not provided all required meal periods due to Defendant's meal period policies and practices, which fail to provide 30-minute first meal periods before the end of the fifth hour of work. Specifically, due to the work demands imposed by Defendant and the nature of the work, the meal periods were untimely, short, interrupted, missed and/or otherwise unlawful. Further, Defendant did not require Mr. Kincherlow and the other non-exempt employees to clock in and out for their meal periods. Therefore, despite Defendant's failure to keep any records of Mr. Kincherlow's meal periods, Mr. Kincherlow is informed and believes that Defendant unlawfully and automatically deducted thirty minutes from Mr. Kincherlow's work time each shift for a purported meal period regardless of whether or not a meal period was taken and regardless of whether the meal period, if taken, was less than 30 minutes in length.

Further, Defendant's meal period policies and practices fail to provide Mr. Kincherlow and the other non-exempt employees a second meal period for shifts over 10.0 hours. As a result, when Mr. Kincherlow worked in excess of 10.0 hours, he was not provided with a second 30-minute meal period in violation of California law.

Although Mr. Kincherlow was not provided with all legally-compliant meal periods to which he was entitled, Defendant failed to compensate Mr. Kincherlow with all of the required meal period premiums for each workday in which he experienced a meal period violation as mandated by Labor Code § 226.7.

Mr. Kincherlow was also not authorized and permitted to take all required rest periods due to Defendant's rest period policies and practices. Defendant's rest period policies and practices fail to authorize and permit all rest periods for every four hours worked, or major fraction thereof. Further, Mr. Kincherlow was unable to take all of his required rest periods due to heavy work demands.

On those occasions when Mr. Kincherlow was not authorized and permitted to take all legally-compliant rest periods to which he was entitled, Defendant failed to compensate Mr. Kincherlow with the required rest period premium for each workday in which he experienced a rest period violation as mandated by Labor Code § 226.7.

As a result of Defendant's failure to pay all overtime and/or minimum wages owed, as well as meal and rest period premium wages, Defendant maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Kincherlow.

As a further result of Defendant's failure to pay all overtime and/or minimum wages owed, and failure to pay all meal and rest period premium wages, Defendant failed to provide pay Mr. Kincherlow all wages owed upon his separation of employment with Defendant.

As described above, Defendant committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 1 ("Wage Order 1"):

Overtime Violations

Defendant was required to pay Mr. Kincherlow and other Aggrieved Employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 1194(a) and 1198; the Wage Order 1, § 3. According to Labor Code § 510(a), "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." This Section further provides, "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated equal to one and one-half times their regular rate of pay for all overtime hours worked." As explained above, throughout Mr. Kincherlow's employment with Defendant, Defendant would keep track of Mr. Kincherlow's time worked and would unlawfully shave Mr. Kincherlow's work time and/or round Mr. Kincherlow's work time such that Mr. Kincherlow would not be fully paid for all time worked. This time shaving/rounding practice utilized by Defendant was not-even handed over time and would round and shave in Defendant's favor

such that Mr. Kincherlow was routinely underpaid for his time worked. Further, during Mr. Kincherlow's employment with Defendant, he often worked in excess of 8 hours per workday and/or 40 hours per work week, and therefore, had Mr. Kincherlow been properly paid for all of the time that he actually worked, he would have been paid additional overtime and/or double-time wages. This practice by Defendant resulted in Defendant not properly tracking the time worked by Mr. Kincherlow, and also resulted in Defendant paying Mr. Kincherlow less than he was owed for the work he performed, including failing to pay him all required overtime and double-time wages. For a period of time during his employment, Mr. Kincherlow and other Aggrieved Employees were required to undergo COVID/temperature screening tests prior to commencing their work. However, Defendant failed to compensate Mr. Kincherlow and the other Aggrieved Employees for this time under which they were under the direction and control of Defendant, resulting in the underpayment of minimum, overtime and double-time wages.

Furthermore, throughout Mr. Kincherlow's employment with Defendant, Mr. Kincherlow would often work shifts in excess of 12 hours per day. However, Defendant only paid Mr. Kincherlow overtime for hours in excess of 10 hours per day but failed to pay him proper overtime compensation for hours worked in excess of 8 hours per day but less than 10 hours. This resulted in Defendant paying Mr. Kincherlow less than he was owed for the work he performed in violation of California law.

Minimum Wage Violations

Defendant was required to pay Mr. Kincherlow and other Aggrieved Employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1194; 1194.2, 1197; The Wage Order 1, § 4. Mr. Kincherlow and other Aggrieved Employees were not paid for all hours worked due to Defendant's timekeeping and compensation practices. As alleged above, Throughout Mr. Kincherlow's employment with Defendant, Defendant would keep track of Mr. Kincherlow's time worked and would unlawfully shave Mr. Kincherlow's work time and/or round Mr. Kincherlow's work time such that Mr. Kincherlow would not be fully paid for all time worked. This time shaving/rounding practice utilized by Defendant was not-even handed over time and would round and shave in Defendant's favor such that Mr. Kincherlow was routinely underpaid for his time worked. Further, during Mr. Kincherlow's employment with Defendant, he often worked in excess of 8 hours per workday and/or 40 hours per work week, and therefore, had Mr. Kincherlow been properly paid for all of the time that he actually worked, he would have been paid additional minimum, overtime and/or double-time wages. This practice by Defendant resulted in Defendant not properly tracking the time worked by Mr. Kincherlow, and also resulted in Defendant paying Mr. Kincherlow less than he was owed for the work he performed, including failing to pay him all required minimum wages. For a period of time during his employment, Mr. Kincherlow and other non-exempt employees were required to undergo COVID/temperature screening tests prior to commencing their work. However, Defendant failed to compensate Mr. Kincherlow and the other Aggrieved Employees for this time under which they were under the direction and control of Defendant, resulting in the underpayment of minimum wages.

Meal Period Violations

As alleged above, Defendant failed to provide Mr. Kincherlow and other Aggrieved Employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 1, § 11. Specifically, due to the work demands imposed by Defendant and the nature of the work, the meal periods were untimely, short, interrupted, missed and/or otherwise unlawful. Further, Defendant did not require Mr. Kincherlow and other Aggrieved Employees to clock in and out for their meal periods. Therefore, despite Defendant's failure to keep any records of Mr. Kincherlow's meal periods, Mr. Kincherlow is informed and believes that Defendant unlawfully and automatically deducted thirty minutes from Mr. Kincherlow's work time each shift for a purported meal period regardless of whether or not a meal period was taken and regardless of whether the meal period, if taken, was less than 30 minutes in length. Further, Defendant's meal period policies and practices fail to provide Mr. Kincherlow and the other Aggrieved Employees a second meal period for shifts over 10.0 hours. As a result, when Mr. Kincherlow worked in excess of 10.0 hours, he was not provided with a second 30-minute meal period in violation of California law. Therefore, Mr. Kincherlow and other Aggrieved Employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.").

Rest Period Violations

Defendant also failed to authorize and permit Mr. Kincherlow and other Aggrieved Employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 1, § 12. As alleged above, Defendant's rest period policies/practices fail to authorize and permit all rest periods for every four hours worked, or *major fraction thereof*. Specifically, as a result of the work demands imposed by Defendant, Defendant did not authorize and permit one rest period for every four hours worked, or *major fraction thereof*. As a result, Mr. Kincherlow and other Aggrieved Employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.")

Wage Statement Violations

Defendant knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Mr. Kincherlow and other Aggrieved Employees with accurate and

complete, itemized wage statements that included, among other requirements, all minimum and overtime wages earned, meal and rest period premiums, and total gross and net wages earned, in violation of Labor Code § 226 *et seq.* Defendant's failure to furnish Mr. Kincherlow and other aggrieved employees with complete and accurate, itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all minimum and overtime wages earned, and meal and rest period premium wages, and deprived them of the information necessary to identify discrepancies in Defendant's reported data.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Defendant failed to timely pay Mr. Kincherlow and other Aggrieved Employees all of their final wages at the time of separation, which included, among other things, underpaid minimum and overtime wages, and meal and rest period premium wages. Pursuant to Labor Code § 203, Defendant's failure to pay all final wages due to Mr. Kincherlow and other Aggrieved Employees was willful and, consequently, entitles Mr. Kincherlow and other Aggrieved Employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Defendant failed to pay their final wages after their separation, up to a maximum of thirty days.

As an "aggrieved employee," Mr. Kincherlow will initiate a civil action on behalf of himself and other Aggrieved Employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Kincherlow's own investigation, and on information and belief, Defendant committed the following Labor Code violations:

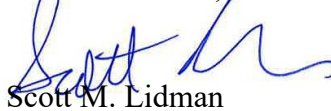
- a) Defendant violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Mr. Kincherlow and other Aggrieved Employees the statutory minimum wage for all hours worked;
- b) Defendant violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Kincherlow and other Aggrieved Employees all overtime compensation earned;
- c) Defendant violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Mr. Kincherlow and other Aggrieved Employees;
- d) Defendant violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Mr. Kincherlow and other Aggrieved Employees;

- e) Defendant violated Labor Code § 226 by failing to furnish Mr. Kincherlow and other Aggrieved Employees with accurate and compliant itemized wage statements;
- f) Defendant violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Mr. Kincherlow and other Aggrieved Employees;
- g) Defendant violated Labor Code § 204 by failing to pay Mr. Kincherlow and other Aggrieved Employees all earned wages at least twice during each calendar month;
- h) Defendant violated Labor Code § 1174 by failing to maintain accurate records on behalf of Mr. Kincherlow and other Aggrieved Employees.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendant if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,

LIDMAN LAW, APC



Scott M. Lidman

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: [Gladys Beltran](#)
Subject: Thank you for submission of your PAGA Case.
Date: Tuesday, January 31, 2023 4:04:01 PM

1/31/2023

LWDA Case No. LWDA-CM-932977-23
Law Firm : Lidman Law, APC
Plaintiff Name : Howard Kincherlow
Employer: Pabco Building Products, LLC
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT 2

EXHIBIT 2

PAGA SETTLEMENT AGREEMENT

This Settlement Agreement ("Settlement" or "Agreement") is made and entered into between Plaintiff Howard Kincherlow ("Plaintiff"), acting in a Private Attorney General capacity, and Defendant PABCO Building Products, LLC. ("Defendant").

I. DEFINITIONS

The following terms, when used in this Settlement, shall have the following meanings:

1. "Action" means Plaintiff's lawsuit against Defendant with the sole claim being asserted under the Private Attorneys' General Act of 2004 ("PAGA") pursuant to California Labor Code section 2699, *et seq.* entitled *Howard Kincherlow v. PABCO Building Products, LLC*, pending in Los Angeles County Superior Court, Case No. 23STCV07711.
2. "Aggrieved Employees" means all current and former hourly, non-exempt employees of Defendant PABCO Building Products, LLC who worked in California at any time from January 31, 2022 through the date the Court grants approval of this settlement.
3. "Defendant" means PABCO Building Products, LLC, a Nevada limited liability company.
4. "Complaint" means the Representative Action Complaint entitled *Howard Kincherlow v. PABCO Building Products, LLC*, pending in Los Angeles County Superior Court, Case No. 23STCV07711, and filed on April 7, 2023.
5. "Court" means the Superior Court of California for the County of Los Angeles.
6. "Effective Date" means the date upon entry of an Order by the Court approving this Settlement Agreement.
7. "Individual PAGA Payment" means the amount to be paid to each Aggrieved Employee based on the formula described herein.
8. "LWDA" means the California Labor and Workforce Development Agency.
9. "Gross Settlement Amount" is the non-reversionary sum of Three Hundred Thousand Dollars and Zero Cents (\$300,00.00), which represents the total amount payable under this Settlement by Defendant, including, without limitation, payments to all Aggrieved Employees, payment to the LWDA, payment of Plaintiff's Counsel's fees and costs, payment of Plaintiff's enhancement award and payment to the Settlement Administrator for administration costs.
10. "Net Settlement Amount" is the amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts (if approved by the Court) are subtracted from the Gross Settlement Amount: (a) Plaintiff's Counsel's fees up to one-third of the Gross Settlement Amount (currently estimated at \$100,000.00); (b) Plaintiff's verified costs up to \$25,000.00; (c) Plaintiff's enhancement award in an amount not to exceed \$7,500.00; and (d) administration costs in an amount not to exceed \$4,500.00.

11. “PAGA” means the California Labor Code Private Attorneys General Act, California Labor Code § 2698, *et seq.*

12. “PAGA Period” means the time period from January 31, 2022 through the date the Court grants approval of this settlement.

13. “Released Parties” means Defendant and its former, present and future owners, parents, subsidiaries, and all of their current, former and future officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, agents, successors, assigns, accountants, insurers, or legal representatives.

14. “PAGA Released Claims” means 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 Exhibit A, that arose during the PAGA Period, with respect to the following claims: (a) failure to pay all minimum wages owed; (b) failure to pay all overtime wages owed; (c) failure to provide meal periods, or premium pay for non-compliant meal periods; (d) failure to authorize and permit rest periods, or premium pay for non-complaint rest periods; (e) failure to provide accurate, itemized wage statements; (f) failure to timely pay wages upon separation of employment; (g) failing to pay all wages at least twice a calendar month; and (h) failing to maintain accurate records (“PAGA Released Claims”). The PAGA Released Claims herein does not release the Released Parties from any underlying Labor Code violations upon which Plaintiff’s Cause of Action for PAGA is based.

15. “Parties” mean Plaintiff and Defendant, collectively.

16. “Plaintiff” means Howard Kincherlow.

17. “Plaintiff’s Counsel” means Scott M. Lidman, Milan Moore and Tiara Gose-Hardy, of Lidman Law, APC.

18. “Settlement Administrator” means Phoenix Class Action Administration Solutions.

II. RECITALS

1. On January 31, 2023, Plaintiff provided written notice to the LWDA and Defendant asserting claims for civil penalties pursuant to the PAGA stemming from alleged violations of the California Labor Code, as follows: (a) failure to pay all minimum wages owed; (b) failure to pay all overtime wages owed; (c) failure to provide meal periods, or premium pay for non-compliant meal periods; (d) failure to authorize and permit rest periods, or premium pay for non-complaint rest periods; (e) failure to provide accurate, itemized wage statements; (f) failure to timely pay wages upon separation of employment; and (f) failing to pay all wages at least twice a calendar month and to maintain accurate records. A true and correct copy of the January 31, 2023 letter to the LWDA is attached hereto as **Exhibit A**.

2. On April 7, 2023, Plaintiff filed his Complaint in the Action asserting a single cause of action for civil penalties under the PAGA alleged on behalf of the Aggrieved Employees based on Defendant’s alleged: (a) failure to pay all minimum wages owed; (b) failure to pay all overtime wages owed; (c) failure to provide meal periods, or premium pay for non-compliant meal periods;

(d) failure to authorize and permit rest periods, or premium pay for non-complaint rest periods; (e) failure to provide accurate, itemized wage statements; (f) failure to timely pay wages upon separation of employment; (g) failing to pay all wages at least twice a calendar month; and (h) failing to maintain accurate records.

3. During the pendency of the Action, the Parties exchanged certain informal discovery prior to mediation, including information and documents pertaining to Plaintiff and other Aggrieved Employees and the claims in the Action in order for Plaintiff's Counsel to investigate Plaintiff's allegations and evaluate the substance and value of the PAGA claim.

4. On July 16, 2024, the Parties participated in a full-day mediation before mediator Kevin Barnes, Esq. With the assistance of the mediator both during and after the scheduled mediation, the Parties were able to reach an agreement to fully and finally resolve, subject to Court approval, the PAGA Released Claims as to Plaintiff and the Aggrieved Employees.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. **Non-Admission.** Nothing in this Settlement shall be construed to be an admission by Plaintiff that his claims do not have merit or by Defendant of any liability or wrongdoing as to Plaintiff, Aggrieved Employees, or any other person, and Defendant specifically disclaims any such liability or wrongdoing. The Parties have entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and risks. This Settlement and any related court documents or orders are not and may not be cited or admitted as evidence of liability.

2. **Gross Settlement Amount.** Defendant shall pay Three Hundred Thousand Dollars and Zero Cents (\$300,000.00) as the **non-reversionary** Gross Settlement Amount. Defendant shall deposit the Gross Settlement Amount with the Settlement Administrator by no later than thirty (30) calendar days of the Court issuing an Order approving the Settlement. The Settlement Administrator shall hold all portions of the Gross Settlement Amount in an interest-bearing account for the benefit of the Aggrieved Employees until the time for disbursement. The releases identified herein shall be null and void if Defendant fails to fully fund the Gross Settlement Amount.

3. **Escalator Clause.** Defendant represents that there are an estimated 9,166 pay periods worked by the Aggrieved Employees during the PAGA Period. If the number of pay periods worked by the Aggrieved Employees during the PAGA Period is 10% or greater than this figure (i.e., of there are 10,082 or more pay periods), Defendant agrees to increase the Gross Settlement Amount on a proportional basis equal to the percentage increase in the number of pay periods worked by the PAGA Period above the 10% (i.e., if there was an 11% increase in the number pay periods during the PAGA Period, Defendant agrees to increase the Gross Settlement Amount by 1%).

4. **Net Settlement Amount.** The Parties agree that the following amounts should be subtracted from the Gross Settlement Amount, subject to Court approval, resulting in a Net Settlement Amount to distribute to the LWDA and Aggrieved Employees:

a. Plaintiff's Attorneys' Fees and Costs. Defendant will not oppose Plaintiff's request for attorneys' fees in the amount up to one-third (1/3) of the Gross Settlement Amount, including one-third of any increase pursuant to the Escalator Clause. (The fees are currently estimated to be One Hundred Thousand Dollars and Zero Cents (\$100,000.00). Defendant will not oppose Plaintiff's request for costs incurred in prosecuting this Action in amount not to exceed Twenty Five Thousand Dollars and Zero Cents (\$25,000.00). In the event the Court approves a payment of less than these amounts, the difference will be added to the Net Settlement Amount (although Plaintiff may appeal an order granting less than the full amount sought for attorneys' fees and costs). If the Court believes the attorneys' fees and/or costs should be reduced, the other terms of this Settlement will remain in effect and enforceable, and any such reduction will not affect the remaining terms, other than adjusting the Net Settlement Amount. The Settlement Administrator, will report these payments on IRS Form 1099 issued to Plaintiff's Counsel.

b. Plaintiff's Enhancement Award. Defendant will not oppose Plaintiff's request for an enhancement award in the amount of Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) for his service to the LWDA and the Aggrieved Employees by and through filing the Action, participation in this Action, and the risk he undertook by attaching his name to the Action. In the event the Court approves a payment of less than the requested amount, the difference will be added to the Net Settlement Amount (although Plaintiff may appeal an order granting less than the full amount sought for Plaintiff's enhancement award). If the Court believes the enhancement award should be reduced, the other terms of the Settlement will remain in effect and enforceable, and any such reduction will not affect the remaining terms, other than adjusting the Net Settlement Amount. The Settlement Administrator will report this payment on IRS Form 1099 issued to Plaintiff.

c. Administration Costs. The Parties agree that the Administration Costs shall be paid from the Gross Settlement Amount, in an amount not to exceed \$4,500.00, for administering the Settlement. The Settlement Administrator will report this payment on IRS Form 1099 issued to the Settlement Administrator.

5. Allocation of Net Settlement Amount. The Net Settlement Amount shall be distributed pursuant to Labor Code § 2699(i) as follows:

a. 75% of the Net Settlement Amount shall be distributed to the LWDA;

b. 25% of the Net Settlement Amount shall be paid to Aggrieved Employees. This portion of the Net Settlement Amount shall be paid to all Aggrieved Employees pro rata based on the proportional number of pay periods worked by each Aggrieved Employee during the PAGA Period.

This paragraph regarding allocation is based on the Parties' collective understanding that all payments will be considered "penalties" and that there will no employer-side tax consequence to Defendant as a result of an allocation of the penalty amount being wages. If the Parties later determine otherwise, they will meet and confer regarding changes to this allocation provision. The Parties agree that should the Court deny approval of the Settlement based on the allocation of the Net Settlement Amount, the Parties agree to re-negotiate in good faith in an effort to obtain approval of the Settlement.

6. **Representative PAGA Release.** In his capacity as a Private Attorney General or “aggrieved employee” acting on behalf of himself, the State of California and Aggrieved Employees, and in consideration of the enhancement award awarded to him, Plaintiff hereby releases Defendant and Released Parties, from any and all of the PAGA Released Claims that arose during the PAGA Period.

7. **No Right to Opt-Out.** The Parties agree that there is no statutory right for any Aggrieved Employee to opt-out or otherwise exclude himself or herself from the Settlement.

8. **Covenants and Representations by Plaintiff and Plaintiff’s Counsel.**

a. Plaintiff represents and warrants that he has not assigned or transferred or purported to assign or transfer, to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Settlement.

b. Plaintiff acknowledges that he has read this Settlement, that he fully understands his rights, privileges and duties under the Settlement, and enters into this Settlement freely and voluntarily, and without duress. Plaintiff further acknowledges that he had the opportunity to consult with his attorneys to explain the terms of this Settlement and the consequences of signing this Settlement.

9. **Court Approval of PAGA Settlement.** To permit judicial review and approval of the Settlement, as required by Labor Code Section 2698, et seq., Plaintiff’s Counsel will file the Agreement with the Court and submit the Agreement to the LWDA as part of Plaintiff’s motion seeking Court approval of the Settlement, per Lab. Code § 2699(1)(2).

10. **Termination of Settlement.** If the Court does not approve the Settlement, if the Court does not enter judgment, as provided for in this Settlement, or if appellate review is sought and, on such review, the Court’s decision is materially modified or reversed, or, except as otherwise set forth herein, if one or more of the terms of the Settlement is not approved or is materially modified or reversed or found to be invalid, then either of the Parties shall have the right within ten (10) days of written notice thereof to elect to terminate the Settlement, in which case the Settlement shall have no force or effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Settlement.

11. **Judgment.** As part of the Motion to approve the Settlement, Plaintiff shall submit a proposed order and judgment which enters judgment in the Action in accordance with the terms of the Settlement and retains jurisdiction over the Action for the purpose of enforcing the terms of the Settlement following approval of the Settlement. This Settlement is expressly conditioned upon the Court entering judgment as set forth herein. The judgment will not release or bar any claims other than the PAGA Released Claims as to Plaintiff and Aggrieved Employees. Plaintiff’s Counsel will further submit any judgment rendered in the Action and approving the PAGA Settlement to the LWDA, per Lab. Code § 2699(1)(3).

IV. **ADMINISTRATION OF SETTLEMENT**

1. **Settlement Administrator.** The Parties agree to use Phoenix Class Action Administration Solutions to handle the administration of this Settlement.

2. **Provision of Information for Aggrieved Employees.** Within ten (10) business days of the Effective Date, Defendant shall provide the Settlement Administrator with information for Aggrieved Employees. Defendant will in good faith compile from its records a list of Aggrieved Employees that will be in a computer-readable format, such as a Microsoft Excel spreadsheet, and shall include each Aggrieved Employee's full name, last known mailing address, total number of pay periods worked during the PAGA Period, and Social Security number. The list shall also include the sum total of all pay periods worked by Aggrieved Employees during the PAGA Period. Because Social Security numbers are included in the list, the Settlement Administrator will maintain the list in the highest of confidence, and access shall be limited to those with a need to use the list as part of the administration of the Settlement and none of the information contained in the list shall be disclosed to third Parties or to Plaintiff's Counsel without the express written consent of counsel for Defendant.

Within seven (7) business days of receiving the Aggrieved Employees' information from Defendant, the Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the estimated individual settlement payments to each Aggrieved Employee and the data used to calculate said payments. The Settlement Administrator shall also determine whether the Escalator Clause in Section III.3 has been triggered. The Settlement Administrator shall obtain approval from all counsel of the calculations before mailing Individual PAGA Payments.

3. **Explanatory Letter and Individual PAGA Payments.** Upon receipt of the information for Aggrieved Employees, the Settlement Administrator will perform a search on the National Change of Address database to update the Aggrieved Employees' addresses.

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

The Settlement Administrator will calculate the amount to be received by each Aggrieved Employee, which will be based on the formula set forth in Section III.5., *supra*. The Settlement Administrator will send each Aggrieved Employee a check for his or her Individual PAGA Payment along with the explanatory letter. Checks will remain negotiable for 180 days. Each Individual PAGA Payment shall be deemed penalties/interest and reported using IRS Form 1099.

4. **Undeliverable Notices.** The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Aggrieved Employee. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Aggrieved Employee.

Any checks returned as non-deliverable on or before the check cashing deadline will be re-sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace or other search using the name, address or Social Security number of the Aggrieved Employee involved and will perform a single re-mailing after which any returned checks will be deemed undeliverable.

The Settlement Administrator shall maintain a list of the postmark date for the original mailing of the Individual Settlement Payment(s) to the Aggrieved Employees, the postmark date of any subsequent mailing to any the Aggrieved Employees, and a list of Aggrieved Employees who did not receive the Individual Settlement Payment due to the inability to locate a valid address using the procedures described herein or who otherwise could not be located within two attempts at mailing.

Defendant fully discharges its obligations to those Aggrieved Employees to whom they will pay an Individual PAGA Payment through the mailing of a check, regardless of whether such checks are actually received and/or negotiated by Aggrieved Employees. Funds represented by checks returned as undeliverable after a re-mailing, and funds represented by checks remaining un-cashed for more than 180 days after issuance, will be tendered to the State Controller's Office pursuant to the Unclaimed Property Law, California Civil Code § 1500, *et. seq.* for the benefit of and in the name(s) of the Aggrieved Employees to whom the checks were issued but whom did not cash the checks. The unclaimed checks shall remain in the unclaimed property fund in the name of the Aggrieved Employee until such time that they claim their property (the Individual Settlement Payment), or the property is otherwise disposed of pursuant the Unclaimed Property Laws.

5. **Payment of Remainder.** Within two (2) business days of receiving approval from counsel of the payment calculations, the Settlement Administrator will distribute the following additional payments: (1) the 75% share of the Net Settlement Amount to the LWDA; (2) Court-approved attorneys' fees and costs to Plaintiff's Counsel; (3) Court-approved enhancement award to Plaintiff; and (4) Court-approved administration costs to the Settlement Administrator.

6. **Accounting.** Within fifteen (15) business days of receiving approval from counsel of the payment calculations, the Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid from the Settlement. The Settlement Administrator shall provide a further such accounting under oath, upon request, after the conclusion of the 180-day check cashing period.

7. **Tax Consequences.** Individual PAGA Payments made under this Settlement will be attributed 100% as penalties and paid via IRS Form 1099 issued to each Aggrieved Employee. No later than January 31 of the year following payment of their individual portion of the PAGA Payment, the Settlement Administrator will prepare and issue IRS Form 1099s to Aggrieved Employees who received a payment. Neither Plaintiff nor Defendant, nor counsel for either of the Parties, makes any representations or warranties with respect to tax consequences of any payment under this Settlement.

V. MISCELLANEOUS PROVISIONS

1. **Mutual Preparation and Drafting.** The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement. The Parties agree that the terms and conditions of this Settlement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that neither Plaintiff nor Defendant shall be considered the "drafter" of this Settlement for purposes of having terms construed against that Party. This Settlement will not be construed more strictly against one Party merely by virtue of the fact that it may have been

prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement.

2. **Successors**. This Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, assigns, administrators and successors.

3. **Costs and Fees**. The Parties shall each bear their own costs, attorneys' fees, expert fees, mediator fees, and other fees incurred in connection with this Settlement, the Action and Plaintiff's claims, except as otherwise set forth specifically herein.

4. **Governing Law**. This Settlement shall be construed under and governed by the laws of the State of California. This Settlement shall be deemed to have been entered into in the County of Los Angeles, California, and all questions of validity, interpretation or performance of any of its terms or of any rights or obligations of the Parties to this Settlement shall be governed by California law. If any legal or equitable action is necessary to enforce the terms of this Settlement, it shall be brought in the State of California, County of Los Angeles. Furthermore, this Settlement shall be valid and enforceable notwithstanding any new legal developments regarding the PAGA Released Claims or any other matter related to the Action occurring after the date this Agreement is executed by all Parties.

5. **Complete Agreement**. The Parties each acknowledge and represent that no promise or representation not contained in this Settlement has been made to them and acknowledge and represent that this Settlement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the PAGA Released Claims in the Action. This Settlement cannot be amended or modified except by a writing signed by the Parties hereto.

6. **Nullification of Settlement**. In the event that: (i) after good faith efforts to amend or modify the Agreement for Court approval the Court does not approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then this Settlement and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions unless otherwise required under this Agreement.

7. **Judgment and Continued Jurisdiction**. After approval of this Settlement, the Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement. Plaintiff will submit a proposed judgment in conformity with this Agreement to be entered by the Court, which shall constitute a final and binding resolution of the claims in the Action.

8. **Authorization to Enter into Settlement**. The signatories hereto represent that they are fully authorized to enter into this Settlement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

9. **Execution and Counterparts**. This Settlement is subject only to the execution of

all Parties. However, the Settlement may be executed in one or more counterparts. All executed counterparts, and each of them, including facsimile, electronic signatures, and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange a fully executed Agreement. The Parties also agree that a facsimile, electronic, or scanned copy of the fully executed Agreement shall have the same force and effect as an original signed Agreement.

10. **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties believe this Settlement is a fair, adequate and reasonable settlement of the Action, and have arrived at this Settlement after arm's-length negotiations by experienced counsel and with the assistance of an experienced mediator. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

11. **Invalidity of Any Provision.** Before declaring any provision of this Settlement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Settlement valid and enforceable.

12. **Severability.** If any term or provision of this Settlement is held to be invalid or unenforceable, the remaining portions of this Settlement will continue to be valid and will be performed, construed and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

13. **Waiver.** No waiver of any condition or covenant contained in this Settlement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right or remedy.

14. **Representation by Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement, and this Settlement has been executed with the consent and advice of counsel and reviewed in full.

15. **Enforcement Action.** The Parties hereby agree this Agreement is enforceable under Code of Civil Procedure section 664.6, so as to allow the Parties to enforce the terms of their settlement until performance has been made in full. In the event that one more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this Settlement Agreement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions

IN WITNESS THEREOF, the Parties each acknowledge that they have read the foregoing Settlement, accept and agree to the provisions contained in this Settlement and hereby execute it voluntarily and with full understanding of its consequences.

APPROVED AS TO FORM AND CONTENT:

Dated: 10/25/2024

Howard Kincherlow

Howard Kincherlow, Plaintiff

Dated: 10/28/2024

Phil Bonnell

By: Phil Bonnell

Its: President

PABCO Building Products, LLC, Defendant

APPROVED AS TO FORM:

Dated: October 25, 2024

LIDMAN LAW, APC

By: Scott M. Lidman

Scott M. Lidman

Attorneys for Plaintiff, Howard Kincherlow

Dated: October 31, 2024

PALMER KAZANJIAN WHOL HODSON LLP

By: Larry M. Kazanjian

Larry M. Kazanjian

Attorneys for Defendant, PABCO Building Products, LLC,

EXHIBIT A

EXHIBIT A

LIDMAN LAW

2155 CAMPUS DRIVE, SUITE 150, EL SEGUNDO, CA 90245

OFFICE: (424) 322-4772

FAX: (424) 322-4775

January 31, 2023

VIA LWDA WEBSITE

Labor and Workforce Development Agency

Attn: PAGA Administrator

1515 Clay Street, Suite 801

Oakland, CA 94612

VIA U.S. CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Pabco Building Products, LLC, a Nevada limited liability company

c/o Daniel S. Yangihara, Jr., Agent for Service of Process

10600 White Rock Road, #100

Rancho Cordova, CA 95670

Re: *Howard Kincherlow v. Pabco Building Products, LLC*

To Whom It May Concern:

Please be advised that this law firm represents Howard Kincherlow in claims arising from his employment with Pabco Building Products, LLC, a Nevada limited liability company (“Defendant”). Mr. Kincherlow is an “aggrieved employee” as defined by Labor Code sections 2699, *et seq.* due to Defendant’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, if the LWDA decides not to investigate, Mr. Kincherlow intends to pursue a lawsuit on behalf of other “Aggrieved Employees”, which should be considered to include all of Defendant’s current and former non-exempt employees in California who have worked for Defendant (including any and all of its divisions, including Pabco Paper, Pabco Roofing Company, Papco Gypsum and QuiteRock), at least in part, during the one year immediately preceding the date of this letter through the date of trial, the date judgment is entered, the date of settlement and/or other date approved by the Court.

Mr. Kincherlow was employed by Defendant as a non-exempt employee from approximately 2001 through approximately January 2023 when his employment was terminated. Mr. Kincherlow worked for Defendant’s Pabco Paper division and held the position of lab technician.

During Mr. Kincherlow’s employment with Defendant, Mr. Kincherlow was generally scheduled to work a 12-hour shift, from approximately 6:00 a.m. until approximately 6:00 p.m. However, Mr. Kincherlow would often clock in and begin work prior to 6:00 a.m. but was not paid for all time worked. Indeed, during Mr. Kincherlow’s employment with Defendant, Defendant maintained a uniform policy or practice of failing to accurately record all time worked by Mr. Kincherlow and other non-exempt employees.

Throughout Mr. Kincherlow's employment with Defendant, Defendant would keep track of Mr. Kincherlow's time worked and would unlawfully shave Mr. Kincherlow's work time and/or round Mr. Kincherlow's work time such that Mr. Kincherlow would not be fully paid for all time worked. This time shaving/rounding practice utilized by Defendant was not-even handed over time and would round and shave in Defendant's favor such that Mr. Kincherlow was routinely underpaid for his time worked. Further, during Mr. Kincherlow's employment with Defendant, he often worked in excess of 8 hours per workday and/or 40 hours per work week, and therefore, had Mr. Kincherlow been properly paid for all of the time that he actually worked, he would have been paid additional minimum, overtime and/or double-time wages. This practice by Defendant resulted in Defendant not properly tracking the time worked by Mr. Kincherlow, and also resulted in Defendant paying Mr. Kincherlow less than he was owed for the work he performed, including failing to pay him all required minimum, overtime and double-time wages.

For a period of time during his employment, Mr. Kincherlow and other non-exempt employees were required to undergo COVID/temperature screening tests prior to commencing their work. However, Defendant failed to compensate Mr. Kincherlow and the other non-exempt employees for this time under which they were under the direction and control of Defendant, resulting in the underpayment of minimum, overtime and double-time wages.

Throughout Mr. Kincherlow's employment with Defendant, Mr. Kincherlow would often work shifts in excess of 12 hours per day. However, Defendant only paid Mr. Kincherlow overtime for hours in excess of 10 hours per day but failed to pay him proper overtime compensation for hours worked in excess of 8 hours per day but less than 10 hours. This resulted in Defendant paying Mr. Kincherlow less than he was owed for the work he performed in violation of California law.

Throughout Mr. Kincherlow's employment with Defendant, Mr. Kincherlow was not provided all required meal periods due to Defendant's meal period policies and practices, which fail to provide 30-minute first meal periods before the end of the fifth hour of work. Specifically, due to the work demands imposed by Defendant and the nature of the work, the meal periods were untimely, short, interrupted, missed and/or otherwise unlawful. Further, Defendant did not require Mr. Kincherlow and the other non-exempt employees to clock in and out for their meal periods. Therefore, despite Defendant's failure to keep any records of Mr. Kincherlow's meal periods, Mr. Kincherlow is informed and believes that Defendant unlawfully and automatically deducted thirty minutes from Mr. Kincherlow's work time each shift for a purported meal period regardless of whether or not a meal period was taken and regardless of whether the meal period, if taken, was less than 30 minutes in length.

Further, Defendant's meal period policies and practices fail to provide Mr. Kincherlow and the other non-exempt employees a second meal period for shifts over 10.0 hours. As a result, when Mr. Kincherlow worked in excess of 10.0 hours, he was not provided with a second 30-minute meal period in violation of California law.

Although Mr. Kincherlow was not provided with all legally-compliant meal periods to which he was entitled, Defendant failed to compensate Mr. Kincherlow with all of the required meal period premiums for each workday in which he experienced a meal period violation as mandated by Labor Code § 226.7.

Mr. Kincherlow was also not authorized and permitted to take all required rest periods due to Defendant's rest period policies and practices. Defendant's rest period policies and practices fail to authorize and permit all rest periods for every four hours worked, or major fraction thereof. Further, Mr. Kincherlow was unable to take all of his required rest periods due to heavy work demands.

On those occasions when Mr. Kincherlow was not authorized and permitted to take all legally-compliant rest periods to which he was entitled, Defendant failed to compensate Mr. Kincherlow with the required rest period premium for each workday in which he experienced a rest period violation as mandated by Labor Code § 226.7.

As a result of Defendant's failure to pay all overtime and/or minimum wages owed, as well as meal and rest period premium wages, Defendant maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Kincherlow.

As a further result of Defendant's failure to pay all overtime and/or minimum wages owed, and failure to pay all meal and rest period premium wages, Defendant failed to provide pay Mr. Kincherlow all wages owed upon his separation of employment with Defendant.

As described above, Defendant committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 1 ("Wage Order 1"):

Overtime Violations

Defendant was required to pay Mr. Kincherlow and other Aggrieved Employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 1194(a) and 1198; the Wage Order 1, § 3. According to Labor Code § 510(a), "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." This Section further provides, "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated equal to one and one-half times their regular rate of pay for all overtime hours worked." As explained above, throughout Mr. Kincherlow's employment with Defendant, Defendant would keep track of Mr. Kincherlow's time worked and would unlawfully shave Mr. Kincherlow's work time and/or round Mr. Kincherlow's work time such that Mr. Kincherlow would not be fully paid for all time worked. This time shaving/rounding practice utilized by Defendant was not-even handed over time and would round and shave in Defendant's favor

such that Mr. Kincherlow was routinely underpaid for his time worked. Further, during Mr. Kincherlow's employment with Defendant, he often worked in excess of 8 hours per workday and/or 40 hours per work week, and therefore, had Mr. Kincherlow been properly paid for all of the time that he actually worked, he would have been paid additional overtime and/or double-time wages. This practice by Defendant resulted in Defendant not properly tracking the time worked by Mr. Kincherlow, and also resulted in Defendant paying Mr. Kincherlow less than he was owed for the work he performed, including failing to pay him all required overtime and double-time wages. For a period of time during his employment, Mr. Kincherlow and other Aggrieved Employees were required to undergo COVID/temperature screening tests prior to commencing their work. However, Defendant failed to compensate Mr. Kincherlow and the other Aggrieved Employees for this time under which they were under the direction and control of Defendant, resulting in the underpayment of minimum, overtime and double-time wages.

Furthermore, throughout Mr. Kincherlow's employment with Defendant, Mr. Kincherlow would often work shifts in excess of 12 hours per day. However, Defendant only paid Mr. Kincherlow overtime for hours in excess of 10 hours per day but failed to pay him proper overtime compensation for hours worked in excess of 8 hours per day but less than 10 hours. This resulted in Defendant paying Mr. Kincherlow less than he was owed for the work he performed in violation of California law.

Minimum Wage Violations

Defendant was required to pay Mr. Kincherlow and other Aggrieved Employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1194; 1194.2, 1197; The Wage Order 1, § 4. Mr. Kincherlow and other Aggrieved Employees were not paid for all hours worked due to Defendant's timekeeping and compensation practices. As alleged above, Throughout Mr. Kincherlow's employment with Defendant, Defendant would keep track of Mr. Kincherlow's time worked and would unlawfully shave Mr. Kincherlow's work time and/or round Mr. Kincherlow's work time such that Mr. Kincherlow would not be fully paid for all time worked. This time shaving/rounding practice utilized by Defendant was not-even handed over time and would round and shave in Defendant's favor such that Mr. Kincherlow was routinely underpaid for his time worked. Further, during Mr. Kincherlow's employment with Defendant, he often worked in excess of 8 hours per workday and/or 40 hours per work week, and therefore, had Mr. Kincherlow been properly paid for all of the time that he actually worked, he would have been paid additional minimum, overtime and/or double-time wages. This practice by Defendant resulted in Defendant not properly tracking the time worked by Mr. Kincherlow, and also resulted in Defendant paying Mr. Kincherlow less than he was owed for the work he performed, including failing to pay him all required minimum wages. For a period of time during his employment, Mr. Kincherlow and other non-exempt employees were required to undergo COVID/temperature screening tests prior to commencing their work. However, Defendant failed to compensate Mr. Kincherlow and the other Aggrieved Employees for this time under which they were under the direction and control of Defendant, resulting in the underpayment of minimum wages.

Meal Period Violations

As alleged above, Defendant failed to provide Mr. Kincherlow and other Aggrieved Employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 1, § 11. Specifically, due to the work demands imposed by Defendant and the nature of the work, the meal periods were untimely, short, interrupted, missed and/or otherwise unlawful. Further, Defendant did not require Mr. Kincherlow and other Aggrieved Employees to clock in and out for their meal periods. Therefore, despite Defendant's failure to keep any records of Mr. Kincherlow's meal periods, Mr. Kincherlow is informed and believes that Defendant unlawfully and automatically deducted thirty minutes from Mr. Kincherlow's work time each shift for a purported meal period regardless of whether or not a meal period was taken and regardless of whether the meal period, if taken, was less than 30 minutes in length. Further, Defendant's meal period policies and practices fail to provide Mr. Kincherlow and the other Aggrieved Employees a second meal period for shifts over 10.0 hours. As a result, when Mr. Kincherlow worked in excess of 10.0 hours, he was not provided with a second 30-minute meal period in violation of California law. Therefore, Mr. Kincherlow and other Aggrieved Employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.").

Rest Period Violations

Defendant also failed to authorize and permit Mr. Kincherlow and other Aggrieved Employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 1, § 12. As alleged above, Defendant's rest period policies/practices fail to authorize and permit all rest periods for every four hours worked, or *major fraction thereof*. Specifically, as a result of the work demands imposed by Defendant, Defendant did not authorize and permit one rest period for every four hours worked, or *major fraction thereof*. As a result, Mr. Kincherlow and other Aggrieved Employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.")

Wage Statement Violations

Defendant knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Mr. Kincherlow and other Aggrieved Employees with accurate and

complete, itemized wage statements that included, among other requirements, all minimum and overtime wages earned, meal and rest period premiums, and total gross and net wages earned, in violation of Labor Code § 226 *et seq.* Defendant's failure to furnish Mr. Kincherlow and other aggrieved employees with complete and accurate, itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all minimum and overtime wages earned, and meal and rest period premium wages, and deprived them of the information necessary to identify discrepancies in Defendant's reported data.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Defendant failed to timely pay Mr. Kincherlow and other Aggrieved Employees all of their final wages at the time of separation, which included, among other things, underpaid minimum and overtime wages, and meal and rest period premium wages. Pursuant to Labor Code § 203, Defendant's failure to pay all final wages due to Mr. Kincherlow and other Aggrieved Employees was willful and, consequently, entitles Mr. Kincherlow and other Aggrieved Employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Defendant failed to pay their final wages after their separation, up to a maximum of thirty days.

As an "aggrieved employee," Mr. Kincherlow will initiate a civil action on behalf of himself and other Aggrieved Employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Kincherlow's own investigation, and on information and belief, Defendant committed the following Labor Code violations:

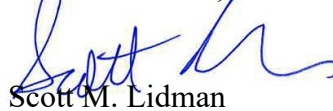
- a) Defendant violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Mr. Kincherlow and other Aggrieved Employees the statutory minimum wage for all hours worked;
- b) Defendant violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Kincherlow and other Aggrieved Employees all overtime compensation earned;
- c) Defendant violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Mr. Kincherlow and other Aggrieved Employees;
- d) Defendant violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Mr. Kincherlow and other Aggrieved Employees;

- e) Defendant violated Labor Code § 226 by failing to furnish Mr. Kincherlow and other Aggrieved Employees with accurate and compliant itemized wage statements;
- f) Defendant violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Mr. Kincherlow and other Aggrieved Employees;
- g) Defendant violated Labor Code § 204 by failing to pay Mr. Kincherlow and other Aggrieved Employees all earned wages at least twice during each calendar month;
- h) Defendant violated Labor Code § 1174 by failing to maintain accurate records on behalf of Mr. Kincherlow and other Aggrieved Employees.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendant if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,

LIDMAN LAW, APC



Scott M. Lidman

EXHIBIT B

EXHIBIT B

NOTICE OF PAGA SETTLEMENT AND RELEASE OF CLAIMS

Howard Kincherlow v. PABCO Building Products, LLC
Los Angeles County Superior Court Case No. 23STCV07711

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

I. NOTICE OF PAGA SETTLEMENT

The Los Angeles County Superior Court (the “Court”) has approved a settlement in the above-captioned action filed by Howard Kincherlow (“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 PABCO Building Products, LLC (“PABCO”): (1) failed to pay all minimum wages owed; (2) failed to pay all overtime wages owed; (3) failed to provide legally compliant meal periods; (4) failed to permit and authorize legally compliant rest periods; (5) failed to provide accurate, itemized wage statements; (6) failed to maintain accurate records; (7) failed to pay all wages at least twice a calendar month; and (8) 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.

PABCO 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 PABCO Building Products, LLC who worked in California at any time from January 31, 2022 through [INSERT DATE OF APPROVAL].”

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 PABCO 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 PABCO 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 letter to the LWDA, that arose during the PAGA Period, with respect to the following claims: (a) failure to pay all minimum wages owed; (b) failure to pay all overtime wages owed; (c) failure to provide meal periods, or premium pay for non-compliant meal periods; (d) failure to authorize and permit rest periods, or premium pay for non-complaint rest periods; (e) failure to provide accurate, itemized wage statements; (f) failure to timely pay wages upon separation of employment; and (g) failing to pay all wages at least twice a calendar month; and (h) failing to maintain accurate records ("PAGA Released Claims"). The PAGA Released Claims herein does not release the Released Parties from any underlying Labor Code violations upon which Plaintiff's Cause of Action for PAGA is based.

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, which means claims for civil penalties, but not claims for unpaid wages or statutory penalties recoverable under the Labor Code and/or Wage Orders for the violations alleged in this Lawsuit.

IV. SETTLEMENT ADMINISTRATOR

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

You may call the Settlement Administrator, **Phoenix Class Action Administration Solutions** 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.

EXHIBIT 3

EXHIBIT 3

~~**[MODEL] CLASS ACTION AND PAGA SETTLEMENT AGREEMENT-
AND CLASS NOTICE[†]**~~

This ~~Class Action and PAGA~~ Settlement Agreement (“Settlement” or “Agreement”) is made by and entered into between ~~p~~Plaintiff Howard Kincherlow (“Plaintiff”), acting in a Private Attorney General capacity, and ~~d~~Defendant XYZ PABCO Building Products, LLC. (“XYZ Defendant”). ~~The Agreement refers to Plaintiff and XYZ collectively as “Parties,” or individually as “Party.”~~

1.I. DEFINITIONS.

~~1.1.1. “Action” means the Plaintiff’s lawsuit against Defendant with the sole claim being asserted under the Private Attorneys’ General Act of 2004 (“PAGA”) pursuant to California Labor Code section 2699, et seq. entitled Howard Kincherlow v. PABCO Building Products, LLC, alleging wage and hour violations against XYZ captioned _____ initiated on _____ and pending in Superior Court of the State of California, County of Los Angeles County Superior Court, Case No. 23STCV07711.~~

~~1.2. “Administrator” means _____, the neutral entity the Parties have agreed to appoint to administer the Settlement.~~

~~1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.~~

~~1.4.2. “Aggrieved Employee” means all current and former hourly, non-exempt employees of Defendant PABCO Building Products, LLC who worked in California at any time from January 31, 2022 through the date the Court grants approval of this settlement. [e.g., a person employed by XYZ in California and classified as a _____ who worked for XYZ during the PAGA Period].~~

~~1.5. “Class” means [define class e.g., all persons employed by XYZ in California and classified as _____ who worked for XYZ during the Class Period].~~

~~1.6. “Class Counsel” means _____.~~

~~1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.~~

~~1.8. “Class Data” means Class Member identifying information in XYZ’s possession including the Class Member’s name, last known mailing address, Social Security~~

~~number, , and number of Class Period Workweeks and PAGA Pay Periods.~~

~~1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).~~

~~1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available~~

~~sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.~~

~~1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English [with a Spanish translation, if applicable] in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.~~

~~1.12. “Class Period” means the period from _____ to _____.~~[#]

~~1.13. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.~~

~~1.14. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.~~

3. “Defendant” means PABCO Building Products, LLC, a Nevada limited liability company.

4. “Complaint” means the Representative Action Complaint entitled Howard Kincherlow v. PABCO Building Products, LLC, pending in Los Angeles County Superior Court, Case No. 23STCV07711, and filed on April 7, 2023.

~~1.15.~~5. “Court” means the Superior Court of California, County of Los Angeles.

~~1.16. “XYZ” means named Defendant _____.~~

~~1.17. “Defense Counsel” means _____.~~

~~1.18.~~6. “Effective Date” means the date upon entry of an Order by the Court approving this Settlement Agreement by when both of the following have occurred:

~~— (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and
(b) the Judgment is final. The Judgment is final as of the latest of the following occurrences:
(a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.~~

~~1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.~~

~~1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.~~

~~1.21. “Final Judgment” means the Judgment Entered by the Court upon Granting Final~~

~~Approval of the Settlement.~~

~~1.22. “Gross Settlement Amount” means \$_____ which is the total amount XYZ agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual~~

~~—PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator’s Expenses.~~

~~1.23. —“Individual Class Payment” means the Participating Class Member’s pro-rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.~~

~~1.24.7. —“Individual PAGA Payment” means the amount to be paid to each Aggrieved Employee based on the formula described herein. Aggrieved Employee’s pro-rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.~~

~~1.25. —“Judgment” means the judgment entered by the Court based upon the Final Approval.~~

~~1.26.8. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).~~

~~1.27. —“LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).~~

~~9. —“Gross Settlement Amount” is the non-reversionary sum of Three Hundred Thousand Dollars and Zero Cents (\$300,00.00), which represents the total amount payable under this Settlement by Defendant, including, without limitation, payments to all Aggrieved Employees, payment to the LWDA, payment of Plaintiff’s Counsel’s fees and costs, payment of Plaintiff’s enhancement award and payment to the Settlement Administrator for administration costs.~~

~~1.28.10. “Net Settlement Amount” is the amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts (if approved by the Court) are subtracted from the Gross Settlement Amount: (a) Plaintiff’s Counsel’s fees up to one-third of the Gross Settlement Amount (currently estimated at \$100,000.00); (b) Plaintiff’s verified costs up to \$25,000.00; (c) Plaintiff’s enhancement award in an amount not to exceed \$7,500.00; and (d) administration costs in an amount not to exceed \$4,500.00. means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.~~

~~1.29. —“Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.~~

~~1.30.11. “PAGA” means the California Labor Code Private Attorneys General Act, California Labor Code § 2698, et seq. Pay Period” means any Pay Period during which an Aggrieved Employee worked for XYZ for at least one day during the PAGA Period.~~

~~1.31.12. “PAGA Period” means the time period from January 31, 2022 _____~~

through the date the Court grants approval of this settlement to _____.ⁱⁱⁱ

1.32. ~~“PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).~~

1.33. ~~“PAGA Notice” means Plaintiff’s _____ letter to XYZ and the LWDA [and Plaintiff’s _____ letter to XYZ and the LWDA] providing notice pursuant to Labor Code section 2699.3, subd.(a).~~

1.34. ~~“PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees~~

~~13. (_____) and the 75% to LWDA (____) in settlement of PAGA claims: “Released Parties” means Defendant and its former, present and future owners, parents, subsidiaries, and all of their current, former and future officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, agents, successors, assigns, accountants, insurers, or legal representatives.~~

~~14. “PAGA Released Claims” means 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 **Exhibit A**, that arose during the PAGA Period, with respect to the following claims: (a) failure to pay all minimum wages owed; (b) failure to pay all overtime wages owed; (c) failure to provide meal periods, or premium pay for non-compliant meal periods; (d) failure to authorize and permit rest periods, or premium pay for non-complaint rest periods; (e) failure to provide accurate, itemized wage statements; (f) failure to timely pay wages upon separation of employment; (g) failing to pay all wages at least twice a calendar month; and (h) failing to maintain accurate records (“PAGA Released Claims”). The PAGA Released Claims herein does not release the Released Parties from any underlying Labor Code violations upon which Plaintiff’s Cause of Action for PAGA is based.~~

~~15. “Parties” mean Plaintiff and Defendant, collectively.~~

~~1.35. —“Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.~~

~~16. —“Plaintiff” means Howard Kincherlow, the named plaintiff in the Action.~~

~~1.36.~~

~~1.37. —“Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.~~

~~1.38. —“Preliminary Approval Order” means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.~~

~~1.39. —“Released Class Claims” means the claims being released as described in Paragraph 6.2 below.~~

~~1.40. —“Released PAGA Claims” means the claims being released as described in Paragraph 6.2 below.~~

~~1.41. —“Released Parties” means: XYZ and each of its former and present directors, officers, shareholders, owners, [members], attorneys, insurers, predecessors, successors, assigns [subsidiaries] [affiliates].~~

~~1.42. —“Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.~~

~~1.43. —“Response Deadline” means [e.g., 60] days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.~~

~~1.44. —“Settlement” means the disposition of the Action effected by this Agreement and the Judgment.~~

~~⁺ —“Workweek” means any week during which a Class Member worked for XYZ for at least one day, during the Class Period.³⁶~~

~~17. —“Plaintiff’s Counsel” means Scott M. Lidman, Milan Moore and Tiara Gose-Hardy, of Lidman Law, APC.~~

~~18. —“Settlement Administrator” means Phoenix Class Action Administration Solutions.~~

2.II. RECITALS.

~~2.1.1. On _____ January 31, 2023, Plaintiff commenced this Action by filing a Complaint alleging causes of action against XYZ for _____. [The Complaint is the operative complaint in the Action (the “Operative Complaint.”)] [On _____, Plaintiff filed a [e.g., First Amended Complaint] alleging causes of action against XYZ for _____. The [e.g., First Amended] Complaint is the operative complaint in the Action (the “Operative~~

~~_____ Complaint.”}] XYZ denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged. provided written notice to the LWDA and Defendant asserting claims for civil penalties pursuant to the PAGA stemming from alleged violations of the California Labor Code, as follows: (a) failure to pay all minimum wages owed; (b) failure to pay all overtime wages owed; (c) failure to provide meal periods, or premium pay for non-compliant meal periods; (d) failure to authorize and permit rest periods, or premium pay for non-complaint rest periods; (e) failure to provide accurate, itemized wage statements; (f) failure to timely pay wages upon separation of employment; and (f) failing to pay all wages at least twice a calendar month and to maintain accurate records. A true and correct copy of the January 31, 2023 letter to the LWDA is attached hereto as **Exhibit A**.~~

1. ~~_____ Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to XYZ and the LWDA by sending the PAGA Notice.~~

2. ~~_____ On April 7, 2023, Plaintiff filed his Complaint in the Action asserting a single cause of action for civil penalties under the PAGA alleged on behalf of the Aggrieved Employees based on Defendant’s alleged: (a) failure to pay all minimum wages owed; (b) failure to pay all overtime wages owed; (c) failure to provide meal periods, or premium pay for non-compliant meal periods; (d) failure to authorize and permit rest periods, or premium pay for non-complaint rest periods; (e) failure to provide accurate, itemized wage statements; (f) failure to timely pay wages upon separation of employment; (g) failing to pay all wages at least twice a calendar month; and (h) failing to maintain accurate records.~~

3. ~~_____ During the pendency of the Action, the Parties exchanged certain informal discovery prior to mediation, including information and documents pertaining to Plaintiff and other Aggrieved Employees and the claims in the Action in order for Plaintiff’s Counsel to investigate Plaintiff’s allegations and evaluate the substance and value of the PAGA claim.~~

4. ~~_____ On July 16, 2024, the Parties participated in a full-day mediation before mediator Kevin Barnes, Esq. With the assistance of the mediator both during and after the scheduled mediation, the Parties were able to reach an agreement to fully and finally resolve, subject to Court approval, the PAGA Released Claims as to Plaintiff and the Aggrieved Employees.~~

2.2. ~~_____ (type in additional dates) _____, [the Parties _____ participated in an all-day mediation presided over by _____ which led to this Agreement to settle the Action (describe alternative means of negotiation). _____ (describe alternative means of negotiation) _____]~~

2.3. ~~_____ Prior to ☐ mediation ☐ negotiating the Settlement, Plaintiff obtained, through _____ ☐ formal ☐ informal discovery, ~~(documents, testimony and information obtained)~~ Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).~~

~~2.4. The Court ☐ has ☐ has not granted class certification.~~

~~(insert details as needed)~~

~~2.5. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.~~

III. OPERATIVE MONETARY TERMS OF THE SETTLEMENT AGREEMENT.

~~3.~~ The Parties agree as follows:

~~1. **Non-Admission.** Nothing in this Settlement shall be construed to be an admission by Plaintiff that his claims do not have merit or by Defendant of any liability or wrongdoing as to Plaintiff, Aggrieved Employees, or any other person, and Defendant specifically disclaims any such liability or wrongdoing. The Parties have entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and risks. This Settlement and any related court documents or orders are not and may not be cited or admitted as evidence of liability.~~

~~2. **Gross Settlement Amount.** Except as otherwise provided by Paragraph 9 below, XYZ Defendant shall promises to pay Three Hundred Thousand Dollars and Zero Cents (\$ 300,000.00) as the non-reversionary and no more as the Gross Settlement Amount. Defendant shall deposit the Gross Settlement Amount with the Settlement Administrator by no later than thirty (30) calendar days of the Court issuing an Order approving the Settlement. [and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments.] XYZ has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 6.1 of this Agreement.* The Settlement Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to XYZ shall hold all portions of the Gross Settlement Amount in an interest-bearing account for the benefit of the Aggrieved Employees until the time for disbursement. The releases identified herein shall be null and void if Defendant fails to fully fund the Gross Settlement Amount.~~

~~3.1.3. **Escalator Clause.** Defendant represents that there are an estimated 9,166 pay periods worked by the Aggrieved Employees during the PAGA Period. If the number of pay periods worked by the Aggrieved Employees during the PAGA Period is 10% or greater than this figure (i.e., of there are 10,082 or more pay periods), Defendant agrees to increase the Gross Settlement Amount on a proportional basis equal to the percentage increase in the number of pay periods worked by the PAGA Period above the 10% (i.e., if there was an 11% increase in the number pay periods during the PAGA Period, Defendant agrees to increase the Gross Settlement Amount by 1%).~~

~~3.2.4. **Net Settlement Amount.** The Parties agree that the following amounts should be subtracted from the Gross Settlement Amount, subject to Court approval, resulting in a Net Settlement Amount to distribute to the LWDA and Aggrieved Employees Payments from the~~

Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

a. Plaintiff's Attorneys' Fees and Costs. Defendant will not oppose Plaintiff's request for attorneys' fees in the amount up to one-third (1/3) of the Gross Settlement Amount, including one-third of any increase pursuant to the Escalator Clause. (The fees are currently estimated to be One Hundred Thousand Dollars and Zero Cents (\$100,000.00). Defendant will not oppose Plaintiff's request for costs incurred in prosecuting this Action in amount not to exceed Twenty Five Thousand Dollars and Zero Cents (\$25,000.00). In the event the Court approves a payment of less than these amounts, the difference will be added to the Net Settlement Amount (although Plaintiff may appeal an order granting less than the full amount sought for attorneys' fees and costs). If the Court believes the attorneys' fees and/or costs should be reduced, the other terms of this Settlement will remain in effect and enforceable, and any such reduction will not affect the remaining terms, other than adjusting the Net Settlement Amount. The Settlement Administrator, will report these payments on IRS Form 1099 issued to Plaintiff's Counsel

b. 3.2.1. To Plaintiff's Enhancement Award.÷ Class Representative Service Payment to the Class Representative of not more than \$_____ (in addition to any Individual Class Payment [and any Individual PAGA Payment] the Class Representative is

~~entitled to receive as a Participating Class Member). XYZ-Defendant will not oppose Plaintiff's request for an Enhancement Award Class Representative Service Payment that does not exceed this amount, in the amount of Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) for his service to the LWDA and the Aggrieved Employees by and through filing the Action, participation in this Action, and the risk he undertook by attaching his name to the Action. In the event the Court approves a payment of less than the requested amount, the difference will be added to the Net Settlement Amount (although Plaintiff may appeal an order granting less than the full amount sought for Plaintiff's enhancement award). If the Court believes the enhancement award should be reduced, the other terms of the Settlement will remain in effect and enforceable, and any such reduction will not affect the remaining terms, other than adjusting the Net Settlement Amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than [16 court] days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Settlement Administrator will pay the Class Representative Service report this Ppayment using on IRS Form 1099 issued to the Settlement Administrator. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.~~

~~3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than __%, which is currently estimated to be \$ _____ and a Class Counsel Litigation Expenses Payment of not more than \$ _____. XYZ will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than [16 court] days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds XYZ harmless, and indemnifies XYZ, from any dispute or controversy regarding any division or sharing of any of these Payments.~~

~~_____~~
~~_____ a.~~

~~_____ c.~~
~~3.2.3. To the Administrator Administration Costs: An Administrator Expenses Payment The Parties agree that the Administration Costs shall be paid from the Gross Settlement Amount, in an amount not to exceed~~

~~\$ _____ 4,500.00, for administering the Settlement. The Settlement Administrator will report this payment on IRS Form 1099 issued to the Settlement Administrator. except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$ __, the Administrator will retain the remainder in the Net Settlement Amount.~~

5. **Allocation of Net Settlement Amount.** The Net Settlement Amount shall be distributed pursuant to Labor Code § 2699(i) as follows:

a. 75% of the Net Settlement Amount shall be distributed to the LWDA;

b. 25% of the Net Settlement Amount shall be paid to Aggrieved Employees.

This portion of the Net Settlement Amount shall be paid to all Aggrieved Employees pro rata based on the proportional number of pay periods worked by each Aggrieved Employee during the PAGA Period.

This paragraph regarding allocation is based on the Parties' collective understanding that all payments will be considered "penalties" and that there will no employer-side tax consequence to Defendant as a result of an allocation of the penalty amount being wages. If the Parties later determine otherwise, they will meet and confer regarding changes to this allocation provision. The Parties agree that should the Court deny approval of the Settlement based on the allocation of the Net Settlement Amount, the Parties agree to re-negotiate in good faith in an effort to obtain approval of the Settlement.

3.2.4. ~~To Each Participating Class Member: An Individual Class Payment~~ calculated by (a) ~~dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and~~

~~(b) multiplying the result by each Participating Class Member's Workweeks.~~

3.2.4.1. ~~Tax Allocation of Individual Class Payments.~~ % ~~_____~~ of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage-claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The

~~% _____ of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for [e.g., interest and penalties] (the~~

~~_____ “Non-Wage Portion”).^{vi} The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.~~

~~3.2.4.2. _____ Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro-rata basis.~~

~~3.2.5. _____ To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$ _____ to be paid from the Gross Settlement Amount, with 75% _____ (\$ _____) allocated to the LWDA PAGA Payment and 25% (\$ _____) allocated to the Individual PAGA Payments.~~

~~3.2.5.1. _____ The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties \$ _____ by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee’s PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.~~

~~3.2.5.2. _____ If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.~~

~~4. _____ SETTLEMENT FUNDING AND PAYMENTS.~~

~~4.1. _____ Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, XYZ estimates there are _____ Class Members who collectively worked a total of _____ Workweeks, and _____ of Aggrieved Employees who worked a total _____ of PAGA Pay Periods.~~

~~4.2. _____ Class Data. Not later than [e.g., 15] days after the Court grants Preliminary Approval of the Settlement, XYZ will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members’ privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. XYZ has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which XYZ must send the Class Data~~

~~to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.~~

~~4.3. Funding of Gross Settlement Amount. XYZ shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay XYZ's share of payroll taxes by transmitting the funds to the Administrator no later than [14] days after the Effective Date.~~

~~4.4. Payments from the Gross Settlement Amount. Within [14] days after XYZ funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.~~

~~4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.~~

~~4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within [7] days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.~~

~~4.4.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks [to the California~~

~~Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).] [or to a Court approved nonprofit organization or foundation consistent with Code of Civil Procedure Section 384, subd. (b) ("Cy Pres Recipient") ____]. The Parties, Class Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient.~~

~~4.4.4. _____ The payment of Individual Class Payments and Individual PAGA Payments shall not obligate XYZ to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.~~

~~6. _____ RELEASES OF CLAIMS. Effective on the date when XYZ fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:~~

~~6.1 _____ Plaintiff's Release. Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences [that occurred during the Class Period], including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, [or ascertained during the Action and released under 6.2, below]. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.~~

~~6.1.1 _____ Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:~~

~~A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.~~

~~6.2 — Release by Participating Class Members Who Are Not Aggrieved Employees: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint [and ascertained in the course of the Action] [including, e.g., “(a) any and all claims involving any alleged failure to pay minimum wage; etc.]. Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.~~

~~6. Representative PAGA Release. In his capacity as a Private Attorney General or “aggrieved employee” acting on behalf of himself, the State of California and Aggrieved Employees, and in consideration of the enhancement award awarded to him, Plaintiff hereby releases Defendant and Released Parties, from any and all of the PAGA Released Claims that arose during the PAGA Period~~Release by Non-Participating Class Members Who Are Aggrieved Employees: ~~All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA-Period facts stated in the Operative Complaint[,] [and] the PAGA Notice [and ascertained in the course of the Action][including, e.g., “(a) any and all claims involving any alleged failure to pay minimum wage; etc.].~~

~~7. No Right to Opt-Out. The Parties agree that there is no statutory right for any Aggrieved Employee to opt-out or otherwise exclude himself or herself from the Settlement.~~

~~8. Covenants and Representations by Plaintiff and Plaintiff’s Counsel.~~

~~a. Plaintiff represents and warrants that he has not assigned or transferred or purported to assign or transfer, to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Settlement.~~

~~b. Plaintiff acknowledges that he has read this Settlement, that he fully understands his rights, privileges and duties under the Settlement, and enters into this Settlement freely and voluntarily, and without duress. Plaintiff further acknowledges that he had the opportunity to consult with his attorneys to explain the terms of this Settlement and the consequences of signing this Settlement.~~

~~9. Court Approval of PAGA Settlement. To permit judicial review and approval of the Settlement, as required by Labor Code Section 2698, et seq., Plaintiff’s Counsel will file the Agreement with the Court and submit the Agreement to the LWDA as part of Plaintiff’s motion seeking Court approval of the Settlement, per Lab. Code § 2699(1)(2).~~

~~10. Termination of Settlement. If the Court does not approve the Settlement, if the Court does not enter judgment, as provided for in this Settlement, or if appellate review is sought and, on such review, the Court’s decision is materially modified or reversed, or, except as otherwise set forth herein, if one or more of the terms of the Settlement is not approved or is~~

materially modified or reversed or found to be invalid, then either of the Parties shall have the right within ten (10) days of written notice thereof to elect to terminate the Settlement, in which case the Settlement shall have no force or effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Settlement.

6.311. **Judgment.** As part of the Motion to approve the Settlement, Plaintiff shall submit a proposed order and judgment which enters judgment in the Action in accordance with the terms of the Settlement and retains jurisdiction over the Action for the purpose of enforcing the terms of the Settlement following approval of the Settlement. This Settlement is expressly conditioned upon the Court entering judgment as set forth herein. The judgment will not release or bar any claims other than the PAGA Released Claims as to Plaintiff and Aggrieved Employees. Plaintiff's Counsel will further submit any judgment rendered in the Action and approving the PAGA Settlement to the LWDA, per Lab. Code § 2699(l)(3).

~~7. **MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's current checklist for Preliminary Approvals.~~

~~7.1 **XYZ's Declaration in Support of Preliminary Approval.** Within _____ days of the full execution of this Agreement, XYZ will prepare and deliver to Class Counsel a signed Declaration from XYZ and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator and Cy Pres Recipient. In their Declarations, Defense Counsel and XYZ shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.~~

~~7.2 **Plaintiff's Responsibilities.** Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members [and/or the proposed Cy Pres]; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration~~

~~from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, [and/or] the Administrator [and/or the proposed Cy Pres]; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (1)(1)), this Agreement (Labor Code section 2699, subd. (1)(2)); (vi) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator and/or the Cy Pres Recipient. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.~~

~~7.3 — Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than [30] days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.~~

~~7.4 — Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.~~

8.IV. SETTLEMENT ADMINISTRATION OF SETTLEMENT.

~~8.1.1. Selection of Administrator Settlement Administrator. The Parties have jointly selected to use Phoenix Class Action Administration Solutions to handle the administration of this Settlement.~~

~~_____ to serve as the Administrator and verified that, as a condition of appointment, _____ agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.~~

~~8.2 — Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.~~

~~8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.~~

~~8.4 Notice to Class Members.~~

~~2. **Provision of Information for Aggrieved Employees.** Within ten (10) business days of the Effective Date, Defendant shall provide the Settlement Administrator with information for Aggrieved Employees. Defendant will in good faith compile from its records a list of Aggrieved Employees that will be in a computer-readable format, such as a Microsoft Excel spreadsheet, and shall include each Aggrieved Employee’s full name, last known mailing address, total number of pay periods worked during the PAGA Period, and Social Security number. The list shall also include the sum total of all pay periods worked by Aggrieved Employees during the PAGA Period. Because Social Security numbers are included in the list, the Settlement Administrator will maintain the list in the highest of confidence, and access shall be limited to those with a need to use the list as part of the administration of the Settlement and none of the information contained in the list shall be disclosed to third Parties or to Plaintiff’s Counsel without the express written consent of counsel for Defendant.~~

~~Within seven (7) business days of receiving the Aggrieved Employees’ information from Defendant, the Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the estimated individual settlement payments to each Aggrieved Employee and the data used to calculate said payments. The Settlement Administrator shall also determine whether the Escalator Clause in Section III.3 has been triggered. The Settlement Administrator shall obtain approval from all counsel of the calculations before mailing Individual PAGA Payments.~~

~~3. **Explanatory Letter and Individual PAGA Payments.** Upon receipt of the information for Aggrieved Employees, the Settlement Administrator will perform a search on the National Change of Address database to update the Aggrieved Employees’ addresses.~~

~~Within two (2) business days of receiving approval from counsel of the payment calculations as provided above, the Settlement Administrator shall mail copies of the explanatory letter, which has been mutually approved by the Parties and is attached hereto as **Exhibit B**, in both English and Spanish, along with Individual PAGA Payments to all Aggrieved Employees via regular First-Class U.S. Mail.~~

~~The Settlement Administrator will calculate the amount to be received by each Aggrieved Employee, which will be based on the formula set forth in Section III.5., supra. The Settlement Administrator will send each Aggrieved Employee a check for his or her Individual PAGA Payment along with the explanatory letter. Checks will remain negotiable for 180 days. Each Individual PAGA Payment shall be deemed penalties/interest and reported using IRS Form 1099.~~

~~4. **Undeliverable Notices.** The Settlement Administrator shall exercise its best~~

judgment to determine the current mailing address for each Aggrieved Employee. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Aggrieved Employee.

Any checks returned as non-deliverable on or before the check cashing deadline will be re-sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace or other search using the name, address or Social Security number of the Aggrieved Employee involved and will perform a single re-mailing after which any returned checks will be deemed undeliverable.

The Settlement Administrator shall maintain a list of the postmark date for the original mailing of the Individual Settlement Payment(s) to the Aggrieved Employees, the postmark date of any subsequent mailing to any the Aggrieved Employees, and a list of Aggrieved Employees who did not receive the Individual Settlement Payment due to the inability to locate a valid address using the procedures described herein or who otherwise could not be located within two attempts at mailing.

Defendant fully discharges its obligations to those Aggrieved Employees to whom they will pay an Individual PAGA Payment through the mailing of a check, regardless of whether such checks are actually received and/or negotiated by Aggrieved Employees. Funds represented by checks returned as undeliverable after a re-mailing, and funds represented by checks remaining un-cashed for more than 180 days after issuance, will be tendered to the State Controller's Office pursuant to the Unclaimed Property Law, California Civil Code § 1500, et. seq. for the benefit of and in the name(s) of the Aggrieved Employees to whom the checks were issued but whom did not cash the checks. The unclaimed checks shall remain in the unclaimed property fund in the name of the Aggrieved Employee until such time that they claim their property (the Individual Settlement Payment), or the property is otherwise disposed of pursuant the Unclaimed Property Laws.

5. **Payment of Remainder.** Within two (2) business days of receiving approval from counsel of the payment calculations, the Settlement Administrator will distribute the following additional payments: (1) the 75% share of the Net Settlement Amount to the LWDA; (2) Court-approved attorneys' fees and costs to Plaintiff's Counsel; (3) Court-approved enhancement award to Plaintiff; and (4) Court-approved administration costs to the Settlement Administrator.

6. **Accounting.** Within fifteen (15) business days of receiving approval from counsel of the payment calculations, the Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid from the Settlement. The Settlement Administrator shall provide a further such accounting under oath, upon request, after the conclusion of the 180-day check cashing period.

7. **Tax Consequences.** Individual PAGA Payments made under this Settlement will be attributed 100% as penalties and paid via IRS Form 1099 issued to each Aggrieved Employee. No later than January 31 of the year following payment of their individual portion of the PAGA Payment, the Settlement Administrator will prepare and issue IRS Form 1099s to Aggrieved Employees who received a payment. Neither Plaintiff nor Defendant, nor counsel for either of the Parties, makes any representations or warranties with respect to tax consequences of any payment under this Settlement.

~~8.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.~~

~~8.4.2 Using best efforts to perform as soon as possible, and in no event later than [14] days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice [with Spanish translation, if applicable] substantially in the form attached to this Agreement as Exhibit __. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.~~

~~8.4.3 Not later than [3] business days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.~~

~~8.4.4 The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional [14] days beyond the [60] days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.~~

~~8.4.5 If the Administrator, XYZ or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than [14] days after~~

~~_____ receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.~~

~~8.5 Requests for Exclusion (Opt-Outs):~~

~~8.5.1 _____ Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than [60] days after the Administrator mails the Class Notice (plus an additional [14] days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.~~

~~8.5.2 _____ The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.~~

~~8.5.3 _____ Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 6.2 and~~

~~_____ 6.3 of this Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.~~

~~8.5.4 _____ Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph _____ 6.4 of this Agreement and are eligible for an Individual PAGA Payment.~~

~~8.6 _____ Challenges to Calculation of Workweeks. Each Class Member shall have [60] days after the Administrator mails the Class Notice (plus an additional [14] days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the~~

~~_____ Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.~~

~~8.7 _____ Objections to Settlement.~~

~~8.7.1 _____ Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.~~

~~8.7.2 _____ Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than [60] days after the Administrator's mailing of the Class Notice (plus an additional [14] days for Class Members whose Class Notice was re-mailed).~~

~~8.7.3 _____ Non-Participating Class Members have no right to object to any of the class action components of the Settlement.~~

~~8.8 _____ Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.~~

~~8.8.1 _____ Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.~~

~~8.8.2 _____ Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their~~

~~——— validity. Not later than [5] days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).~~

~~8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.~~

~~8.8.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.~~

~~8.8.5 Administrator’s Declaration. Not later than [14] days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.~~

~~8.8.6 Final Report by Settlement Administrator. Within [10] days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least [15] days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.~~

~~9. — CLASS SIZE ESTIMATES [and ESCALATOR CLAUSE] Based on its records, XYZ estimates that, as of the date of this Settlement Agreement, (1) there are _____ Class Members and _____ Total Workweeks during the Class period and (2) there were _____ Aggrieved Employees who worked _____ Pay Periods during the PAGA Period.”ii~~

~~10. — XYZ’S RIGHT TO WITHDRAW. If the number of valid Requests for Exclusion identified in the Exclusion List exceeds % _____ of the total of all Class Members, XYZ may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if XYZ withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, XYZ will remain responsible for paying all Settlement Administration Expenses incurred to that point. XYZ must notify Class Counsel and the Court of its election to withdraw not later than [seven] days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.~~

~~11. — MOTION FOR FINAL APPROVAL. Not later than [16] court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (1), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiff shall provide drafts of these documents to Defense Counsel not later than [seven] days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.~~

~~11.1 — Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than [five] court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.~~

~~11.2 — Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.~~

~~11.3 — Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing~~

~~_____settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.~~

~~11.48. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.~~

~~11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.~~

~~12. AMENDED JUDGMENT. If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.~~

13.V. MISCELLANEOUS ADDITIONAL PROVISIONS.

~~13.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by XYZ that any of the allegations in the Operative Complaint have merit or that XYZ has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that XYZ's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, XYZ reserves the right to contest certification of any class for any reasons, and XYZ reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest XYZ's defenses. The Settlement, this Agreement and Parties' willingness to~~

~~_____ settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).~~

~~13.2 — Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, XYZ and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties’ attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency.~~

~~_____ Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, XYZ and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that “the matter was resolved,” or words to that effect. This paragraph does not restrict Class Counsel’s communications with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.~~

~~13.3 — No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel’s ability to communicate with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.~~

~~13.4 — Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.~~

~~13.5 — Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and XYZ, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.~~

~~13.6 — Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement~~

~~the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.~~

~~13.7 — No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.~~

~~13.8 — No Tax Advice. Neither Plaintiff, Class Counsel, XYZ nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.~~

~~13.9 — Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.~~

~~13.10 — Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.~~

~~13.11 — Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.~~

~~13.12 — Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.~~

~~13.13 — Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.~~

~~13.14 — Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by XYZ in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from XYZ unless, prior to the Court's discharge of the Administrator's obligation, XYZ makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.~~

~~13.15 — **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.~~

~~13.16 — **Calendar Days.** Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.~~

~~2. — **Notice.** All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:~~

1. **Mutual Preparation and Drafting.** The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement. The Parties agree that the terms and conditions of this Settlement are the result of lengthy, intensive, arm’s-length negotiations between the Parties and that neither Plaintiff nor Defendant shall be considered the “drafter” of this Settlement for purposes of having terms construed against that Party. This Settlement will not be construed more strictly against one Party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm’s-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement.

2. **Successors.** This Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, assigns, administrators and successors.

3. **Costs and Fees.** The Parties shall each bear their own costs, attorneys’ fees, expert fees, mediator fees, and other fees incurred in connection with this Settlement, the Action and Plaintiff’s claims, except as otherwise set forth specifically herein.

4. **Governing Law.** This Settlement shall be construed under and governed by the laws of the State of California. This Settlement shall be deemed to have been entered into in the County of Los Angeles, California, and all questions of validity, interpretation or performance of any of its terms or of any rights or obligations of the Parties to this Settlement shall be governed by California law. If any legal or equitable action is necessary to enforce the terms of this Settlement, it shall be brought in the State of California, County of Los Angeles. Furthermore, this Settlement shall be valid and enforceable notwithstanding any new legal developments regarding the PAGA Released Claims or any other matter related to the Action occurring after the date this Agreement is executed by all Parties.

5. **Complete Agreement.** The Parties each acknowledge and represent that no promise or representation not contained in this Settlement has been made to them and acknowledge and represent that this Settlement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the PAGA Released Claims in the Action. This Settlement cannot be amended or modified except by a writing signed by the Parties hereto.

6. **Nullification of Settlement.** In the event that: (i) after good faith efforts to amend or modify the Agreement for Court approval the Court does not approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then this Settlement and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions unless otherwise required under this Agreement.

7. **Judgment and Continued Jurisdiction.** After approval of this Settlement, the Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement. Plaintiff will submit a proposed judgment in conformity with this Agreement to be entered by the Court, which shall constitute a final and binding resolution of the claims in the Action.

8. **Authorization to Enter into Settlement.** The signatories hereto represent that they are fully authorized to enter into this Settlement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

9. **Execution and Counterparts.** This Settlement is subject only to the execution of all Parties. However, the Settlement may be executed in one or more counterparts. All executed counterparts, and each of them, including facsimile, electronic signatures, and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange a fully executed Agreement. The Parties also agree that a facsimile, electronic, or scanned copy of the fully executed Agreement shall have the same force and effect as an original signed Agreement.

10. **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties believe this Settlement is a fair, adequate and reasonable settlement of the Action, and have arrived at this Settlement after arm's-length negotiations by experienced counsel and with the assistance of an experienced mediator. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

11. **Invalidity of Any Provision.** Before declaring any provision of this Settlement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Settlement valid and enforceable.

12. **Severability.** If any term or provision of this Settlement is held to be invalid or unenforceable, the remaining portions of this Settlement will continue to be valid and will be performed, construed and enforced to the fullest extent permitted by law, and the invalid or

unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

13. **Waiver.** No waiver of any condition or covenant contained in this Settlement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right or remedy.

14. **Representation by Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement, and this Settlement has been executed with the consent and advice of counsel and reviewed in full.

15. **Enforcement Action.** The Parties hereby agree this Agreement is enforceable under Code of Civil Procedure section 664.6, so as to allow the Parties to enforce the terms of their settlement until performance has been made in full. In the event that one more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this Settlement Agreement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions

IN WITNESS THEREOF, the Parties each acknowledge that they have read the foregoing Settlement, accept and agree to the provisions contained in this Settlement and hereby execute it voluntarily and with full understanding of its consequences.

To Plaintiff:

To XYZ:

13.17 ~~Execution in Counterparts.~~ This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

3. ~~Stay of Litigation.~~ The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to

APPROVED AS TO FORM AND CONTENT:

 Counsel For Plaintiff Counsel For
XYZ

Dated: _____

By: _____

Its: _____

PABCO Building Products, LLC, Defendant

By: _____
Scott M. Lidman
Attorneys for Plaintiff, Howard Kincherlow

Dated: **PALMER KAZANJIAN WHOL HODSON LLP**

By: _____

Larry M. Kazanjian

Attorneys for Defendant, PABCO Building
Products, LLC,

**COURT APPROVED NOTICE OF CLASS ACTION PAGA SETTLEMENT
AND HEARING DATE FOR FINAL COURT APPROVAL RELEASE OF
CLAIMS**

(case name and number)

Howard Kincherlow v. PABCO Building Products, LLC

Los Angeles County Superior Court Case No. 23STCV07711

<<Name>>

<<Address>>

<<City>>, <<State>> <<Zip Code>>

XX - XX -

I. NOTICE OF PAGA SETTLEMENT

The Los Angeles County Superior Court (the “Court”) has approved a settlement in the above-captioned action filed by Howard Kincherlow (“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 PABCO Building Products, LLC (“PABCO”): (1) failed to pay all minimum wages owed; (2) failed to pay all overtime wages owed; (3) failed to provide legally compliant meal periods; (4) failed to permit and authorize legally compliant rest periods; (5) failed to provide accurate, itemized wage statements; (6) failed to maintain accurate records; (7) failed to pay all wages at least twice a calendar month; and (8) 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.

PABCO 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 PABCO Building Products, LLC who worked in California at any time from January 31, 2022 through [INSERT DATE OF APPROVAL].”

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 PABCO 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 PABCO 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 letter to the LWDA, that arose during the PAGA Period, with respect to the following claims: (a) failure to pay all minimum wages owed; (b) failure to pay all overtime wages owed; (c) failure to provide meal periods, or premium pay for non-compliant meal periods; (d) failure to authorize and permit rest periods, or premium pay for non-complaint rest periods; (e) failure to provide accurate, itemized wage statements; (f) failure to timely pay wages upon separation of employment; and (g) failing to pay all wages at least twice a calendar month; and (h) failing to maintain accurate records ("PAGA Released Claims"). The PAGA Released Claims herein does not release the Released Parties from any underlying Labor Code violations upon which Plaintiff's Cause of Action for PAGA is based.

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, which means claims for civil penalties, but not claims for unpaid wages or statutory penalties recoverable under the Labor Code and/or Wage Orders for the violations alleged in this Lawsuit.

IV. SETTLEMENT ADMINISTRATOR

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

You may call the Settlement Administrator, **Phoenix Class Action Administration Solutions** 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.

***~~The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.~~***

~~**You may be eligible to receive money** from an employee class action lawsuit ("Action") against _____ (abbreviate name; "XYZ" is used herein as a placeholder) for alleged wage and hour violations. The Action was filed by a[n][former] XYZ employee _____ ("Plaintiff") and seeks payment of (1) back wages [and other relief] for a class of [e.g., hourly] employees ("Class Members") who worked for XYZ during the Class Period (_____ to _____); and (2) penalties under the California Private Attorney General Act ("PAGA") for all [e.g., hourly] employees who worked for XYZ during the PAGA Period (_____ to _____) ("Aggrieved Employees").~~

~~The proposed Settlement has two main parts: (1) a Class Settlement requiring XYZ to fund Individual Class Payments, and (2) a PAGA Settlement requiring XYZ to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency ("LWDA").~~

~~Based on XYZ's records, and the Parties' current assumptions, **your Individual Class Payment is estimated to be \$_____ (less withholding) and your Individual PAGA Payment is estimated to be \$_____.** The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to XYZ's records you are not eligible for an Individual PAGA Payment under the Settlement because you didn't work during the PAGA Period.)~~

~~The above estimates are based on XYZ's records showing that **you worked _____ workweeks** during the Class Period and **you worked _____ workweeks** during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.~~

~~The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires XYZ to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against XYZ.~~

~~If you worked for XYZ during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:~~

~~(1) Do Nothing.~~ You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class-Period wage claims and PAGA Period penalty claims against XYZ.

~~(2) Opt-Out of the Class Settlement.~~ You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against XYZ, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

~~XYZ will not retaliate against you for any actions you take with respect to the proposed Settlement.~~

~~SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT~~

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against XYZ that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is _____	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. XYZ must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by _____	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.

You Can Participate in the _____ Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on _____. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by _____	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Pay Periods you worked according to XYZ's records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 4 of this Notice.

~~1. WHAT IS THE ACTION ABOUT?~~

Plaintiff is a[n] [former] XYZ employee. The Action accuses XYZ of violating California labor laws by failing to pay [e.g., overtime wages, minimum wages, wages due upon termination and reimbursable expenses] and failing to provide [e.g., meal periods, rest breaks and accurate itemized wage statements]. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) ("PAGA"). Plaintiff is represented by attorneys in the Action:

_____ ("Class Counsel.")

XYZ strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

~~2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?~~

So far, the Court has made no determination whether XYZ or Plaintiff is correct on the merits.

In the meantime, Plaintiff and XYZ hired ☐ an experienced, neutral mediator ☐ a retired judge

☐ _____ (describe alternative means of negotiation) _____

in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and XYZ have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, XYZ does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) XYZ has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

~~3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?~~

1. ~~XYZ Will Pay \$ _____ as the Gross Settlement Amount (Gross Settlement). XYZ has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, XYZ will fund the Gross Settlement not more than [14] days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.~~

2. ~~Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:~~

A. ~~Up to \$ _____ (_____ % of the Gross Settlement] to Class Counsel for attorneys' fees and up to \$ _____ for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.~~

B. ~~Up to \$ _____ as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.~~

C. ~~Up to \$ _____ to the Administrator for services administering the Settlement.~~

D. ~~Up to \$ _____ for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.~~

~~Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.~~

3. ~~Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross~~

Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.

4. ~~Taxes Owed on Payments to Class Members.~~ Plaintiff and XYZ are asking the Court to approve an allocation of % _____ of each Individual Class Payment to taxable wages (“Wage Portion”) and % _____ to [e.g., interest, etc.] (“Non-Wage Portion.”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. [Option 1: (XYZ will separately pay employer payroll taxes it owes on the Wage Portion.)] The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and XYZ have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. ~~Need to Promptly Cash Payment Checks.~~ The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies

☐ will be deposited with the California Controller's Unclaimed Property Fund in your name.

☐ will irrevocably lost to you because they will be paid to a non-profit organization or foundation (“Cy Pres”).

If the monies represented by your check is sent to the Controller’s Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. ~~Requests for Exclusion from the Class Settlement (Opt-Outs).~~ You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than _____, that you wish to opt out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the _____ Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member’s name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against XYZ.

You cannot opt out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against XYZ based on the PAGA Period facts alleged in the Action.

- ~~7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and XYZ have agreed that, in either case, the Settlement will be void: XYZ will not pay any money and Class Members will not release any claims against XYZ.~~
- ~~8. Administrator. The Court has appointed a neutral company, _____ (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.~~
- ~~9. Participating Class Members’ Release. After the Judgment is final and XYZ has fully funded the Gross Settlement [Option 1: (and separately paid all employer payroll taxes)], Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against XYZ or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.~~

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint [and ascertained in the course of the Action] [including, e.g., “(a) any and all claims involving any alleged failure to pay minimum wage; etc.]. Except as set forth in Section 6.3 of the Settlement Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.^{viii}

- ~~10. Aggrieved Employees’ PAGA Release. After the Court’s judgment is final, and XYZ has paid the Gross Settlement (and separately paid the employer-side payroll taxes), all Aggrieved Employees will be barred from asserting PAGA claims against XYZ, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against XYZ or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.~~

~~The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:~~

~~All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties, from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint[,] [and] the PAGA Notice [and ascertained in the course of the Action][including, e.g., (a) any and all claims involving any alleged failure to pay minimum wage; etc.].~~

~~4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?~~

- ~~1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.~~
- ~~2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$_____ by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.~~
- ~~3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in XYZ's records, are stated in the first page of this Notice. You have until _____ to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.~~

~~You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept XYZ's calculation of Workweeks and/or Pay Periods based on XYZ's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and XYZ's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.~~

~~5. HOW WILL I GET PAID?~~

- ~~1. **Participating Class Members.** The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.~~
- ~~2. **Non-Participating Class Members.** The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).~~

~~**Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.**~~

~~6. **HOW DO I OPT OUT OF THE CLASS SETTLEMENT?**~~

~~Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as _____, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by _____, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.~~

~~7. **HOW DO I OBJECT TO THE SETTLEMENT?**~~

~~Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and XYZ are asking the Court to approve. At least _____ days before the _____ Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website _____ (url) _____ or the Court's website _____ (url) _____.~~

~~A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is _____.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action _____ and include your name, current address,~~

telephone number, and approximate dates of employment for [XYZ] and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

~~8. CAN I ATTEND THE FINAL APPROVAL HEARING?~~

You can, but don't have to, attend the Final Approval Hearing on _____ at ~~(time)~~ in Department [7] of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via LACourtConnect (<https://www.lacourt.org/lacc/>). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website _____ beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

~~9. HOW CAN I GET MORE INFORMATION?~~

The Agreement sets forth everything XYZ and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to _____ (specify entity) 's website at _____ (url) _____. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.lacourt.org/casesummary/ui/index.aspx>) and entering the Case Number for the Action, Case No. _____. You can also make an appointment to personally review court documents in the Clerk's Office at the Stanley Mosk Courthouse by calling (213) 830-0800.

~~DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.~~

Class Counsel:-

Name of Attorney:-

Email Address:-

Name of Firm:-

Mailing Address:-

Telephone:-

Settlement Administrator:-

Name of Company:-

Email Address:
Mailing Address:
Telephone:
Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void

- ☐ you should consult the Unclaimed Property Fund _____ for instructions on how to retrieve the funds
- ☐ you will have no way to recover the money.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

ⁱ This Model Class Action and PAGA Settlement Agreement has been approved by the Court, the Complex litigation judges, and a 2022 Ad Hoc Wage and Hour Committee co-chaired by Judge David Cunningham and Judge Amy Hogue and comprised of 16 attorneys who regularly represent plaintiffs and defendants in wage and hour case. It is written for settlements of single plaintiff wage and hour actions asserting class claims and PAGA claims against a single employer (XYZ). The parties will need to revise this form if there are multiple plaintiffs or multiple defendants. For settlements of wage and hour class actions that do not include PAGA claims, please use the Model Class Action Settlement Agreement and Class Notice. ~~THE COURT ASKS ALL COUNSEL USING THIS MODEL AGREEMENT TO ATTACH A REDLINED VERSION TO THEIR MOTIONS FOR APPROVAL SO THAT THE COURT CAN EASILY SEE EXACTLY HOW THE PARTIES HAVE MODIFIED THIS MODEL AGREEMENT.~~

ⁱⁱ Whether the “date of preliminary approval” yields a fair and adequate payment to Class Members may depend on whether the Class Members, in exchange for their releases of claims, receive consideration for time worked between the date when parties reached a settlement and the date of preliminary approval. The Parties’ *Kullar* analysis must give the Court sufficient information to allow the Court to determine whether the Gross Settlement Amount “represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation.” (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 94–95, internal quotation marks omitted.)

ⁱⁱⁱ See endnote ii above.

^{iv} The Parties may need to tailor this language to pay periods or shifts depending on the facts of the case.

^v The Parties are free to negotiate a payment plan structure, if appropriate, and payment deadlines may fall earlier as necessary thereto.

^{vi} Note that this is not the only possible appropriate breakdown depending on the claims at issue in the case (e.g. a settlement that is solely a Labor Code Section 226(a) claim.)

^{vii} Insert negotiated terms, if any, addressing the possibility that XYZ’s estimates of class size, Workweeks or Pay Periods turn out to be understated such as an ADR clause imposing a duty to engage in good faith negotiations or mediation or an “escalator” clause memorializing XYZ’s promise to increase the Gross Settlement Amount in an agreed upon proportion to the percentage by which the calculated class size, Workweeks, or Pay Periods exceeds XYZ’s estimates.

^{viii} Releases in Notice should track the releases in the Settlement Agreement.

EXHIBIT 4

EXHIBIT 4

LAFFEY MATRIX

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[See the Matrix](#)
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			Years Out of Law School *				
Year	Adjustmt Factor**	Paralegal/ Law Clerk	1-3	4-7	8-10	11-19	20 +
6/01/23- 5/31/24	1.059295	\$239	\$437	\$538	\$777	\$878	\$1057
6/01/22- 5/31/23	1.085091	\$225	\$413	\$508	\$733	\$829	\$997
6/01/21- 5/31/22	1.006053	\$208	\$381	\$468	\$676	\$764	\$919
6/01/20- 5/31/21	1.015894	\$206	\$378	\$465	\$672	\$759	\$914
6/01/19- 5/31/20	1.0049	\$203	\$372	\$458	\$661	\$747	\$899
6/01/18- 5/31/19	1.0350	\$202	\$371	\$455	\$658	\$742	\$894
6/01/17- 5/31/18	1.0463	\$196	\$359	\$440	\$636	\$717	\$864
6/01/16- 5/31/17	1.0369	\$187	\$343	\$421	\$608	\$685	\$826
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406
6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375

6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363
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The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., *DL v. District of Columbia*, 267 F.Supp.3d 55, 69 (D.D.C. 2017)

* $\frac{1}{2}$ Years Out of Law School $\frac{1}{2}$ is calculated from June 1 of each year, when most law students graduate. $\frac{1}{2}$ 1-3" includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). $\frac{1}{2}$ 4-7" applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier $\frac{1}{2}$ 1-3" from June 1, 1996 until May 31, 1999, would move into tier $\frac{1}{2}$ 4-7" on June 1, 1999, and tier $\frac{1}{2}$ 8-10" on June 1, 2003.

** The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.

EXHIBIT 5

EXHIBIT 5

Expense Summary
Howard Kincherlow v. PABCO Building Products, LLC

EXPENSE	AMOUNT
Mediation Costs (including Plaintiff's portion of mediator expenses)	\$6,250.00
Filing, Service and Messenger Fees	\$2,513.13
Expert Fees	\$5,880.00
Copying Costs	\$37.50
Postage Costs	\$21.72
Document Purchase Costs	\$21.00
Anticipated Costs (costs for court appearances, filing of instant motion, service fees, copying and postage)	\$450.00
TOTAL:	\$15,173.35

EXHIBIT 6

EXHIBIT 6

From: [DIR PAGA Unit](#)
To: [Marlyn Ajanel](#)
Subject: Thank you for your Proposed Settlement Submission
Date: Monday, November 11, 2024 3:32:13 PM

11/11/2024 03:31:52 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm