

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:

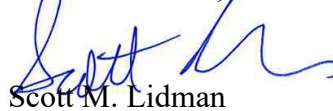
- a) Defendant violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Mr. Kincherlow and other Aggrieved Employees the statutory minimum wage for all hours worked;
- b) Defendant violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Kincherlow and other Aggrieved Employees 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.