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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]

**[PROPOSED] ORDER AND JUDGMENT
GRANTING PLAINTIFF'S 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.
Department: 57
Reservation ID: 064764038778

Complaint Filed: April 7, 2023
Trial Date: None Set

1 This matter came on regularly for hearing before this Court on December 12, 2024 at 8:30 a.m.
2 Having considered the Parties' PAGA Settlement Agreement ("Settlement"), the documents and
3 evidence presented in support thereof, and recognizing the disputed factual and legal issues involved
4 in this case, the risks of further prosecution, protracted litigation, and costs and expenses associated
5 therewith, the substantial benefits to be received by the State of California and the Aggrieved
6 Employees pursuant to the Settlement, the fair, reasonable, and adequate nature of the settlement
7 obtained as a result of good faith arm's-length negotiations between the parties, the Court hereby makes
8 a final ruling that the settlement is approved pursuant to Labor Code § 2699(1). Good cause appearing
9 therefor, the Court hereby GRANTS Plaintiff's Motion for Settlement Approval of Claims brought
10 under the Private Attorneys General Act and Reasonable Attorneys' Fees, Costs, and Enhancement
11 Award and ORDERS as follows:

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

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

17 2. The "PAGA Period" means the time period from January 31, 2022 through the date the
18 Court grants approval of this settlement.

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

22 4. The Court orders that PABCO Building Products, LLC (Defendant") shall deposit the
23 Gross Settlement Amount of Three Hundred Thousand Dollars and Zero Cents (\$300,000.00) to the
24 Settlement Administrator within thirty (30) calendar days of the Court's issuing an order.²

25 ¹ All terms and definitions set forth in the Settlement Agreement are incorporated by reference into
26 this Order.

27 ² Based on its records, Defendant estimates that there were 9,166 pay periods worked by Aggrieved
28 Employees during the PAGA Period. In the event that the final number of PAGA Pay Periods during
the PAGA Period exceeds 10,081 pay periods, Defendant shall increase the GSA on a proportional basis
equal to the percentage increase in the number of pay periods worked by the PAGA Period above the
10 percent. *See* Settlement, Sec. III.3.

1 5. The Court hereby approves, as to form and content, the Notice of PAGA Settlement and
2 Release of Claims attached to the Settlement as **Exhibit B**, and attached to this Order and Judgment as
3 **Exhibit A**.

4 6. The Court hereby appoints Phoenix Settlement Administrators as Settlement
5 Administrator.

6 7. Within ten (10) business days after the Effective Date, the date in which entry of an
7 order by the Court approving this settlement agreement, Defendant shall provide the Settlement
8 Administrator with information for Aggrieved Employees. Defendant will in good faith compile from
9 its records a list of Aggrieved Employees that will be in a computer-readable format, such as a
10 Microsoft Excel spreadsheet, and shall include each Aggrieved Employee's full name, last known
11 mailing address, total number of pay periods during the PAGA Period, and Social Security number.

12 8. Within seven (7) business days of receiving the Aggrieved Employees' information
13 from Defendants, the Settlement Administrator will circulate to counsel for all Parties an anonymized
14 spreadsheet containing the Individual Settlement Payments to each Aggrieved Employee and the data
15 used to calculate said payments. The Settlement Administrator shall also determine whether the
16 Escalator Clause in Section III.3 of the Settlement has been triggered. The Settlement Administrator
17 shall obtain approval from all counsel for all Parties of the calculations before mailing Individual
18 Settlement Payments. Within two (2) business days of receiving approval from counsel of the payment
19 calculations, Phoenix Settlement Administrators is directed to mail the Individual Settlement Payments
20 and the Notice of Settlement to the Aggrieved Employees. A true and correct copy of the proposed
21 Notice agreed upon by the Parties to be mailed to the Aggrieved Employees is attached hereto as
22 **Exhibit A**.

23 9. The Court finds that attorneys' fees in the total amount of \$100,000.00 for Lidman Law,
24 APC ("Plaintiff's Counsel"), and reimbursement of litigation costs in the amount of \$15,173.35 to
25 Plaintiff's Counsel are fair, reasonable, and adequate, and orders that the Settlement Administrator
26 distribute these payments to Plaintiff's Counsel as provided for in the Settlement. Within two (2)
27 business days of receiving approval from counsel of the payment calculations as provided for in
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Paragraph 8 above, Phoenix Settlement Administrators is directed to distribute to Plaintiff's counsel the Court-approved attorneys' fees and costs.

10. The Court orders that the Settlement Administrator shall be paid \$4,500.00 for all of its work done and to be done until the completion of this matter and finds that sum appropriate.

11. The Court finds that enhancement award/general release payment of \$7,500.00 to Plaintiff Howard Kincherlow, is fair and reasonable in recognition of the unique contributions he has made, the risks he undertook on behalf of the Aggrieved Employees and the State of California. Within two (2) business days of receiving approval from counsel of the payment calculations as provided for in Paragraph 8 above, the Settlement Administrator is directed to distribute to Plaintiff the Court-approved enhancement award.

12. The Court finds that the amount from the Gross Settlement Amount remaining after deductions for: (i) Plaintiff's Counsel's attorneys' fees and costs, (ii) enhancement award to Plaintiff; and (iii) Settlement Administrator fees ("Net Settlement Amount") which is \$172,826.65 shall be distributed as follows: 75% or \$129,619.99 shall to be paid to the California Labor and Workforce Development Agency ("LWDA") and 25% or \$43,206.66 to be distributed to the Aggrieved Employees *pro rata* based on the proportional number of pay periods worked by each Aggrieved Employee during the PAGA Period, as provided for in the Settlement. The Court finds that these amounts and the distribution formula as set forth in the Settlement is fair, adequate, and reasonable, and orders that payment be made to the LWDA and Aggrieved Employees in accordance with the terms of the Settlement.

13. The Court hereby approves the limited scope of the release as set forth in the Settlement. Specifically, following entry of this Order and Final Judgment, Plaintiff, the State of California, and all Aggrieved Employees shall and will fully and finally release 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 ("Released Parties") from any and all claims, rights, demands, liabilities and causes of action for civil penalties under the Labor Code and

1 Private Attorneys General Act (“PAGA”), Labor Code § 2698 et seq., against the Released Parties as
2 pled in the Action, or which could have been pled in the Action based on the factual allegations therein
3 and alleged in Plaintiff’s January 31, 2023 letter to the LWDA, that arose during the PAGA Period,
4 with respect to the following claims: (a) failure to pay all minimum wages owed; (b) failure to pay all
5 overtime wages owed; (c) failure to provide meal periods, or premium pay for non-compliant meal
6 periods; (d) failure to authorize and permit rest periods, or premium pay for non-complaint rest periods;
7 (e) failure to provide accurate, itemized wage statements; (f) failure to timely pay wages upon
8 separation of employment; (g) failing to pay all wages at least twice a calendar month; and (h) failing
9 to maintain accurate records (“PAGA Released Claims”).

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

14 15. Upon entry of this Final Order and Judgment, the Court permanently enjoins and forever
15 bars Plaintiff and the Aggrieved Employees from instituting or prosecuting any action, claim, cause of
16 action, and/or issue against the Released Persons which was and/or were resolved as part of the
17 Settlement. Without affecting the finality of this Final Order and Judgment in any way, the Court
18 retains jurisdiction to enforce the terms of the Settlement.

19 16. Plaintiff shall file a declaration confirming the final distribution of funds on or before
20 July 31, 2025.

21 **IT IS SO ORDERED.**

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23 Dated: _____, 2024

By: _____

Honorable Michael Small
Judge of the Superior Court

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EXHIBIT A

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>>

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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.