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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

SEAN SMITH, in a Representative capacity
only, and on behalf of other members of the
general public similarly situated,

Plaintiff,

vs.

TAP PLASTIC, INC., a California Corporation,
and DOES 1-10, inclusive,

Defendants.

Case No.: STK-CV-UOE-2023-0005825

**JOINT STIPULATION OF CLASS ACTION
AND PAGA SETTLEMENT AND RELEASE**

1 **JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT AND RELEASE**

2 This Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement” or
3 “Settlement Agreement”) is made and entered into by and between Plaintiff Sean Smith (“Plaintiff” or
4 “Class Representative”), as an individual and on behalf of all others similarly situated, and Defendant
5 TAP Plastics, Inc. (“Defendant”) (collectively with Plaintiff, the “Parties”).

6 **DEFINITIONS**

7 The following definitions are applicable to this Settlement Agreement. Definitions contained
8 elsewhere in this Settlement Agreement will also be effective:

9 1. “Action” means *Smith v. Tap Plastics, Inc.*, No. STK-CV-UOE-2023-0005825 (San
10 Joaquin County Superior Court).

11 2. “Attorneys’ Fees and Costs” means attorneys’ fees agreed upon by the Parties and
12 approved by the Court for Class Counsel’s litigation and resolution of the Action, and all out-of-pocket
13 costs incurred and to be incurred by Class Counsel in the Action, including but not limited to
14 expert/consultant fees, investigation costs, and costs associated with documenting the Settlement,
15 providing any notices required as part of the Settlement or Court order, securing the Court’s approval of
16 the Settlement, administering the Settlement, and obtaining entry of a Judgment terminating the Action.
17 Class Counsel will request attorneys’ fees not in excess of one-third (1/3) of the Gross Settlement
18 Amount, or Eighty-Eight Thousand Three Hundred Thirty-Three Dollars (\$88,333). The Attorneys’
19 Fees and Costs will also mean and include the additional reimbursement of any costs and expenses
20 associated with Class Counsel’s litigation and settlement of the Action, up to Thirteen Thousand Dollars
21 (\$13,000) subject to the Court’s approval. Defendant has agreed not to oppose Class Counsel’s request
22 for fees and reimbursement of costs as set forth above.

23 3. “Class Counsel” means Capstone Law APC and Sullivan & Yaeckel Law Group, APC.

24 4. “Class List” means a complete list of all Class Members that Defendant will diligently
25 and in good faith compile from its records and provide to the Settlement Administrator within twenty
26 (20) calendar days after Preliminary Approval of this Settlement. The Class List will be formatted in
27 Microsoft Office Excel and will include each Class Member’s full name; most recent mailing address
28 and telephone number; Social Security number; dates of employment; the respective number of

1 Workweeks that each Class Member worked during the Class Period and PAGA Period; and any other
2 relevant information needed to calculate settlement payments.

3 5. “Class Member(s)” or “Settlement Class” means all persons who worked for Defendant
4 as non-exempt, hourly paid employees in the State of California at any time from March 21, 2022
5 through June 27, 2024 .

6 6. “Class Notice” means the Notice of Class Action Settlement, substantially in the form
7 attached as Exhibit A.

8 7. “Class Period” means the period from March 21, 2022 through June 27, 2024 .

9 8. “Class Representative Enhancement Payment” means the amount to be paid to Plaintiff
10 in recognition of his effort and work in prosecuting the Action on behalf of Class Members, and for his
11 general release of claims. Subject to the Court granting final approval of this Settlement Agreement and
12 subject to the exhaustion of any and all appeals, Plaintiff will request Court approval of a Class
13 Representative Enhancement Payment of up to Ten Thousand Dollars (\$10,000).

14 9. “Court” means the San Joaquin County Superior Court.

15 10. “Defendant” means Defendant TAP Plastics, Inc.

16 11. “Effective Date” means the later of: (a) if no timely objections are filed, or are
17 withdrawn prior to Final Approval, then the date of Final Approval; or (b) if a Class Member files an
18 objection to the Settlement, the Effective Date shall be the sixty-first (61st) calendar day after the date of
19 Final Approval, provided no appeal is initiated by an objector; or (c) if a timely appeal is initiated by an
20 objector, then the Effective Date will be the date of final resolution of that appeal (including any requests
21 for rehearing and/or petitions for certiorari), resulting in final judicial approval of the Settlement.

22 12. “Final Approval” means the date on which the Court enters an order granting final
23 approval of the Settlement Agreement.

24 13. “Gross Settlement Amount” means the Gross Settlement Amount of Two Hundred
25 Sixty-Five Thousand Dollars (\$265,000), to be paid by Defendant in full satisfaction of all Released
26 Class Claims and Released PAGA Claims, which includes all Individual Settlement Payments,
27 Attorneys’ Fees and Costs, the Class Representative Enhancement Payment, the PAGA Settlement
28 Amount, and Settlement Administration Costs. This Gross Settlement Amount has been agreed to by

1 Plaintiff and Defendant based on the aggregation of the agreed-upon settlement value of individual
2 claims. In no event will Defendant be liable for more than the Gross Settlement Amount except as
3 otherwise explicitly set forth herein. There will be no reversion of the Gross Settlement Amount to
4 Defendant. Defendant will be separately responsible for any employer payroll taxes required by law,
5 including the employer FICA, FUTA, and SDI contributions, which shall not be paid from the Gross
6 Settlement Amount.

7 14. "Individual Settlement Payment" means each Participating Class Member's and PAGA
8 Member's respective shares of the Net Settlement Fund and PAGA Fund.

9 15. "Net Settlement Fund" means the portion of the Gross Settlement Amount remaining
10 after deducting the Attorneys' Fees and Costs, the Class Representative Enhancement Payment, the
11 PAGA Settlement Amount, and Settlement Administration Costs. The Net Settlement Fund will be
12 distributed to Participating Class Members. There will be no reversion of the Net Settlement Fund to
13 Defendant.

14 16. "Notice of Objection" means a Class Member's valid and timely written objection to the
15 Settlement Agreement. For the Notice of Objection to be valid, it must include: (a) the objector's full
16 name, signature, address, and telephone number, (b) a written statement of all grounds for the objection
17 accompanied by any legal support for such objection; (c) copies of any papers, briefs, or other
18 documents upon which the objection is based; and (d) a statement whether the objector intends to appear
19 at the final fairness hearing.

20 17. "PAGA Members" means all persons who worked for Defendant as non-exempt, hourly
21 paid employees in the State of California at any time from March 21, 2022 through June 27, 2024 .

22 18. "PAGA Period" means the period from March 21, 2022 through June 27, 2024 .

23 19. "PAGA Settlement Amount" means the amount that the Parties have agreed to pay to
24 the Labor and Workforce Development Agency ("LWDA") and PAGA Members in connection with
25 Plaintiff's claim under the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698,
26 *et seq.*, "PAGA") ("PAGA Settlement"). The Parties have agreed that Thirty Thousand Dollars
27 (\$30,000) of the Gross Settlement Amount will be allocated to the PAGA Settlement. Pursuant to
28 PAGA, Seventy-Five Percent (75%), or Twenty-Two Thousand Five Hundred Dollars (\$22,500), of the

1 PAGA Settlement Amount will be paid to the LWDA (“LWDA Payment”), and Twenty-Five Percent
2 (25%), or Seven Thousand Five Hundred Dollars (\$7,500) (“PAGA Fund”), of the PAGA Settlement
3 will be disbursed to PAGA Members, and regardless whether they request to be excluded from the
4 Settlement Class.

5 20. “Parties” means Plaintiff and Defendant collectively.

6 21. “Participating Class Members” means all Class Members who do not submit timely and
7 valid Requests for Exclusion.

8 22. “Plaintiff” means Plaintiff Sean Smith.

9 23. “Preliminary Approval” means the date on which the Court enters an order granting
10 preliminary approval of the Settlement Agreement.

11 24. “Released Class Claims” means all claims, rights, demands, liabilities, and causes of
12 action, reasonably arising from, or reasonably related to, the same set of operative facts as those set forth
13 in the operative complaint during the Class Period, including: (a) all claims for unpaid overtime; (b) all
14 claims for meal and rest break violations; (c) all claims for unpaid minimum wages; (d) all claims for the
15 failure to timely pay wages upon termination based on the preceding claims; (e) all claims for the failure
16 to reimburse for necessary business expenses; (f) all claims for the failure to timely pay wages during
17 employment based on the preceding claims; (g) all claims for wage statement violations based on the
18 preceding claims; and (h) all claims asserted through California Business & Professions Code §§ 17200,
19 *et seq.*

20 25. “Released PAGA Claims” means all claims for civil penalties under California Labor
21 Code §§ 2698, *et seq.*, that were brought or could reasonably have been brought based on the same facts
22 alleged in Plaintiff’s LWDA letter and/or the operative complaint during the PAGA Period.

23 26. “Released Parties” means Defendant, its past or present officers, directors, shareholders,
24 agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and
25 its respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys, if any.

26 27. “Request for Exclusion” means a timely letter submitted by a Class Member indicating a
27 request to be excluded from the Settlement Class. The Request for Exclusion must: (a) set forth the
28 name, address, telephone number and last four digits of the Social Security Number of the Class

1 Member requesting exclusion; (b) be signed by the Class Member; (c) be returned to the Settlement
2 Administrator; (d) clearly state that the Class Member does not wish to be included in the Settlement;
3 and (e) be faxed or postmarked on or before the Response Deadline.

4 28. “Response Deadline” means the deadline by which Class Members must postmark or
5 fax to the Settlement Administrator Requests for Exclusion, postmark or fax disputes concerning the
6 calculation of Individual Settlement Payments, or postmark Notices of Objection to the Settlement
7 Administrator. The Response Deadline will be forty-five (45) calendar days from the initial mailing of
8 the Class Notice by the Settlement Administrator, unless the forty-fifth (45th) calendar day falls on a
9 Sunday or State holiday, in which case the Response Deadline will be extended to the next day on which
10 the U.S. Postal Service is open.

11 29. “Settlement Administration Costs” means the costs payable from the Gross Settlement
12 Amount to the Settlement Administrator for administering this Settlement, including, but not limited to,
13 printing, distributing, and tracking documents for this Settlement, tax reporting, distributing the Gross
14 Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The
15 Settlement Administration Costs will be paid from the Gross Settlement Amount, including, if necessary,
16 any such costs in excess of the amount represented by the Settlement Administrator as being the
17 maximum costs necessary to administer the Settlement. Based on an estimated Settlement Class of
18 approximately One Hundred Fifty-Nine (159) Class Members, the Settlement Administration Costs are
19 currently estimated to be Six Thousand Five Hundred Dollars (\$6,500).

20 30. “Settlement Administrator” means ILYM, or any other third-party class action
21 settlement administrator agreed to by the Parties and approved by the Court for the purposes of
22 administering this Settlement. The Parties each represent that they do not have any financial interest in
23 the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that
24 could create a conflict of interest.

25 31. “Workweeks” means the number of days of employment for each Class Member during
26 the Class Period, subtracting days on leave of absence (if any), dividing by seven (7), and rounding up to
27 the nearest whole number. All Class Members will be credited with at least one Workweek during the
28 Class Period, and all PAGA Members will be credited with at least one Workweek during the PAGA

Period.

TERMS OF AGREEMENT

The Plaintiff, on behalf of himself and the Settlement Class, and Defendant agree as follows:

32. First Amended Complaint. As a condition of settlement, Plaintiff will file a First Amended Complaint (“FAC”) to conform the pleadings with the scope of the Released Class Claims and Released PAGA Claims. Defendant will not be required to file an answer or other responsive pleading to the FAC. If, for any reason, the Court does not approve of the Settlement, or if the Settlement does not become final for any reason, then the FAC will be deemed withdrawn and the First Amended Complaint will again become the operative complaint without prejudice to Plaintiff’s right to seek leave to file another amended complaint and without prejudice to Defendant’s rights to object and/or challenge an amended pleading. Defendant does not impliedly or expressly waive any arguments or defenses to the FAC.

33. Funding of the Gross Settlement Amount. Defendant will make a one-time deposit of the Gross Settlement Amount of Two Hundred Sixty-Five Thousand Dollars (\$265,000) into a Qualified Settlement Account to be established by the Settlement Administrator. Defendant will pay the employer’s share of payroll taxes separately. After the Effective Date, the Gross Settlement Amount will be used for: (a) Individual Settlement Payments; (b) the LWDA Payment; (c) the Class Representative Enhancement Payment; (d) Attorneys’ Fees and Costs; and (e) Settlement Administration Costs. Defendant will deposit the Gross Settlement Amount and the employer’s share of payroll taxes within thirty (30) calendar days of the Effective Date (“Funding Date”).

34. Attorneys’ Fees and Costs. Defendant agrees not to oppose or impede any application or motion for attorneys’ fees and costs by Class Counsel for Attorneys’ Fees and Costs of not more than Eighty-Eight Thousand Three Hundred Thirty-Three Dollars (\$88,333), plus the reimbursement of all out-of-pocket costs and expenses associated with Class Counsel’s litigation and settlement of the Action (including expert/consultant fees, investigations costs, etc.), not to exceed Thirteen Thousand Dollars (\$13,000), both of which will be paid from the Gross Settlement Amount.

35. Class Representative Enhancement Payment. In exchange for a general release, and in recognition of his effort and work in prosecuting the Action on behalf of Class Members, Defendant

1 agrees not to oppose or impede any application or motion for a Class Representative Enhancement
2 Payment of up to Ten Thousand Dollars (\$10,000). The Class Representative Enhancement Payment
3 will be paid from the Gross Settlement Amount and will be in addition to Plaintiff's Individual
4 Settlement Payment paid pursuant to the Settlement. Plaintiff will be solely and legally responsible to
5 pay any and all applicable taxes on the Class Representative Enhancement Payment. Plaintiff
6 understands and agrees that this Settlement Agreement shall remain in full force and effect even if the
7 full amount of Class Representative Enhancement Payment sought by Plaintiff is not ultimately awarded
8 by the Court.

9 36. Settlement Administration Costs. The Settlement Administrator will be paid for the
10 reasonable costs of administration of the Settlement and distribution of payments from the Gross
11 Settlement Amount, which is currently estimated to be Six Thousand Five Hundred Dollars (\$6,500).
12 These costs, which will be paid from the Gross Settlement Amount, will include, *inter alia*, the required
13 tax reporting on the Individual Settlement Payments, the issuing of 1099 and W-2 IRS Forms,
14 distributing Class Notices, calculating and distributing the Gross Settlement Amount, and providing
15 necessary reports and declarations.

16 37. PAGA Settlement Amount. Subject to Court approval, the Parties agree that the amount
17 of Thirty Thousand Dollars (\$30,000) from the Gross Settlement Amount will be designated for
18 satisfaction of Plaintiff's PAGA claim. Pursuant to PAGA, Seventy-Five Percent (75%), or Twenty-Two
19 Thousand Five Hundred Dollars (\$22,500), of this sum will be paid to the LWDA and Twenty-Five
20 Percent (25%), or Seven Thousand Five Hundred Dollars (\$7,500), will be paid to PAGA Members in
21 proportion to the number of Workweeks worked during the PAGA Period.

22 38. No Right to Exclusion or Objections to the PAGA Settlement. Because this settlement
23 resolves claims and actions brought pursuant to PAGA by Plaintiff acting as a proxy and as a Private
24 Attorney General of, and for, the State of California and the LWDA, the Parties agree that no PAGA
25 Member has the right to exclude himself or herself from the release of the Released PAGA Claims, and
26 all PAGA Members will receive their shares of the PAGA Fund. The Parties also agree that no PAGA
27 Member has the right to object to the PAGA Settlement Amount.

28 39. Net Settlement Fund. The entire Net Settlement Fund will be distributed to Participating

Class Members. No portion of the Net Settlement Fund will revert to or be retained by Defendant.

40. PAGA Fund. The entire PAGA Fund will be distributed to all PAGA Members. No portion of the PAGA Fund will revert to or be retained by Defendant.

41. Individual Settlement Payment Calculations. Individual Settlement Payments will be calculated and apportioned from the Net Settlement Fund and PAGA Fund based on the number of Workweeks a Class Member worked during the Class Period and PAGA Period. Specific calculations of Individual Settlement Payments will be made as follows:

41(a) Payments from the Net Settlement Fund. Defendant will calculate the total number of Workweeks worked by each Class Member during the Class Period and the aggregate total number of Workweeks worked by all Class Members during the Class Period. To determine each Class Member's estimated "Individual Settlement Payment" from the Net Settlement Fund, the Settlement Administrator will use the following formula: The Net Settlement Fund will be divided by the aggregate total number of Workweeks during the Class Period, resulting in the "Workweek Value." Each Class Member's "Individual Settlement Payment" will be calculated by multiplying each individual Class Member's total number of Workweeks by the Workweek Value. The Individual Settlement Payment will be reduced by any required deductions for each Participating Class Member as specifically set forth herein, including employee-side tax withholdings or deductions. The entire Net Settlement Fund will be disbursed to all Participating Class Members. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement Payment for each Participating Class Member according to the number of Workweeks worked, so that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Fund.

41(b) Payments from the PAGA Fund. Defendant will calculate the total number of Workweeks worked by each PAGA Member during the PAGA Period

1 and the aggregate total number of Workweeks worked by all PAGA
2 Members during the PAGA Period. To determine each PAGA Member's
3 estimated "Individual Settlement Payment," the Settlement Administrator
4 will use the following formula: The PAGA Fund will be divided by the
5 aggregate total number of Workweeks during the PAGA Period, resulting in
6 the "PAGA Workweek Value." Each PAGA Member's "Individual
7 Settlement Payment" will be calculated by multiplying each individual
8 PAGA Member's total number of Workweeks by the PAGA Workweek
9 Value. The entire PAGA Fund will be disbursed to all PAGA Members.

10 42. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
11 Participating Class Members under this Settlement, as well as any other payments made pursuant to this
12 Settlement, will not be utilized to calculate any additional benefits under any benefit plans to which any
13 Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k)
14 plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan.
15 Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions,
16 or amounts to which any Class Members may be entitled under any benefit plans.

17 43. Administration Process. The Parties agree to cooperate in the administration of the
18 settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in
19 administration of the Settlement.

20 44. Delivery of the Class List. Within twenty (20) calendar days of Preliminary Approval,
21 Defendant will provide the Class List to the Settlement Administrator.

22 45. Notice by First-Class U.S. Mail. Within ten (10) calendar days after receiving the Class
23 List from Defendant, the Settlement Administrator will mail a Class Notice to all Class Members via
24 regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class
25 List.

26 46. Confirmation of Updated Contact Information in the Class Lists. Prior to mailing, the
27 Settlement Administrator will perform a search based on the National Change of Address Database for
28 information to update and correct for any known or identifiable address changes. Any Class Notices

1 returned to the Settlement Administrator as non-deliverable on or before the Response Deadline will be
2 sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the
3 Settlement Administrator will indicate the date of such re-mailing on the Class Notice. If no forwarding
4 address is provided, the Settlement Administrator will promptly attempt to determine the correct address
5 using a skip-trace, or other search using the name, address and/or Social Security Number of the Class
6 Member involved, and will then perform a single re-mailing. Those Class Members who receive a re-
7 mailed Class Notice, whether by skip-trace or by request, will have either (a) an additional fifteen (15)
8 calendar days or (b) until the Response Deadline, whichever is later, to submit a Request for Exclusion
9 or Notice of Objection.

10 47. Class Notices. All Class Members will be mailed a Class Notice. Each Class Notice will
11 provide: (a) information regarding the nature of the Action; (b) a summary of the Settlement's principal
12 terms; (c) the Settlement Class and PAGA Member definitions; (d) the total number of Workweeks each
13 respective Class Member and PAGA Member worked for Defendant during the Class Period and PAGA
14 Period; (e) each Class Member's and PAGA Member's estimated Individual Settlement Payment and
15 the formula for calculating Individual Settlement Payments; (f) the dates which comprise the Class
16 Period and PAGA Period; (g) instructions on how to submit Requests for Exclusion or Notices of
17 Objection; (h) the deadlines by which the Class Member must postmark or fax Request for Exclusions,
18 or postmark Notices of Objection to the Settlement; and (i) the claims to be released.

19 48. Disputed Information on Class Notices. Class Members will have an opportunity to
20 dispute the information provided in their Class Notices. To the extent Class Members dispute their
21 employment dates or the number of Workweeks on record, Class Members may produce evidence to the
22 Settlement Administrator showing that such information is inaccurate. Defendant's records will be
23 presumed correct, but the Settlement Administrator shall contact the Parties regarding the dispute and the
24 Parties will work in good faith to resolve it. All disputes must be submitted by the Response Deadline,
25 and will be decided within ten (10) business days after the Response Deadline.

26 49. Defective Submissions. If a Class Member's Request for Exclusion is defective as to the
27 requirements listed herein, that Class Member will be given an opportunity to cure the defect(s). The
28 Settlement Administrator will mail the Class Member a cure letter within three (3) business days of

1 receiving the defective submission to advise the Class Member that his/her/their submission is defective
2 and that the defect must be cured to render the Request for Exclusion valid. The Class Member will have
3 until (a) the Response Deadline or (b) fifteen (15) calendar days from the date of the cure letter,
4 whichever date is later, to postmark or fax a revised Request for Exclusion. If the revised Request for
5 Exclusion is not postmarked or received by fax within that period, it will be deemed untimely.

6 50. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the
7 Settlement Agreement must sign and fax or postmark a written Request for Exclusion to the Settlement
8 Administrator within the Response Deadline. In the case of Requests for Exclusion that are mailed to the
9 Settlement Administrator, the postmark date will be the exclusive means to determine whether a Request
10 for Exclusion has been timely submitted.

11 51. Escalator. Defendant represents that there are approximately One Hundred Fifty-Nine
12 (159) Class Members. In the event it is determined that the actual number of Class Members as of the
13 Class Period and PAGA Period end dates exceeds One Hundred Fifty-Nine (159) by more than Ten
14 Percent (10%), then Defendant must either: (a) increase the Gross Settlement Amount on a pro rata basis
15 for every percentage increase in Class Members over One Hundred Seventy-Five (175); or (b) advance
16 the end dates for the Class Period and PAGA Period to correspond to the last date on which the total
17 number of Class Members was not in excess of One Hundred Seventy-Five (175).

18 52. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class Member
19 who does not affirmatively opt-out of the Settlement Agreement by submitting a timely and valid
20 Request for Exclusion will be bound by all of its terms, including those pertaining to the Released Class
21 Claims, as well as any Judgment that may be entered by the Court if it grants final approval to the
22 Settlement.

23 53. Releases by Participating Class Members. Upon the Funding Date, and except as to such
24 rights or claims as may be created by this Settlement Agreement, each Participating Class Member,
25 together and individually, on their behalf and on behalf of their respective heirs, executors,
26 administrators, agents, and attorneys, shall fully and forever release and discharge all of the Released
27 Parties, or any of them, from each of the Released Class Claims arising during the Class Period.

28 54. Releases by PAGA Members. Upon the Funding Date, and except as to such rights or

1 claims as may be created by this Settlement Agreement, each PAGA Member, together and individually,
2 on their behalf and on behalf of their respective heirs, executors, administrators, agents, and attorneys,
3 shall fully and forever release and discharge all of the Released Parties, or any of them, from each of the
4 Released PAGA Claims during the PAGA Period.

5 55. Defendant's Right to Rescind. Defendant will have, in its sole discretion, the right to
6 void and withdraw from the Settlement if, at any time prior to Final Approval, Ten Percent (10%) or
7 more of Class Members opt out of the settlement. Defendant must exercise this right of rescission in
8 writing to Class Counsel within fourteen (14) calendar days after the Response Deadline. If the option to
9 rescind is exercised, then Defendant will be solely responsible for all Settlement Administration Costs
10 incurred to the date of rescission.

11 56. Objection Procedures. To object to the Settlement Agreement, a Class Member may
12 either postmark a valid Notice of Objection to the Settlement Administrator on or before the Response
13 Deadline, or appear in person at the Final Approval Hearing. Class Members who fail to object either by
14 submitting a valid Notice of Objection or appearing in person at the Final Approval Hearing will be
15 deemed to have waived all objections to the Settlement and will be foreclosed from making any
16 objections, whether by appeal or otherwise, to the Settlement Agreement. At no time will any of the
17 Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written
18 objections to the Settlement Agreement or appeal from the final approval order and judgment. Class
19 Counsel will not represent any Class Members with respect to any such objections to this Settlement. If a
20 Class Member timely submits both a Notice of Objection and a Request for Exclusion, the Request for
21 Exclusion will be given effect and considered valid, the Notice of Objection shall be rejected, and the
22 Class Member shall not participate in or be bound by the Settlement.

23 57. Certification Reports Regarding Individual Settlement Payment Calculations. The
24 Settlement Administrator will provide Defendant's counsel and Class Counsel a weekly report that
25 certifies the number of Class Members who have submitted valid Requests for Exclusion or Notices of
26 Objection, and whether any Class Member has submitted a challenge to any information contained in
27 their Class Notice, including those received after the Response Deadline. Additionally, the Settlement
28 Administrator will provide to counsel for both Parties any updated reports regarding the administration

of the Settlement Agreement as needed or requested.

58. Distribution Timing of Individual Settlement Payments. Within ten (10) calendar days of the Funding Date, the Settlement Administrator will issue payments to: (a) Participating Class Members and PAGA Members; (b) the LWDA; (c) Plaintiff; and (d) Class Counsel. The Settlement Administrator will also issue a payment to itself for Court-approved services performed in connection with the Settlement.

59. Un-cashed Settlement Checks. Proceeds represented by Individual Settlement Payment checks returned as undeliverable and Individual Settlement Payment checks remaining un-cashed for more than one hundred and eighty (180) calendar days after issuance will be tendered pursuant to Code of Civil Procedure section 384 to The Justice Gap Fund maintained by The State Bar of California.

60. Certification of Completion. Upon completion of administration of the Settlement, the Settlement Administrator will provide a written declaration under oath to certify such completion to the Court and counsel for all Parties.

61. Treatment of Individual Settlement Payments. All Individual Settlement Payments will be allocated as follows: (a) Twenty-Five Percent (25%) of each Individual Settlement Payment will be allocated as wages for which IRS Forms W-2 will be issued; and (b) Seventy-Five Percent (75%) will be allocated as non-wages for which IRS Forms 1099-MISC will be issued. Payments issued to PAGA Members from the PAGA Fund will be treated as non-wages for which IRS Forms 1099-MISC will be issued.

62. Administration of Taxes by the Settlement Administrator. The Settlement Administrator will be responsible for issuing to Plaintiff, Participating Class Members, PAGA Members, and Class Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to this Settlement. The Settlement Administrator will also be responsible for forwarding all payroll taxes and penalties to the appropriate government authorities.

63. Tax Liability. The Parties make no representation as to the tax treatment or legal effect of the payments called for hereunder, and Plaintiff, Participating Class Members, and PAGA Members are not relying on any statement, representation, or calculation by Defendant or by the Settlement Administrator in this regard.

1 64. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES
2 OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS
3 AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”)
4 ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND
5 NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES
6 OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR
7 WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED
8 OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
9 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
10 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS
11 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
12 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS
13 AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY
14 ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY
15 UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO
16 ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
17 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
18 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF
19 ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER
20 SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
21 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
22 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
23 AGREEMENT.

24 65. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
25 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
26 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of
27 action or right herein released and discharged.

28 66. Nullification of Settlement Agreement. In the event that: (a) the Court does not finally

1 approve the Settlement as provided herein; or (b) the Settlement does not become final for any other
2 reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null
3 and void. Any order or judgment entered by the Court in furtherance of this Settlement Agreement will
4 likewise be treated as void from the beginning.

5 67. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to request
6 the Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary Approval Order
7 for: (a) conditional certification of the Settlement Class for settlement purposes only, (b) preliminary
8 approval of the proposed Settlement Agreement, (c) setting a date for a final fairness hearing. The
9 Preliminary Approval Order will provide for the Class Notice to be sent to all Class Members as
10 specified herein. In conjunction with the Preliminary Approval hearing, Plaintiff will submit this
11 Settlement Agreement, which sets forth the terms of this Settlement, and will include the proposed
12 Notice of Class Action Settlement, attached as Exhibit A. Class Counsel will be responsible for drafting
13 all documents necessary to obtain preliminary approval.

14 68. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the
15 deadlines to postmark Requests for Exclusion or Notices of Objection, and with the Court's permission,
16 a final fairness hearing will be conducted to determine the Final Approval of the Settlement Agreement
17 along with the amounts properly payable for: (a) Attorneys' Fees and Costs; (b) the Class Representative
18 Enhancement Payment; (c) Individual Settlement Payments; (d) the LWDA Payment; (e) all Settlement
19 Administration Costs. Class Counsel will be responsible for drafting all documents necessary to obtain
20 final approval. Class Counsel will also be responsible for drafting the attorneys' fees and costs
21 application to be heard at the final approval hearing.

22 69. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by the
23 Court or after the final fairness hearing, the Parties will present the Judgment to the Court for its
24 approval. After entry of the Judgment, the Court will have continuing jurisdiction solely for purposes of
25 addressing: (a) the interpretation and enforcement of the terms of the Settlement, (b) Settlement
26 administration matters, and (c) such post-Judgment matters as may be appropriate under court rules or as
27 set forth in this Settlement Agreement. A copy of the Judgment will be posted to the Settlement
28 Administrator's website.

1 70. Release by Plaintiff. Upon the Funding Date, in addition to the claims being released by
2 all Participating Class Members, Plaintiff will release and forever discharge the Released Parties, to the
3 fullest extent permitted by law, of and from any and all claims, known and unknown, asserted and not
4 asserted, which Plaintiff has or may have against the Released Parties as of the date of execution of this
5 Settlement Agreement. To the extent the foregoing release is a release to which Section 1542 of the
6 California Civil Code or similar provisions of other applicable law may apply, Plaintiff expressly waives
7 any and all rights and benefits conferred upon him by the provisions of Section 1542 of the California
8 Civil Code or similar provisions of applicable law which are as follows:

9 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
10 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
11 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE
12 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
13 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
14 PARTY.

15 71. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include the
16 terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth
17 herein. Any Exhibits to this Settlement Agreement are an integral part of the Settlement.

18 72. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the
19 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements
20 may be deemed binding on the Parties. The Parties expressly recognize California Civil Code Section
21 1625 and California Code of Civil Procedure Section 1856(a), which provide that a written agreement is
22 to be construed according to its terms and may not be varied or contradicted by extrinsic evidence, and
23 the Parties agree that no such extrinsic oral or written representations or terms will modify, vary or
24 contradict the terms of this Settlement Agreement.

25 73. Amendment or Modification. No amendment, change, or modification to this Settlement
26 Agreement will be valid unless in writing and signed, either by the Parties or their counsel, and approved
27 by the Court.

28 74. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and

1 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
2 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant
3 to this Settlement Agreement to effectuate its terms and to execute any other documents required to
4 effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each
5 other and use their best efforts to effect the implementation of the Settlement. If the Parties are unable to
6 reach agreement on the form or content of any document needed to implement the Settlement, or on any
7 supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties
8 may seek the assistance of the Court to resolve such disagreement.

9 75. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
10 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

11 76. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto
12 will be governed by and interpreted according to the laws of the State of California.

13 77. Execution and Counterparts. This Settlement Agreement is subject only to the execution
14 of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All
15 executed counterparts and each of them, including electronic (e.g., DocuSign), facsimile, and scanned
16 copies of the signature page, will be deemed to be one and the same instrument.

17 78. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this
18 Settlement Agreement is a fair, adequate and reasonable settlement of the Action and have arrived at this
19 Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into account
20 all relevant factors, present and potential. The Parties further acknowledge that they are each represented
21 by competent counsel and that they have had an opportunity to consult with their counsel regarding the
22 fairness and reasonableness of this Settlement.

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

27 80. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
28 certification for purposes of this Settlement only; except, however, that Plaintiff or Class Counsel may

1 appeal any reduction to the Attorneys' Fees and Costs below the amount they request from the Court,
2 and either party may appeal any court order that materially alters the Settlement Agreement's terms.

3 81. Class Action Certification for Settlement Purposes Only. The Parties agree to stipulate to
4 class action certification for purposes of the Settlement only. If, for any reason, the Settlement is not
5 approved, the stipulation to certification will be void. The Parties further agree that certification for
6 purposes of the Settlement is not an admission that class action certification is proper under the standards
7 applied to contested certification motions and that this Settlement Agreement will not be admissible in
8 this or any other proceeding as evidence that either (a) a class action should be certified or (b) Defendant
9 is liable to Plaintiff or any Class Member, other than according to the Settlement's terms.

10 82. Non-Admission of Liability. The Parties enter into this Settlement to resolve the dispute
11 that has arisen between them and to avoid the burden, expense and risk of continued litigation. In
12 entering into this Settlement, Defendant does not admit, and specifically denies, that it violated any
13 federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or
14 any other applicable laws, regulations or legal requirements; breached any contract; violated or breached
15 any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with
16 respect to its employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any
17 of the negotiations connected with it, will be construed as an admission or concession by Defendant of
18 any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to
19 enforce the terms of this Settlement, this Settlement Agreement and its terms and provisions will not be
20 offered or received as evidence in any action or proceeding to establish any liability or admission on the
21 part of Defendant or to establish the existence of any condition constituting a violation of, or a non-
22 compliance with, federal, state, local or other applicable law.

23 83. No Public Comment: Prior to Preliminary Approval, the Parties and their counsel agree
24 that they will not issue any press releases, initiate any contact with the press, respond to any press
25 inquiry, or have any communication with the press about the fact, amount or terms of the Settlement.

26 84. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement
27 or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
28 constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

1 85. Enforcement Actions. In the event that one or more of the Parties institutes any legal
2 action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement
3 or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be
4 entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including
5 expert witness fees incurred in connection with any enforcement actions.

6 86. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
7 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed
8 more strictly against one party than another merely by virtue of the fact that it may have been prepared
9 by counsel for one of the Parties, it being recognized that, because of the arms'-length negotiations
10 between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

11 87. Representation By Counsel. The Parties acknowledge that they have been represented
12 by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and
13 that this Settlement Agreement has been executed with the consent and advice of counsel. Further,
14 Plaintiff and Class Counsel warrant and represent that there are no liens on the Settlement Agreement.

15 88. All Terms Subject to Final Court Approval. All amounts and procedures described in
16 this Settlement Agreement herein will be subject to final Court approval.

17 89. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good
18 faith and execute all documents to the extent reasonably necessary to effectuate the terms of this
19 Settlement Agreement.

20 90. Binding Agreement. The Parties warrant that they understand and have full authority to
21 enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully
22 enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in
23 any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that
24 otherwise might apply under federal or state law.

25 91. Notices. All notices, demands, and other communications to be provided concerning
26 this Settlement Agreement shall be in writing and delivered by overnight mail at the addresses set forth
27 below, or such other addresses as either Party may designate in writing from time to time:
28

To Plaintiff and Class Counsel:

Eric Yaeckel, Esq.
**SULLIVAN & YAECKEL LAW GROUP,
APC**
2330 Third Ave.
San Diego, California 92101

To Defendant:

Julie A. Marquis, Esq.
Nicole M. Cloudsley, Esq.
FREEMAN MATHIS & GARY, LLP
1010 B Street, Suite 400
San Rafael, California 94901

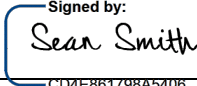
92. Joint Recital Re No Related Cases. Neither the Parties nor their counsel are currently aware of any class, representative or other collective action in any other California court that asserts what they consider to be claims related to the Action, nor are counsel currently aware of any persons who have expressed any interest in pursuing litigation or seeking any recovery against Defendant, apart from such persons who have claims or causes of action against Defendant that are currently pending before a civil court or arbitrator.

READ CAREFULLY BEFORE SIGNING

PLAINTIFF

8/30/2024

Dated: _____

Signed by:


Sean Smith

DEFENDANT TAP PLASTICS, INC.

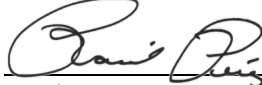
Dated: _____

Name:
Title:

APPROVED AS TO FORM

CAPSTONE LAW APC

Dated: 8/30/2024

By: 

Raul Perez
Attorneys for Plaintiff Sean Smith

To Plaintiff and Class Counsel:

Eric Yaeckel, Esq.
**SULLIVAN & YAECKEL LAW GROUP,
APC**
2330 Third Ave.
San Diego, California 92101

To Defendant:

Julie A. Marquis, Esq.
Nicole M. Cloudsley, Esq.
FREEMAN MATHIS & GARY, LLP
1010 B Street, Suite 400
San Rafael, California 94901

92. Joint Recital Re No Related Cases. Neither the Parties nor their counsel are currently aware of any class, representative or other collective action in any other California court that asserts what they consider to be claims related to the Action, nor are counsel currently aware of any persons who have expressed any interest in pursuing litigation or seeking any recovery against Defendant, apart from such persons who have claims or causes of action against Defendant that are currently pending before a civil court or arbitrator.

READ CAREFULLY BEFORE SIGNING

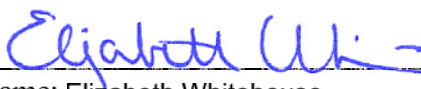
PLAINTIFF

Dated: _____

Sean Smith

DEFENDANT TAP PLASTICS, INC.

Dated: August 26, 2024


Name: Elizabeth Whitehouse
Title: President

APPROVED AS TO FORM

CAPSTONE LAW APC

Dated: _____

By: _____
Raul Perez
Attorneys for Plaintiff Sean Smith

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SULLIVAN & YAECKEL LAW GROUP, APC

Dated: 8/30/24

By: *Eric Yaeckel*
Eric K. Yaeckel
Attorneys for Plaintiff Sean Smith

FREEMAN MATHIS & GARY, LLP

Dated: _____

By: _____
Julie A. Marquis
Nicole Cloudsley
Attorneys for Defendant TAP Plastics, Inc.

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SULLIVAN & YAECKEL LAW GROUP, APC

Dated: _____

By: _____
Eric K. Yaeckel
Attorneys for Plaintiff Sean Smith

FREEMAN MATHIS & GARY, LLP

Dated: August 30, 2024 _____

By:  _____
Julie A. Marquis
Nicole Cloudsley
Attorneys for Defendant TAP Plastics, Inc.

Exhibit A

Smith v. Tap Plastics, Inc., No. STK-CV-UOE-2023-0005825
SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF SAN JOAQUIN
NOTICE OF CLASS ACTION SETTLEMENT

You are not being sued. This notice affects your rights. Please read it carefully

To: All persons who worked for Defendant TAP Plastics, Inc. (“Defendant”) as non-exempt, hourly paid employees in the State of California at any time from March 21, 2022 through June 27, 2024 (“Class Members”).

All persons who worked for Defendant as non-exempt, hourly paid employees in the State of California at any time from March 21, 2022 through June 27, 2024 (“PAGA Members”).

On _____, the Honorable Barbara Kronlund of the San Joaquin County Superior Court granted preliminary approval of this class action settlement and ordered the litigants to notify all Class Members of the settlement. **You have received this notice because Defendant’s records indicate that you are a Class Member, and therefore entitled to a payment from the settlement.**

Based on Defendant’s records, your Individual Class Payment from the Net Settlement Fund is estimated to be \$_____ (less withholding) and your Individual PAGA Payment from the PAGA Fund 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 Defendant’s records you are not eligible for an Individual PAGA Payment from the PAGA Fund under the Settlement because you did not work during the PAGA Period.)

Unless you choose to opt out of the settlement by following the procedures described below, you will be deemed a Class Member and, if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement fund. The Final Fairness Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at _ :00 _m. on _____, 2025 in Department 10-D of the San Joaquin County Superior Court located at 180 E. Weber Avenue, Stockton, California 95202.

Please also note that the Final Fairness Hearing may be rescheduled by the Court to another date and/or time. Please visit [settlement website] for any scheduling changes.

If you move, you must send the Settlement Administrator your new address; otherwise, you may never receive your settlement payment. It is your responsibility to keep a current address on file with the Settlement Administrator.

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 deemed a “Participating Class Member,” and will be eligible for a payment from the Net Settlement Fund and, if you are also a PAGA Member, the PAGA Fund. In exchange, you will be bound by the terms of the proposed Settlement and give up your right to assert wage and hour claims against Defendant based on the same facts alleged in the Action during the Class Period.
You Can Opt-out of the Class Settlement but not the PAGA Settlement	If you don’t want to participate in the proposed class settlement, you can opt-out of the class settlement by sending the Settlement Administrator a written Request for Exclusion. Once excluded, you will no longer be eligible for a payment from the Net Settlement Fund and will not be bound by the terms of the proposed class settlement.
The Opt-out Deadline is [DATE]	You cannot opt-out of the PAGA portion of the proposed Settlement. PAGA Members remain eligible to receive a payment from the PAGA Fund and must give up their rights to pursue PAGA penalty claims against Defendants based on the facts alleged in the Action during the PAGA Period.

Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by [DATE]	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed class settlement, but not the PAGA settlement.
You Can Participate in the [DATE] Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on [DATE] in Department 10-D of the San Joaquin County Superior Court located at 180 E. Weber Avenue, Stockton, California 95202. 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. If the Court grants final approval of the Settlement despite your objection, you will receive a payment from the Net Settlement Fund and you will be bound by the terms of the Settlement and Release.

Summary of the Litigation

Plaintiff Sean Smith, on his behalf and on behalf of other current and former non-exempt employees, alleges that Defendant violated California state labor laws as a result of its alleged failure to, among other things: (1) pay minimum and overtime wages to employees for all hours worked; (2) provide employees with meal and rest breaks; (3) timely pay all wages owed to employees during each pay period and upon termination of their employment; (4) reimburse employees for necessary business expenses; and (5) provide employees with accurate, itemized wage statements.

After the exchange of relevant information and evidence, the parties agreed to enter into settlement negotiations in an attempt to informally resolve the claims in the case. On March 27, 2024, the parties participated in a mediation with Michael Roberts, Esq., an experienced and well-respected class action mediator. With Mr. Roberts’s guidance, the parties were able to negotiate a complete settlement of Plaintiff’s claims.

Counsel for Plaintiff, and the attorneys appointed by the Court to represent the class, Capstone Law APC (“Class Counsel”), have investigated and researched the facts and circumstances underlying the issues raised in the case and the applicable law. While Class Counsel believe that the claims alleged in this lawsuit have merit, Class Counsel also recognize that the risk and expense of continued litigation justify settlement. Based on the foregoing, Class Counsel believe the proposed settlement is fair, adequate, reasonable, and in the best interests of Class Members.

Defendant has denied, and continues to deny the factual and legal allegations in the case and believes that it has valid defenses to Plaintiff’s claims. By agreeing to settle, Defendant is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action. Defendant has agreed to settle the case as part of a compromise with Plaintiff.

Summary of The Proposed Settlement Terms

Plaintiff and Defendant have agreed to settle the underlying class claims in exchange for a Gross Settlement Amount of \$265,000. This amount is inclusive of: (1) individual settlement payments to all Participating Class Members; (2) a Class Representative Enhancement Payment of \$10,000 to Sean Smith for his services on behalf of the class, and for a release of all claims arising out of his employment with Defendant; (3) \$88,333 in attorneys’ fees and up to \$13,000 in litigation costs and expenses; (4) a \$30,000 settlement of claims under the Labor Code Private Attorneys General Act of 2004 (“PAGA”), inclusive of a \$22,500 payment to the California Labor and Workforce Development Agency (“LWDA”) in connection

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

with the PAGA, and a \$7,500 payment (“PAGA Fund”) to all PAGA Members; and (5) reasonable Settlement Administrator’s fees and expenses currently estimated at \$6,500. After deducting the above payments, a total of approximately \$ _____ will be allocated to Class Members who do not opt out of the Settlement Class (“Net Settlement Fund”). Additionally, all PAGA Members will receive a proportional share of the \$7,500 PAGA Fund, regardless whether they opt out of the Settlement Class.

Individual Class Payments from Net Settlement Fund. Defendant will calculate the total number of Workweeks worked by each Class Member from March 21, 2022 through June 27, 2024 (“Class Period”) and the aggregate total number of Workweeks worked by all Class Members during the Class Period. To determine each Class Member’s estimated share of the Net Settlement Fund, the Settlement Administrator will use the following formula: The Net Settlement Fund will be divided by the aggregate total number of Workweeks during the Class Period, resulting in the “Workweek Value.” Each Class Member’s share of the Net Settlement Fund will be calculated by multiplying each individual Class Member’s total number of Workweeks by the Workweek Value. The Individual Settlement Payment will be reduced by any required deductions for each Class Members as specifically set forth herein, including employee-side tax withholdings or deductions. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionately increase each Participating Class Member’s share of the Net Settlement Fund according to the number of Workweeks worked, so that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Fund.

According to Defendant’s records, you worked during the Class Period in a non-exempt position for a total of _____ Workweeks. Accordingly, your estimated individual class payment from the Net Settlement Fund is approximately \$ _____.

Individual PAGA Payments from PAGA Fund. Defendant will calculate the total number of Workweeks worked by each PAGA Member from March 21, 2022 through June 27, 2024 (“PAGA Period”) and the aggregate total number of Workweeks worked by all PAGA Members during the PAGA Period. To determine each PAGA Member’s estimated share of the PAGA Fund, the Settlement Administrator will use the following formula: The PAGA Fund will be divided by the aggregate total number of Workweeks during the PAGA Period, resulting in the “PAGA Workweek Value.” Each PAGA Member’s share of the PAGA Fund will be calculated by multiplying each individual PAGA Member’s total number of Workweeks by the PAGA Workweek Value. A Request for Exclusion does not exclude a PAGA Member from the release of claims under California Labor Code §§ 2698, *et seq.* and the PAGA Member will receive their portion of the PAGA fund even if he/she/they submits a valid Request for Exclusion.

According to Defendant’s records, you worked during the PAGA Period in a non-exempt position for a total of _____ Workweeks. Accordingly, your estimated individual PAGA payment from the PAGA Fund is approximately \$ _____.

Your Estimated Payment: Based on the above, your estimated payment from the settlement is approximately \$ _____. If you believe the Workweek information provided above is incorrect, please contact the Settlement Administrator to dispute the calculation. You must attach all documentation in support of your dispute (such as check stubs, W2s, or letters from HR). All disputes must be postmarked or faxed on or before [insert date of Response Deadline] and must be sent to:

Settlement Administrator

c/o _____

Fax No. _____

If you dispute the information stated above, Defendant’s records will control unless you are able to provide documentation that establishes otherwise.

Taxes on Settlement Payments. IRS Forms W-2 and 1099 will be distributed to participating Class Members and the appropriate taxing authorities reflecting the payments they receive under the settlement. Class Members should consult their

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

tax advisors concerning the tax consequences of the payments they receive under the Settlement. For purposes of this settlement, 20% of each settlement payment will be allocated as wages for which IRS Forms W-2 will be issued, and 80% will be allocated as non-wages for which IRS Forms 1099-MISC will be issued.

Your Options Under the Settlement

Option 1 – Automatically Receive a Payment from the Settlement

If you want to receive your payment from the settlement, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if and when the Settlement receives final approval by the Court.

If you choose **Option 1**, and if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement funds. In addition, you will be deemed to have released or waived the Released Class Claims, and if you are also a PAGA Member, the Released PAGA Claims:

Released Class Claims: All claims, rights, demands, liabilities, and causes of action, reasonably arising from, or reasonably related to, the same set of operative facts as those set forth in the operative complaint during the Class Period, including: (a) all claims for unpaid overtime; (b) all claims for meal and rest break violations; (c) all claims for unpaid minimum wages; (d) all claims for the failure to timely pay wages upon termination based on the preceding claims; (e) all claims for the failure to reimburse for necessary business expenses; (f) all claims for the failure to timely pay wages during employment based on the preceding claims; (g) all claims for wage statement violations based on the preceding claims; and (h) all claims asserted through California Business & Professions Code §§ 17200, *et seq.*

Released PAGA Claims: All claims for civil penalties under California Labor Code §§ 2698, *et seq.*, that were brought or could reasonably have been brought based on the same facts alleged in Plaintiff's LWDA letter and/or the operative complaint during the PAGA Period.

Option 2 – Opt Out of the Settlement

If you do not wish to participate in the settlement, you may exclude yourself from participating by submitting a written request to the Settlement Administrator expressly and clearly indicating that you have received this Notice of Class Action Settlement, decided not to participate in the settlement, and desire to be excluded from the settlement. The written request for exclusion must include your name, signature, address, telephone number, and last four digits of your Social Security Number. Sign, date, and mail the request for exclusion by First Class U.S. Mail or equivalent, to the address below.

Settlement Administrator

c/o _____

The Request for Exclusion must be postmarked or faxed not later than _____, 2025. If you submit a Request for Exclusion which is not postmarked or faxed by _____, 2025, your Request for Exclusion will be rejected, and you will be included in the settlement class.

If you choose **Option 2**, you will no longer be a Class Member, and you will:

- Not Receive a Payment from the Net Settlement Fund.
- Not release the Released Class Claims.
- If you are a PAGA Member, you will still release the Released PAGA Claims, and will receive a payment from the PAGA Fund.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

Option 3 – Object to the Settlement

If you decide to object to the settlement because you find it unfair or unreasonable, you may submit a written objection stating why you object to the settlement, or you may instead appear at the Final Fairness Hearing to object to the Settlement. Written objections must provide: (1) your full name, signature, address, and telephone number, (2) a written statement of all grounds for the objection accompanied by any legal support for such objection; (3) copies of any papers, briefs, or other documents upon which the objection is based; and (4) a statement about whether you intend to appear at the Fairness Hearing. The objection must be mailed to the administrator at [administrator's address].

All written objections must be received by the administrator by not later than _____ 2025. By submitting an objection, you are not excluding yourself from the settlement. To exclude yourself from the settlement, you must follow the directions described above. Please note that you cannot both object to the settlement and exclude yourself. You must choose one option only.

You may also, if you wish, appear at the Final Fairness Hearing set for _____ at _____ a.m./p.m. in the Superior Court of the State of California, for the County of San Joaquin and discuss your objection with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the hearing.

If you choose **Option 3**, you will still be entitled to the money from the settlement. If the Court overrules your objection, you will be deemed to have released the Released Class Claims and Released PAGA Claims.

Procedures for Payment

The individual class payments and individual PAGA payments will be paid by check after the Settlement is given final approval by the Court. Your check will be mailed to you by the Settlement Administrator. If you move or change your mailing address be sure to notify the Settlement Administrator as soon as possible. Your check will remain valid and negotiable for 180 calendar days from the date on which it is mailed. If any Class Member's individual settlement check is not cashed within 180 days after it is mailed, or an envelope mailed to a Class Member is returned and no forwarding address can be located, then any such amounts shall be transmitted to The Justice Gap Fund maintained by The State Bar of California.

Additional Information

This Notice of Class Action Settlement is only a summary of the case and the settlement. For a more detailed statement of the matters involved in the case and the settlement, you may refer to the pleadings, the settlement agreement, and other papers filed in the case. All inquiries by Class Members regarding this Class Notice and/or the settlement should be directed to the Settlement Administrator or Class Counsel.

Settlement Administrator:

Name of Company: _____
Email Address: _____
Mailing Address: _____

Telephone: _____

Class Counsel:

Eric Yaeckel
Sullivan & Yaeckel Law Group, APC
2330 Third Avenue
San Diego, California 92101
Phone: 619-702-6760

Raul Perez
Capstone Law APC
1875 Century Park E., Suite 1000
Los Angeles, CA 90067
Phone: Number

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

PLEASE DO NOT CONTACT THE CLERK OF THE COURT OR THE JUDGE WITH INQUIRIES ABOUT THIS SETTLEMENT.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******