

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff Lucia Lopez-Martinez (“Plaintiff”) and Defendant PCV Modesto 1, LLC (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means Plaintiff’s lawsuit alleging, inter alia, wage and hour violations under PAGA against Defendant entitled *Lopez v. PCV Modesto 1, LLC, et al.*, Case No. CV-23-002478, initiated on May 3, 2023, and pending in the Superior Court of the State of California, County of Stanislaus.
- 1.2. “Aggrieved Employee” means all current and former non-exempt employees of Defendant who worked in California at any time during the period of July 22, 2022, to November 20, 2023.
- 1.3. “Court” means the Superior Court of the State of California, County of Stanislaus.
- 1.4. “Defendant” means Defendant PCV Modesto 1, LLC.
- 1.5. “Defense Counsel” means Bruce Sarchet, Esq., John Adams, Esq., and Lauren Orozco, Esq. of Littler Mendelson, P.C., 500 Capitol Mall, Suite 2000, Sacramento, CA 95814.
- 1.6. “Effective Date” means the date on which the Court enters an Order Approving the PAGA Settlement and Dismissing Plaintiff’s Ninth Cause of Action with Prejudice.
- 1.7. “Gross Settlement Amount” means the exact sum of \$5,000.00, which represents the total amount payable under this Settlement by Defendant, including but not limited to Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, and PAGA Counsel Litigation Expenses Payment.
- 1.8. “Individual PAGA Payment” means the Aggrieved Employees’ pro rata share of 25% of the PAGA Penalties, calculated according to the number of Pay Periods the Aggrieved Employees worked during the PAGA Period.
- 1.9. “LWDA” means the California Labor and Workforce Development Agency, the agency referenced in Labor Code section 2699, subd. (i).
- 1.10. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.11. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments and to the LWDA for the LWDA PAGA Payment.

- 1.12. “PAGA Counsel” means Vladimir J. Kozina, Esq. of Mayall Hurley, P.C., 112 S. Church Street, Lodi, CA 95240, the attorneys representing the Plaintiff in the Action.
- 1.13. “PAGA Counsel Fees Payment” and “PAGA Counsel Litigation Expenses Payment” mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.14. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.15. “PAGA Period” means the period from July 22, 2022, to November 20, 2023.
- 1.16. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.17. “PAGA Notice” means Plaintiff’s letter, dated July 7, 2023, to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.18. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Net Settlement Amount, allocated 25% to the Aggrieved Employees (\$771.68) and 75% to the LWDA (\$2,315.03) in settlement of the Released PAGA claims.
- 1.19. “Plaintiff” means Lucia Lopez-Martinez, the named plaintiff in the Action.
- 1.20. “Approval Order” means the Court Order Granting Approval of the PAGA Settlement.
- 1.21. “Released PAGA Claims” means the claims being released by the Plaintiff, Aggrieved Employees, and PAGA Counsel, as described in Paragraph 5 below, including all claims for civil penalties under the PAGA that were set forth, or could have been set forth based on the facts alleged in the Action, for penalties pursuant to PAGA for violations of Labor Code sections 201-204, 226, 226.7, 233, 246, 246.5, 512, 558, and 2802.
- 1.22. “Released Parties” means: Defendant PCV Modesto 1, LLC, its subsidiaries, parents, and affiliated companies, and each of its former and present directors, officers, agents, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.
- 1.23. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

2. **RECITALS.**

- 2.1. On May 3, 2023, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for violations of the FEHA, including religious discrimination, failure to accommodate religious practice, retaliation, and failure to

prevent discrimination and retaliation. This Settlement does not concern Plaintiff's FEHA-related claims and allegations.

- 2.2. On September 26, 2023, Plaintiff filed a First Amended Complaint adding causes of action against Defendant for failure to pay sick pay/retaliation, failure to pay all wages at termination, failure to furnish accurate, itemized wage statements, failure to reimburse business expenses, and a claim under the PAGA. The First Amended Complaint is the operative complaint in the Action (the "Operative Complaint"). Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint, and denies any and all liability for the causes of action alleged.
- 2.3. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave written notice to Defendant and the LWDA by sending the PAGA Notice.
- 2.4. Prior to and in the course of negotiating the Settlement, Plaintiff obtained, through formal and informal discovery, documents relating to Plaintiff's wage and hour and PAGA claims, including policy documents, payroll records, wage statements, and information relating to the number of pay periods and size of the Aggrieved Employee group.
- 2.5. The Parties, PAGA Counsel, and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. **MONETARY TERMS.**

- 3.1. Gross Settlement Amount. Defendant promises to pay \$5,000.00 and no more as the Gross Settlement Amount. Defendant has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.2 of this Agreement. The entire Gross Settlement Amount will be distributed without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.
- 3.2. Payments from the Gross Settlement Amount. The following payments will be deducted from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
 - 3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 33 1/3% (\$1,666.67) and PAGA Counsel Litigation Expenses Payment of not more than \$246.62. Defendant will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, Defendant will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion the PAGA Counsel Fee Payment

and/or PAGA Counsel Litigation Expenses Payment. Defendant will report the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.2. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$3,086.71 to be paid from the Gross Settlement Amount, with 75% (\$2,315.03) allocated to the LWDA PAGA Payment and 25% (\$771.68) allocated to the Individual PAGA Payments.

3.2.2.1. Defendant will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$771.68) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.2.2. If the Court approves PAGA Penalties of less than the amount requested, Defendant will allocate the remainder to the Net Settlement Amount. The Individual PAGA Payments shall be allocated as 100% penalties. Defendant will report the Individual PAGA Payments on IRS 1099 Forms.

4. **SETTLEMENT FUNDING AND PAYMENTS.**

4.1. Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant estimates there are 36 Aggrieved Employees who worked a total of 18 PAGA Pay Periods in which meal period premiums were paid and a total of 667 PAGA Pay Periods overall. Defendant sold its assets and did not employ any employees as of November 20, 2023.

4.2. Payments from the Gross Settlement Amount. Within 30 days after the date the Court enters an Approval Order, Defendant will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment.

4.2.1. Defendant will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less

than 180 days after the date of mailing) when the check will be voided. Defendant will cancel all checks not cashed by the void date.

- 4.2.2. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, Defendant shall transmit the funds represented by such checks to the Boys and Girls Club of Stanislaus County in the name of the Aggrieved Employee.
- 4.2.3. The payment of Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. **RELEASES OF CLAIMS.**

Effective on the date when Defendant makes the payments set forth above, Plaintiff will release claims against all Released Parties as follows:

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

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

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

5.2 Release by Aggrieved Employees:

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and PAGA Notice. See the Released PAGA claims identified above.

6. **MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT.**

The Parties agree to cooperate to effectuate approval of this Settlement.

- 6.1 Responsibilities of PAGA Counsel. Following full execution of this Settlement Agreement and subject to Defendant's review and approval prior to filing, Plaintiff's Counsel shall prepare and file a motion to the Court for approval of this Agreement. In connection with the motion, Plaintiff's Counsel will present this Settlement Agreement to the Court and will request that the Court issue a Settlement Approval Order and Dismissal of PAGA Claims with Prejudice. Defendant shall not unreasonably withhold its approval of the motion for approval of this Agreement. Pursuant to Labor Code § 2699(1), Plaintiff will provide a copy of this Settlement Agreement to the LWDA concurrently with the filing of the motion for approval of the settlement. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (1)(2)-(4).
- 6.2 Responsibilities of PAGA Counsel and Defense Counsel. PAGA Counsel and Defense Counsel are jointly responsible for cooperating in good faith to expeditiously file the application or motion for approval of this Settlement no later than 30 days after the full execution of this Agreement and, if necessary, obtain a prompt hearing date for the motion and appear in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's Preliminary Approval to the LWDA in accordance with Labor Code Section 2699, subd. (1)(2), (4), and any Order or Judgment in accordance with Labor Code Section 2699, subd. (1)(3), (4).
- 6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. **SETTLEMENT ADMINISTRATION.**

7.1. Defendant to Administer Settlement. The Parties agree that retention and payment of expenses to a third-party administrator is not economical in this instance given the small size of the Aggrieved Employee group and the limited value of the claims. The parties further agree that such payment would substantially reduce the funds paid to the LWDA and Aggrieved employees. Accordingly, Defendant shall undertake the obligation of making the payments required pursuant to this Agreement to the LWDA, PAGA Counsel, and the Aggrieved Employees.

8. **AGGRIEVED EMPLOYEE SIZE ESTIMATES.**

Based on its records, Defendant estimates that, as of the date of this Settlement Agreement, there are 36 Aggrieved Employees who worked 667 Pay Periods during the PAGA Period.

9. **CONTINUING JURISDICTION OF THE COURT.**

The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-dismissal matters as are permitted by law.

9.1 Waiver of Right to Appeal. Provided the Approval Order is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties, their respective counsel waive all rights to appeal from the Approval Order, including all rights to post-judgment and appellate proceedings. If another party appeals the Approval Order, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Order becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10. **ADDITIONAL PROVISIONS.**

10.1 No Admission of Liability. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. If, for any reason the Court does not approve this Settlement, Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement). The

Parties also agree to adhere to Paragraph 6.3, above, and Paragraph 10.4, below, if the Court does not approve this Settlement.

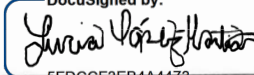
- 10.2 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 10.3 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 10.4 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 10.5 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 10.6 No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendant, nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 10.7 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 10.8 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 10.9 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

- 10.10 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 10.11 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 10.12 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 10.13 Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 10.14 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 10.15 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that, pursuant to Code of Civil Procedure section 583.330, upon the signing of this Agreement, the date to bring a case to trial under Code of Civil Procedure section 583.310 will be extended for the entire period of this settlement process.
- 10.16 Acknowledgement by the Parties. The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this settlement after arm’s-length negotiations by experienced counsel. 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.
- 10.17 Representation by Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with the consent and advice of counsel and reviewed in full.
- 10.18 Dismissal of PAGA Claims With Prejudice. This Settlement contemplates the (a) entry of an Order by the Court approving the Settlement and payments allocated

for Settlement, as set forth above, and (b) dismissal of the Released PAGA claims with prejudice.

Dated:

5/13/2024

DocuSigned by:

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Plaintiff Lucia Lopez-Martinez

Dated:

5/13/2024

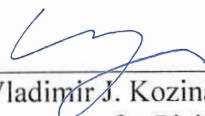
 Ben Heiderscheidt

Authorized Agent for
Defendant PCV Modesto I, LLC

Approved as to Form:

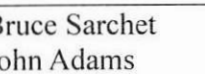
Dated: 5/14/2024

Mayall Hurley, P.C.


Vladimir J. Kozina
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Dated:

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John Adams
Lauren Orozco
Attorneys for Defendant