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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

DOELISHA KELLY, an individual and on behalf of all others similarly situated;

Plaintiff,

vs.

PAN AMERICAN PROPERTIES, INC., a California corporation; and DOES 1 through 50,

Defendants.

Case No.: 30-2023-01362739-CU-OE-CXC

[Assigned for All Purposes to:
Hon. William Claster, Dept. CX101]

DECLARATION OF WILLIAM C. SUNG IN SUPPORT OF MOTION FOR APPROVAL OF PAGA SETTELEMENT, ATTORNEY'S FEES AND COSTS, AND PLAINTIFF'S INDIVIDUAL SETTLEMENT

(Filed Concurrently with Notice of Motion and Motion for Approval of PAGA Settlement; Supporting Declarations and [Proposed] Judgment and Order)

DATE: May 16, 2025
TIME: 9:00 a.m.
DEPT: CX101
RESERVATION NO: 74540726

Action Filed: November 17, 2023
Trial Date: Not Set

I, William C. Sung, hereby declare as follows:

1. I am an attorney licensed to practice law in the state of California and have been admitted to practice before this Court. I am an attorney with the law firm of Justice for Workers, P.C., counsel of record for Plaintiff Doelisha Kelly ("Plaintiff") in this action. I am lead counsel for Plaintiff in this case and I have personal knowledge of the matters stated herein and if called and sworn as a witness, I would and could competently testify under oath thereto.

ATTORNEY QUALIFICATIONS

2. My qualifications are as follow: I received my J.D. from the University of Southern California Gould School of Law in 2011. During law school, I served as the Senior Content Editor on the Southern California Law Review where I published the article: *Taking the Fight Back to Title VII: A Case for Redefining "Because of Sex" to Include Gender Stereotypes, Sexual Orientation, and Gender Identity*, Southern California Law Review, Volume 84:2 (Jan. 2011). During law school, I also served as a judicial extern to U.S. Ninth Circuit Judge, Hon. Kim M. Wardlaw, and U.S. Bankruptcy Court Judge, Hon. Ernest M. Robles; served as a law clerk to the General Counsel of JM Eagle; and participated in the law school's Employer Legal Advice Clinic.

3. After passing the California Bar in December 2011, I began practicing management-side employment law at the Los Angeles office of Lewis Brisbois Bisgaard & Smith LLP. In 2013, I began focusing my practice at Lewis Brisbois on representing employers in wage and hour class and PAGA action lawsuits. In January 2017, I was elevated to the position of Partner and Vice Chair of Lewis Brisbois' Wage & Hour Class Action Practice Group. In November 2020, I was elevated as the Co-Chair of Lewis Brisbois Wage & Hour Class Action Practice Group, becoming one of the youngest attorneys to chair a practice group at the firm. In January 2022, I was voted in as an equity partner, becoming one of the youngest equity partners and the third Asian-American equity partner in the history of this 1,500-attorney firm.

4. In May 2023, I left LBBS and co-founded Barber Ranen LLP.

5. In July 2023, I joined Justice for Workers, P.C. ("JFW") and began heading its Complex Litigation Practice Group where I focus my practice on representing employees in wage and hour class and PAGA action lawsuits.

6. In my current practice at JFW, I serve as the lead plaintiff's counsel on over 100 pending class and/or PAGA actions. In addition to this matter, I have resolved over 30 other class and/or PAGA actions at mediation. The following are cases in which I have received final or preliminary approval of class action and/or PAGA settlement and I was appointed as class and/or PAGA counsel: *Dennisha Lampkin v. Sunstates Security, Inc.*, Riverside Superior Court Case No. CVRI2305600, final approval granted on December 18, 2024; *Juan Hinojos Campos v. Applied Technology Group, Inc.*, Kern Superior Court Case No. BCV-23-103067, final approval granted on March 11, 2025; *Eric Echeverria v. Fireclay Tile Inc.*, San Benito Superior Court Case No. CU-23-00249, preliminary approval granted on October 9, 2024; *Norma Borquez v. Smart Metals Recycling LLC*, Yolo Superior Court Case No. CV2024-0050, preliminary approval granted on November 5, 2024; *Randall Bachman v. Geodis Logistics LLC*, Riverside Superior Court, Case No. CVRI2400956, preliminary approval granted on January 22, 2025; *Alexis Bartram v. Lakeshore Learning Materials, LLC*, Los Angeles Superior Court Case No. 23STCV21174, preliminary approval granted on March 5, 2025; *Mushfiqur Chowdhury v. CWT US, LLC*, Los Angeles Superior Court Case No. 23STCV25373, preliminary approval granted on March 24, 2025; *Jose Regalado v. United Markets*, Marin County Superior Court Case No. CV0001169, preliminary approval granted on March 28, 2025; *Pedro Hernandez v. Edmund A. Gray Co.*, Los Angeles Superior Court Case No. 24STCV04118, preliminary approval granted on April 9, 2025.

7. During my tenure as a wage and hour class action defense attorney, I have represented employers in over 80 wage and hour class and/or PAGA action lawsuits. The following is a list of wage and hour class and/or PAGA actions where I served as lead defense counsel or primary handling attorney and in which final settlement approval was granted, I tried the case to verdict, or I obtained a denial of motion for class certification: *Sylvia Martinez v. CCS Engineering Fresno, Inc., et al.*, Los Angeles Superior Court, No. 22STCV14985, filed May 4, 2022 (PAGA settlement approved on May 13, 2023); *Fidel Cruz v. Crescent Hotels & Resorts, LLC*, Sacramento Superior Court, No. 34-2021-00299126, filed April 20, 2021 (PAGA settlement approved on January 14, 2022); *Sidney Judge v. Aliso Viejo Brewing Company*, Orange County Superior Court, No. 30-2021-01178139-CU-OE-CXC, filed January 8, 2021 (Class/PAGA settlement approved on

January 18, 2023); *Joseph Montgomery v. Copart, Inc.*, Sacramento Superior Court, No. 34-2020-00280733, filed June 15, 2020 (Class/PAGA settlement approved on February 14, 2023); *Khawla Majdoub v. Argent Hotel Management, LLC, et al.*, San Francisco Superior Court, No. CGC20582921, filed February 13, 2020 (Class/PAGA settlement approved on September 9, 2022); *Irene Quesada v. California Commerce Club, Inc.*, Los Angeles Superior Court, No. 19STCV41482, filed November 18, 2019 (PAGA settlement approved on November 17, 2021); *FPI Management Wage and Hour Cases*, Los Angeles Superior Court, No. JCCP5050, filed August 19, 2019 (Class/PAGA settlement of two included cases approved on September 9, 2022); *Stephanie Ouellette v. MKTG, Inc, et al.*, Los Angeles Superior Court, No. 19STCV27487, filed August 2, 2019 (Class/PAGA settlement approved on March 21, 2023); *Naomi Guynn-Neupane v. Magna Legal Services, LLC, et al.*, U.S. District Court, Northern District of California, No. 5:19-CV-02652, filed May 15, 2019 (Plaintiff's motion for class certification denied and defendant's motion for summary judgment granted on October 6, 2021); *Janelle Murphy v. BBVA Compass*, Sacramento Superior Court, No. 34-2018-00241658, filed September 28, 2018 (Class/PAGA settlement approved on November 20, 2020); *George Gunn v. Shimadzu Precision Instruments, Inc.*, Los Angeles Superior Court, No. BC719424, filed August 31, 2018 (Class/PAGA settlement approved on June 22, 2020); *Lizbeth Garcia v. The Bay Clubs Company LLC*, San Diego Superior Court, No. 37-2018-00029247-CU-OE-CTL, filed June 13, 2018 (PAGA settlement approved on March 14, 2022); *Miguel Casillas v. FPI Management, Inc.*, Sacramento Superior Court, No. 34-2018-00227643, filed February 22, 2018 (PAGA settlement approved on October 10, 2018); *Jesus A. Hernandez v. J.V.C. Trucklines, Inc.*, San Bernardino Superior Court, No. CIVDS1714857, filed August 3, 2017 (Class/PAGA settlement approved on May 22, 2018); *Mireya Castrejon v. CCS Orange County Janitorial, Inc.*, Orange County Superior Court, No. 30-2017-00920076-CU-OE-CXC, filed May 12, 2017 (Class/PAGA settlement approved on November 17, 2021); *Alfonso Valadez v. California Commerce Club, Inc.*, Los Angeles Superior Court, No. BC644587, filed December 20, 2016 (PAGA settlement approved on December 17, 2021); *Loreta B. Gharghani v. Gefer Farms, Inc., et al.*, Los Angeles Superior Court, No. BC624938, filed June 23, 2016 (PAGA settlement approved on January 14, 2021); *Salvador Magana v. Normandie Club Incorporated*, Los

Angeles Superior Court, No. BC621737, filed May 25, 2016 (Class/PAGA settlement approved on October 26, 2018); *Kejuan Moore v. Farwest Insulation Contracting*, Los Angeles Superior Court, No. BC588118, filed July 15, 2015 (PAGA settlement approved on August 26, 2016); *Maria Dominguez v. Viva Bargain Center, Inc., et al.*, Los Angeles Superior Court, No. BC588049, filed July 14, 2015 (Class/PAGA settlement approved on June 13, 2017); *Valentin Maracine v. Mesa Verde Convalescent Hospital, Inc.*, Orange County Superior Court, No. 30-2015-00780115-CU-OE-CXC, filed April 1, 2015 (Class/PAGA settlement approved on July 7, 2017); *Judy Pittacora, et al. v. Aurora Vista Del Mar, LLC*, Ventura County Superior Court, No. 56-2014-00454445-CU-OE-VTA, filed June 20, 2014 (Class/PAGA settlement approved on October 20, 2016); *Iffat "Iffy" Khan v. FPI Management, Inc.*, Los Angeles Superior Court, No. BC541747, filed April 4, 2014 (Class/PAGA settlement approved on January 4, 2018); *Michael Luparello v. VIP Tours of California, Inc., et al.*, Los Angeles Superior Court, No. BC538570, filed March 6, 2014 (First-chaired certified class action trial through judgment on behalf of one of the defendants on August 16, 2019); *Bertram Riddick v. WDI International, Inc.*, Los Angeles Superior Court, No. BC507786, filed May 2, 2013 (Class settlement approved on February 21, 2017); *Pedro Aviles v. Super A Foods, Inc.*, Los Angeles Superior Court, No. BC504376, filed March 29, 2013 (Class/PAGA settlement approved on March 9, 2016); *Jose Chavez v. Vallarta Food Enterprises, Inc., et al.*, Los Angeles Superior Court, No. BC490630, filed August 21, 2012 (Class/PAGA settlement approved on November 10, 2014); and *Melinda Gonzalez v. Workforce Outsourcing, Inc., et al.*, Los Angeles Superior Court, No. BC489320, filed July 31, 2012 (Class/PAGA settlement approved on February 5, 2016).

8. As counsel for Plaintiff and Aggrieved Employees, I have been intimately involved in this case since its inception and I believe that the proposed PAGA settlement is an excellent result for Aggrieved Employees and the State. Enclosed as **Exhibit 1** is a true and correct copy of the parties' fully executed Joint Stipulation and Agreement for PAGA Representative Action Settlement (the "Settlement" or "Agreement"). The proposed Notice of PAGA Settlement and Release of Claims is attached to the Agreement as **Exhibit A**.

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SUMMARY OF THE LITIGATION AND SETTLEMENT

9. Defendant Pan American Properties, Inc. ("Defendant") owns and operates a residential property management company in California.

10. On November 17, 2023, Plaintiff filed the Class Action Complaint against Defendant alleging the following causes of action: (1) Minimum Wage Violations; (2) Overtime Wage Violations; (3) Meal Period Violations; (4) Rest Period Violations; (5) Wage Statement Penalties; (6) Waiting Time Penalties; (7) Failure to Reimburse Necessary Business Expenses; (8) Failure to Pay Call-Back Pay; and (9) Unfair Competition.

11. Also on November 17, 2023, Plaintiff submitted the initial PAGA notice of alleged Labor Code violations to Defendant and the California Labor and Workforce Development Agency (the "LWDA"). Enclosed as **Exhibit 2** is a true and correct copy of the August 22, 2023 initial PAGA notice. Plaintiff's administrative exhaustion period expired without the LWDA indicating its intent to investigate the allegations.

12. On January 31, 2024, Plaintiff filed the operative First Amended Class and Representative Action Complaint (the "Operative Complaint") adding a Tenth Cause of Action for Civil Penalties under the PAGA. Enclosed as **Exhibit 3** is a true and correct copy of the Operative Complaint. The Operative Complaint has been uploaded to the LWDA in compliance with PAGA.

13. The Parties met and conferred regarding an arbitration agreement signed by Plaintiff and agreed to attend mediation on a PAGA-only basis with class claims to be dismissed without prejudice. On October 29, 2024, the Parties participated in a PAGA mediation before mediator Phil Cha, Esq., where the Settlement was achieved. On March 19, 2025, after the Parties fully executed the Agreement, Plaintiff filed a Request for Dismissal of Class Claims Without Prejudice.

14. Following the filing of the Operative Complaint, Plaintiff and Defendant met and conferred regarding an agreement to mediate the action on a representative basis and further agreed to a protocol for an informal exchange of documents and information before mediation. Prior to mediation, the Parties engaged in informal discovery which allowed the Parties to meaningfully mediate this matter. Prior to mediation, the Parties engaged in informal discovery which allowed the Parties to meaningfully mediate this matter. Specifically, Defendant produced: (1) PAGA list with

Aggrieved Employees' dates of employment, job position, and, if applicable, value of employer-provided housing; (2) the number of pay periods worked by Aggrieved Employees; (3) a 20% sampling of Aggrieved Employees' time and payroll records; (4) an exemplar meal period waiver; (5) Defendant's employee handbook in effect during the PAGA Period; and (6) Plaintiff's personnel file and time and payroll records.

15. Plaintiff's counsel, with the assistance of a retained expert data analyst, analyzed and reviewed the documents regarding Defendant's wage and hour policies and practices, the Aggrieved Employees' time and pay records, and other information provided by Defendant and Plaintiff. Plaintiff's counsel was able to evaluate the probability of success on the merits and Defendant's maximum and risk-adjusted monetary exposure and prepare a damage analysis prior to mediation. The 20% sampling of time and pay records allowed Plaintiff's counsel and their expert to prepare an analysis with a high degree of certainty. In conjunction with their extensive factual investigation, Plaintiff's counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. Thus, Plaintiff and Plaintiff's counsel's familiarity with the facts of the case and the legal issues raised by the pleadings allowed them to act intelligently in negotiating the Settlement.

16. On October 29, 2024, the Parties participated in private mediation before Phil Cha, Esq., an experienced, neutral, class action and PAGA mediator. The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses, the Parties reached a settlement of this Action, the material terms of which are encompassed within the Agreement. The Parties recognized that the issues presented in the Action are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will lead to inconvenience, distraction, disruption, delay, and expense disproportionate to the potential benefits of litigation. Plaintiff and Plaintiff's counsel considered the risk and uncertainty of the outcome inherent in any litigation when determining whether this Settlement was the correct option.

17. On April 15, 2025, Defendant, via its counsel of record Talar Tavlian, confirmed that the number of pay periods worked during the PAGA Period is 6,068 and the escalator clause will not be triggered.

18. At this time, Plaintiff's litigation costs are $7,492.05, including $88.48 in estimated future costs in filing this Motion and supporting papers ($75.91) and filing of the Settlement Administrator's declaration of compliance re settlement administration ($12.57). Enclosed as **Exhibit 4** is a true and correct itemized list of costs incurred to date and estimated future costs.

19. The amount estimated in the Net Settlement Amount for the LWDA Payment and the PAGA Aggrieved Employee Payment is **$98,57.95**. Accordingly, approximately **$24,629.49** (25% of the Net Settlement Amount) will be paid to the estimated 189 Aggrieved Employees on a pro-rata basis based on the number of pay periods each Aggrieved Employee worked during the PAGA Period, and the raw average payment to Aggrieved Employees is estimated at **$130.31**.

THE SETTLEMENT WARRANTS APPROVAL

20. Plaintiff's counsel has conducted a thorough investigation into the facts of this case. Based on the foregoing discovery and on their own independent investigation and evaluation, Plaintiff's counsel is of the opinion that the Settlement is fair, reasonable, and adequate. Furthermore, considering all known facts and circumstances, the risk of significant delay, trial risk, appellate risk, the defenses that could be asserted by Defendant on the merits, the Settlement is in the best interests of the Aggrieved Employees and the State. The Settlement avoids the risks, burdens, and the accompanying expense of further litigation. Although the Parties have engaged in a significant amount of investigation, informal discovery, and employee data analysis, they have not participated in substantial formal discovery procedures, including depositions and expert discovery. Moreover, preparation for trial would remain for the Parties, as well as the prospect of appeals in the wake of any summary judgment ruling. As a result, the Parties would incur considerably more attorneys' fees and costs through trial.

21. Based on Plaintiff's counsel's analysis of the time and payroll records provided by Defendant and on information from Plaintiff, Plaintiff's counsel evaluated Defendant's maximum and risk-adjusted potential exposure. Based on Defendant's disclosures, there were approximately

172 Aggrieved Employees who collectively worked 5,539 pay periods. Plaintiff's counsel's valuation of each theory of liability is set forth below.

22. Off-the-Clock Work for Onsite Managers. Plaintiff alleges that, as onsite apartment managers, she and other onsite managers were on call afterhours and on weekends for tenant emergencies and regularly worked off the clock without pay, including working on assignments from her supervisor, taking calls from tenants afterhours while she was on call, and working with maintenance and vendors to address issues afterhours, and was not paid for such time. (*See also* Cal. Code Regs. tit. 8, § 11050(2)(K) ["[I]n the case of an employee who is required to reside on the employment premises, that time spent carrying out assigned duties shall be counted as hours worked."].) In response, Defendant argues that it maintains compliant policies that require all employees to accurately record their hours of work and prohibit off the clock work; Plaintiff and other onsite managers could—and should—have recorded the afterhours work in their timesheets for payment; and Defendant had no actual or constructive knowledge that Plaintiff and other onsite managers were working off the clock. (*See also Jong v. Kaiser Found. Health Plan, Inc.* (2014) 226 Cal. App. 4th 391, 395 [holding employer's liability for off-the-clock work is based on its actual or constructive knowledge of the work].) Based on the sampling records, approximately 41.28%, or 2,290 pay periods, during the PAGA Period were attributable to Aggrieved Employees who worked as onsite managers. At $100 initial violation rate penalty per pay period and extrapolated to 5,549 pay periods, PAGA penalties are estimated at $229,000. Utilizing the initial violation rate penalty of $100 is appropriate because Defendant has not been subject to any prior court judgments or Labor Commissioner order placing it on notice of any violation pertaining to the claims Plaintiff asserted and the heightened subsequent violation penalty does not apply. (*See Bernstein v. Virgin America, Inc.* (9th Cir. 2021) 990 F.3d 1157, 1173.)

23. Meal and Rest Period Violations. Plaintiff alleges that Defendant failed to provide Aggrieved Employees with compliant meal and rest periods. In response, Defendant contends that it maintains compliant meal and rest period policies in its employee handbook; any non-compliant meal and rest periods resulted from lawful employee waiver for voluntary choice, rather than any systemic policy or practice of Defendant; some employees did not clock in and out for meal periods

but still took the meal periods; and Plaintiff's proffered meal and rest period non-compliance rate is excessive. The sampling records evidence approximately 70.06% of pay periods with one or more meal period violations (i.e., missed, late, and/or short first and/or second meal periods). At $100 initial violation rate penalty per pay period and extrapolated to 5,549 pay periods, PAGA penalties are estimated at $388,430. As employees are not required to clock in and out for rest periods, any rest period violations will not be in the records. Estimating 25% of pay periods have a rest period violation and extrapolated to 5,549 pay periods, potential PAGA penalties are $138,725.

24. Regular Rate of Pay Violations. Plaintiff alleges that Defendant failed to incorporate the value of employer-provided, discounted apartment units to onsite apartment managers. ("Regular rate of pay, which can change from pay period to pay period, includes adjustments to the straight time rate, reflecting, among other things, shift differentials and the per-hour value of any nonhourly compensation the employee has earned." (*Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 554; *see also* Lab. Code § 246(l)(1).) "The regular rate of pay includes many different kinds of remuneration, for example: . . . the value of meals and lodging." (Division of Labor Standards Enforcement Policies and Interpretations Manuel at 49.1.1.) In response, Defendant argues that there is no authority that the value of the discounted housing for onsite apartment managers must be factored into the regular rate of pay. Based on Plaintiff's counsel's analysis of the payroll records, 20.51% of payrolls of onsite managers had an overtime regular rate violation and 11.68% of payrolls had a paid sick leave violation. At $100 initial penalty per pay period and extrapolated to 5,549 pay periods, PAGA penalties for overtime regular rate is estimated at $46,979.71 and for paid sick leave regular rate is estimated at $26,753.92.

25. Inaccurate Wage Statements. Plaintiff alleges that, as a result of the aforementioned wage violations, Defendant failed to furnish Aggrieved Employees with accurate itemized wage statements in violation of Labor Code section 226(a). In response, Defendant contends that this claim is derivative of the foregoing unpaid wage claims and will fail along the underlying wage claims. In the sampling, at least 70% of pay periods had a meal period violation; thus, extrapolated to 5,549 pay periods, the PAGA penalty floor is $388,430.

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26. Failure to Pay All Wages Due Upon Termination. Plaintiff alleges that, as a result of the aforementioned wage violations, Defendant failed to pay all wages due to formerly employed Aggrieved employees upon their separation of employment in violation of Labor Code sections 201 and 202. In response, Defendant contends that this claim is derivative of the foregoing unpaid wage claims and will fail along the underlying wage claims. At $100 per former employee for 49 former employees, PAGA penalties are estimated to be $4,900.

27. Failure to Reimburse Cellphone Expenses. Plaintiff alleges that she and other onsite apartment managers used their personal cellphones to communicate with tenants and vendors without reimbursement. In response, Defendant contends that it provided onsite apartment managers, including Plaintiff, with pagers for use when they are on call and phones in the leasing office so they are not required to use their personal cellphones for work, and any such usage was for their own convenience rather than a job requirement. At a 41.28% violation rate attributable to onsite managers only, and $100 per pay period and extrapolated to 5,549 pay periods, potential penalties are $229,000.

28. Maximum Exposure and Realistic Recovery at Trial. Based on the foregoing, Plaintiff's counsel estimates Defendant's maximum exposure for PAGA penalties to be approximately **$1,452,218.63**. However, in addition to Defendant's defenses on the merits as discussed above, PAGA penalties subject to discretionary reduction by this Court. Pursuant to Labor Code § 2699(f)(2), the Court can decline to award the full amount of PAGA penalties where ". . . if, based on the facts and circumstances of the particular case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Indeed, courts have affirmed the reduction of PAGA penalties in the past. As shown in *Carrington v. Starbucks Corp*. (2018) 30 Cal.App.5th 504, 517, the Court of Appeal affirmed the trial court's reduction of PAGA penalties by 90%, citing the employer's good-faith attempt at complying with the law. (*See also Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 [affirming reduction of PAGA penalties[; *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 [reducing PAGA penalties by over 82% in part because employer "not aware" of violations].) Here, Defendant argued that based on their compliant policies and practices, the

Court will significantly reduce any award of PAGA penalties based on its good-faith compliance with the Labor Code.

29. Taking into account Defendant's defenses on the merits and the potential for the Court to reduce a PAGA penalty award, Plaintiff's counsel believes there is a 30% risk factor that the Court will find some of the claims in Defendant's favor and another 50% risk factor that the Court will exercise its discretion to reduce the PAGA penalty award. Accordingly, applying an 80% discount to the maximum potential recovery, Plaintiff's counsel believes the realistic recovery at trial on these claims to be **$290,443.73**.

30. The $195,000.00 settlement is an excellent result and amounts to "genuine and meaningful" relief "consistent with the underlying purpose of the statute to benefit the public" as it represents approximately **67%** of Plaintiff's realistic recovery. (*See Villalobos v. Calandri Sonrise Farm LP* (C.D. Cal., July 22, 2015, No. CV 12-2615 PSG (JEMx)) 2015 WL 12732709, at *5; *see also O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135.) This is an excellent result, particularly because, under the Settlement, Aggrieved Employees will receive timely, guaranteed relief and will avoid the risk of not being able to recover anything.

<u>THE REQUESTED ATTORNEYS' FEES AND COST AWARD SHOULD BE APPROVED</u>

31. This Settlement is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and resources facing Defendant while at the same time rewarding Plaintiff's counsel for their decision to assume risk by taking on this matter. In fact, prosecution of this action involved significant financial risk for Plaintiff's counsel. Plaintiff's counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. Once Plaintiff's counsel undertook this litigation on behalf of the Aggrieved Employees, they committed to pursue it to its conclusion, placing their fiduciary duty to the Aggrieved Employees ahead of all other concerns.

32. My fee requests of one-third (33 1/3%) of the gross settlement amount, a lodestar hourly rate of $800 per hour to me and $450 to Tiffany Luu have been approved in *Dennisha Lampkin v. Sunstates Security, Inc.*, Riverside Superior Court Case No. CVRI2305600, final approval granted on December 18, 2024; and *Juan Hinojos Campos v. Applied Technology Group, Inc.*, Kern Superior Court Case No. BCV-23-103067, final approval granted on March 11, 2025.

33. Plaintiff's counsel's current lodestar is **$66,595.00** which is based on 96.50 hours of attorney time for William Sung and Tiffany Luu at their customary hourly rates. Accordingly, the fee request does not need a positive multiplier. Enclosed as **Exhibit 5** is a true and correct copy of William Sung's time log. Enclosed as **Exhibit 6** is a true and correct copy of Tiffany Luu's time log.

34. Additionally, Plaintiff's counsel estimate they will devote no less than 10 hours, although likely more time, to additional tasks, which are hours not included in the foregoing lodestar total. These additional hours will include time spent to obtain and monitor approval of the Settlement and requested awards, oversee the settlement administration process and distribution of funds, respond to inquiries, and communicate with Plaintiff regarding the case.

35. Based on Plaintiff's counsel's calculations, Plaintiff's individual wage and hour damages are $33,279.23, broken down as (1) off-the-clock work: $17,550 ($39 overtime rate x 10 hours per week x 45 weeks); (2) unpaid meal period premiums: $3,510 ($26 hourly rate x 3 violations per week x 45 weeks); (3) unpaid rest period premiums: $3,510 ($26 hourly rate x 3 violations per week x 45 weeks); (4) unreimbursed cellphone expenses: $519.23 ($50/month x 45 weeks); (5) statutory wage statement penalties: $1,950 (20 semi-monthly pay periods); and (6) statutory waiting time penalties: $6,240 ($26 hourly rate x 8 hours x 30 days). Thus, Plaintiff's Individual Settlement Payment is approximately 60% of Plaintiff's potential recovery and consistent with the recovery ratio of the PAGA claims. Furthermore, because Plaintiff is seeking approval of her Individual Settlement Payment, she is not otherwise seeking a service award or enhancement payment for her services as the PAGA representative

36. On April 18, 2025, I caused a copy of the Motion for Approval of PAGA Settlement, supporting declarations, and the fully executed Agreement to be uploaded to the LWDA's website. Enclosed as **Exhibit 7** is a true and correct copy of the LWDA's filing confirmation.

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

Executed on April 18, 2025 at Los Angeles, California.

William C. Sung

EXHIBIT 1

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

DOELISHA KELLY, an individual and on behalf of all others similarly situated; Plaintiff, vs. PAN AMERICAN PROPERTIES, INC., a California corporation; and DOES 1 through 50, Defendants.	Case No.: 30-2023-01362739-CU-OE-CXC [Assigned for All Purposes to: Hon. William Claster, Dept. CX101] **STIPULATION AND AGREEMENT FOR PAGA REPRESENTATIVE ACTION SETTLEMENT** Action Filed: November 17, 2023 Trial Date: Not Set

This Stipulation and Agreement for PAGA Representative Action Settlement (the "**Agreement**", "**Settlement**", or "**Settlement Agreement**") is entered into between Plaintiff Doelisha Kelly ("**Plaintiff**") and Defendant Pan American Properties, Inc. ("**Defendant**") (collectively referred to as the "**Parties**").

DEFINITIONS

1. "**Action**" means *Doelisha Kelly v. Pan American Properties, Inc.*, Orange County Superior Court Case No. 330-2023-01362739-CU-OE-CXC.

2. "**Aggrieved Employees**" means any current or former non-exempt, hourly employee of Defendant who worked in California at any time during the PAGA Period.

3. The terms "**Agreement,**" "**Settlement,**" and "**Settlement Agreement**" mean this Stipulation and Agreement for PAGA Representative Action Settlement, which the Parties acknowledge sets forth all material terms and conditions of the Settlement between them, and which is subject to Court approval pursuant to Section 2699(1) of the California Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*

4. "**Court**" means the Superior Court of California, County of Orange.

5. "**Defendant**" means named Defendant Pan American Properties, Inc.

6. "**Effective Date**" of this Agreement shall be the date the Court enters a Final Order and Judgment.

7. "**Final Order and Judgment**" means the Judgement entered by the Court upon granting Final Approval of the Settlement.

8. "**Gross Settlement Amount**" means a maximum total of One Hundred Ninety-Five Thousand Dollars and Zero Cents ($195,000.00), which includes all payments owing as a result of this Agreement and includes: the LWDA Payment, PAGA Aggrieved Employee Payment, Plaintiff's Individual Settlement Amount; Settlement Administrator Expenses Payment; and PAGA Counsel Fees Payment and PAGA Counsel Costs Payment, all as awarded by the Court.

9. **"Individual PAGA Payment"** means the Aggrieved Employee's pro rata share of 25% of the PAGA Aggrieved Employee Payment calculated according to the number of pay periods

worked during the PAGA Period.

10. "**LWDA Payment**" means a payment to the California Labor Workforce and Development Agency in an amount equal to 75% of the Net Settlement Fund.

11. "**Net Settlement Fund**" is the Gross Settlement Amount less all of the following: PAGA Counsel Fees Payment, PAGA Counsel Costs Payment, Plaintiff's Individual Settlement Amount, and Settlement Administrator Expenses Payment.

12. "**PAGA Aggrieved Employee Payment**" means the total amount of PAGA civil penalties to be paid from the Net Settlement Fund, 25% of which is allocated to the Aggrieved Employees and the 75% of which is allocated to the LWDA in settlement of the PAGA claims.

13. "**PAGA Claim**" means the claim under the California Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code sections 2698 *et seq.*, "**PAGA**") alleged in the Action.

14. "**PAGA Counsel**" means William C. Sung and Tiffany L. Luu of Justice for Workers, P.C.

15. "**PAGA Counsel Fees Payment"** means the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.

16. **"PAGA Counsel Costs Payment"** means the actual amount of litigation costs incurred by PAGA Counsel in this Action, not to exceed an amount of $10,000, as approved by the Court.

17. "**PAGA Period**" means November 17, 2022 through December 29, 2024.

18. **"Plaintiff's Individual Settlement Amount"** means the amount Defendant will pay to Plaintiff for the release of her individual wage and hour claims, as defined in the General Release by Plaintiff section below.

19. "**Released Claims**" means all claims for civil penalties under the California Private Attorneys General Act ("**PAGA**") that are alleged or which reasonably could have been alleged against Released Parties during the PAGA Period based on the facts alleged in the operative First Amended Complaint, including, but not limited to claims pursuant to California Labor Code sections

201, 202, 203, 204, 210, 218.5, 226, 226.3, 226.7, 246, 510, 512, 516, 558, 558.1, 1021.5, 1182.12, 1174, 1182.8, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2698 through 2699.5, 2802, Business and Professions Code section 17200 et seq., 17202 and 17203, Code of Civil Procedure section 1021.5, California Code of Regulations, Title 8, Section 11070 and California Wage Order No. 5-2001.

20. "**Released Parties**" means Defendant and any of its present and former parent companies, subsidiaries, divisions, concepts, related or affiliated companies and their shareholders, officers, directors, employees, agents, attorneys, insurers (including but not limited to Accelerant Specialty Insurance Company and Premier Claims Management, LLC), successors and assigns, and any individual or entity that could be liable for any of the Released Claims, and Defendant's counsel of record in the Action.

21. "**Representative Plaintiff**" or "**Plaintiff**" means Doelisha Kelly, the named Plaintiff in the Action.

22. "**Settlement Administrator**" shall mean Apex Class Action LLC, a neutral third-party administrator chosen by the Parties, subject to approval by the Court.

23. **"Settlement Administrator Expenses Payment"** means the amount the Settlement Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Settlement Administrator's "not to exceed" bid submitted to the Court in connection with approval of the Settlement.

RECITALS

24. On November 17, 2023, Plaintiff sent a PAGA notice (the "**PAGA Notice**") to the Labor & Workforce Development Agency ("**LWDA**") and Defendant. On the same day, Plaintiff filed the Class Action Complaint against Defendant alleging claims for (1) Minimum Wage Violations; (2) Overtime Wage Violations; (3) Meal Period Violations; (4) Rest Period Violations; (5) Wage Statement Penalties; (6) Waiting Time Penalties; (7) Failure to Reimburse Necessary Business Expenses; (8) Failure to Pay Call-Back Pay Premiums; and (9) Unfair Competition.

25. On January 31, 2024, Plaintiff filed the operative First Amended Class and Representative Action Complaint (the "**Operative Complaint**") adding a Tenth Cause of Action

for Civil Penalties under the California Private Attorneys General Act.

26. The Parties have conducted a thorough investigation into the facts of the Action. This included exchanging extensive data and information as well as documents relating to the underlying alleged violations. In addition, the Parties attended a full day mediation with mediator Phillip Cha, Esq. on October 29, 2024.

27. As part of the Settlement, and because the Parties executed an arbitration agreement with a class action waiver, Plaintiff will file a request for dismissal of the class action claims without prejudice within five days of Parties' execution of this Agreement.

28. The Parties believe that the Settlement is fair, reasonable, and adequate. The Parties understand, acknowledge, and agree that this Settlement Agreement constitutes a compromise of Representative Plaintiff's, the State of California's, and the Aggrieved Employees' PAGA Claims, and that it is the desire and intention of the Parties to effect a final and complete resolution of the PAGA claims that the Representative Plaintiff, the State of California, and the Aggrieved Employees may have against Defendant.

29. The Parties enter into this Settlement Agreement on a conditional basis. In the event the Court does not enter a Final Order and Judgment as defined in this Settlement Agreement, this Settlement Agreement will be deemed null and void *ab initio* and will be of no force or effect whatsoever, and will not be referred to or utilized for any purpose whatsoever.

30. Defendant denies all of the claims in the Action, and does not waive, but rather expressly reserves, all rights to challenge all such claims and allegations upon all legal, procedural and factual grounds should this Settlement Agreement not become final. Defendant denies all of the allegations in the Action and denies that it or any Released Parties committed any misconduct, statutory or regulatory violation, wrongdoing, or any other actionable conduct of any kind. This Settlement Agreement reflects a compromise reached to end litigation.

31. The Parties stipulate and agree to the following terms of this Settlement Agreement with the intent that this Agreement finally disposes of the Action with prejudice.

TERMS AND CONDITIONS

32. **Settlement Payments and Calculation of Claims**. The following table summarizes the allocation of the Gross Settlement Amount:

Gross Settlement Amount of $195,000.00 Is Broken Down As Follows:

• **$96,010.00** for the Net Settlement Fund
  o **$72,007.50** for the LWDA Payment
  o **$24,002.50** for the PAGA Aggrieved Employee Payment
• PAGA Counsel Attorneys' Fees Payment not to exceed **$65,000.00** (One-Third of the Goss Settlement Amount)
• PAGA Counsel Costs Payment not to exceed **$10,000.00**
• Plaintiff's Individual Settlement Amount not to exceed **$20,000.00**
• Settlement Administrator Expenses Payment, not to exceed **$3,990.00**

33. Subject to final Court approval and the conditions specified in this Agreement, and in consideration of the mutual covenants and promises set forth in this Agreement, Defendant agrees to pay the Gross Settlement Amount of $195,000.00. The Gross Settlement Amount includes only payments to be made for PAGA Counsel Fees Payment, PAGA Counsel Costs Payment, Plaintiff's Individual Settlement Amount, the Net Settlement Fund, LWDA Payment, PAGA Aggrieved Employee Payment, and Settlement Administrator Expenses Payment. The Parties agree, subject to Court approval, that the Gross Settlement Amount shall be apportioned as follows:

a. Settlement Administrator Expenses Payment: The fees and costs associated with settlement administration (*e.g.*, preparing and mailing payments to the Aggrieved Employees, tax documentation, etc.) (the "**Settlement Administration Costs**") will be paid from the Gross Settlement Amount and are estimated to be $3,990.00. The Parties agree to use Apex Class Action LLC as the Settlement Administrator.

b. PAGA Counsel's Fees Payment and PAGA Counsel Costs Payment: The Parties agree that, subject to the Court's review and approval, PAGA Counsel will be paid from the Gross Settlement Amount an amount that is up to One-Third (33 1/3%) of the Gross Settlement Amount for attorneys' fees ($65,000.00), plus actual litigation costs, not to exceed $10,000.00. The Parties agree that this Agreement shall not be voided or nullified if the Court decides to award a different amount to Plaintiffs' counsel. Any portion of the fee allocation or costs not approved by the Court will be included in the Net Settlement Fund and will be distributed to the LWDA and the Aggrieved Employees. Except for fees and costs awarded by the Court from the Gross Settlement Amount, the Parties will bear their own costs and attorneys' fees.

c. Plaintiff's Individual Settlement Amount: The Parties agree that, subject to the Court's review and approval, Plaintiff will receive up to $20,000.00 in settlement of all of Plaintiff's individual wage and hour claims under the California Labor Code and IWC Wage Orders in exchange for Plaintiff's release of all such claims.

d. Net Settlement Fund: After deducting PAGA Counsel Fee Payment and PAGA Counsel Costs Payment, Settlement Administrator Expenses, and Plaintiff's Individual Settlement Amount from the Gross Settlement Amount, the remaining amount will comprise the Net Settlement Fund. The Net Settlement Fund is comprised of the LWDA Payment and the PAGA Aggrieved Employee Payment. The Net Settlement Fund of approximately $96,010 shall be allocated 75% to the LWDA Payment, which is estimated to total $72,007.50 ($96,010 x 75%). The remaining 25% of the Net Settlement Fund, estimated to total $24,002.50, shall be allocated to the PAGA Aggrieved Employee Payment to be paid to the Aggrieved Employees on a *pro rata* basis as noted below, which shall be referred to as the Aggrieved Employee's "**Individual PAGA Payment**." The Settlement Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods.

e. Taxes and Reporting: The Individual PAGA Payments will be treated as non-wage income to the Aggrieved Employees and reported by the Settlement Administrator on IRS Form 1099. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

34. **Aggrieved Employee Size Estimate And Escalator Clause**.

a. The Settlement is based on the assumption that Aggrieved Employees collectively worked 5,539 pay periods during the PAGA Period. If that number increases by more than 750 pay periods (i.e., more than 6,289 total pay periods), then Defendant shall have the option to either: (1) deescalate the Settlement so that the PAGA Period ends on the date that the pay period count totals no more than 6,289; or (2) permit the Gross Settlement Amount to be increased proportionally by the pay periods worked in excess of 6,289 multiplied by a pay period value of the Gross Settlement Amount divided by 5,539. Within 21 calendar days of the Parties' execution of this Agreement, Defendant shall confirm the number of pay periods worked by Aggrieved Employees during the PAGA Period and whether the escalator clause is triggered.

35. **Release By Aggrieved Employees and State of California**.

a. Terms of Release. In exchange for the consideration recited in this Settlement Agreement and upon Defendant's funding of the Gross Settlement Amount, Plaintiff, as the representative for the State of California and all Aggrieved Employees, and on behalf of their current, former, and future heirs, executors, administrators, attorneys, agents, and assigns, will forever completely release and discharge the Released Parties of any and all Released Claims. The Aggrieved Employees and the State of California are deemed by operation of the Final Order and Judgment to have agreed not to sue or otherwise make a claim against any of the Released Parties for any Released Claims.

b. No Claims Based on Stipulation and Agreement. No Aggrieved Employee, nor the State of California, will have any claim against any of the Released Parties, Defendant's counsel, the Representative Plaintiff, or PAGA Counsel, based on errors in administrating claims or performing the mailing and skip-tracing requirements of the Settlement Administrator under this Agreement.

36. **General Release By Plaintiff**.

a. Terms of Release. As consideration for Plaintiff's Individual Settlement Amount, and upon Defendant's funding of the Gross Settlement Amount, Plaintiff, on behalf of herself and on behalf of her current, former, and future heirs, executors, administrators, attorneys, agents, and assigns, do hereby and forever release, waive, acquit and discharge the Released Parties from all wage and hour claims under the California Labor Code and IWC Wage Orders. Expressly excluded from Plaintiff's release against Released Parties are her claims in Los Angeles County Superior Court Case No. 24LBCV01570, alleging causes of action for (1) breach of warranty of habitability (common law); (2) breach of warranty of habitability (statutory); (3) retaliatory eviction; (4) breach of warranty of quiet enjoyment; (5) nuisance; (6) discriminatory housing practice in violation of fair employment & housing laws (Cal. Gov. Code § 12955, et seq.); (7) violation of Civil Rights Act (42 U.S.C. 3604); (8) negligence; (9) premises liability and personal injury; (10) constructive eviction; and (11) intentional infliction of emotional distress; and any and all claims for (1) whistleblower retaliation in violation of Labor Code section 1102.5; (2) retaliation in violation of the Fair Employment & Housing Act, Gov. Code § 12940 et seq. ("FEHA") including Gov. Code 12940(h); (3) retaliation in violation of Govt. Code section 12940(m)(2); (4) failure to provide a reasonable accommodation in violation of FEHA, including Gov. Code § 12940(m)(1); (5) failure to engage in good-faith, interactive process in violation of FEHA, including Gov. Code § 12940(n); (6) failure to prevent discrimination, harassment and retaliation in violation of FEHA, including Gov. Code § 12940(k); (7) intentional infliction of emotional distress; (8) negligent infliction of emotional distress; (9) breach of warranty of habitability; (10) wrongful termination in violation of public policy; (11) fraud, intentional misrepresentation, fraudulent inducement, fraud by false promise, fraudulent concealment, or negligent misrepresentation; and/or retaliation and/or wrongful termination in violation of Labor Code § 6310. Nothing in Plaintiff's release shall operate to release any of Plaintiff's claims under California's Fair Employment & Housing Act, whether or not specifically listed herein.

37. **Request For Final Order and Judgment**.

a. The Parties agree that Plaintiff's counsel will prepare and file a motion for approval of PAGA settlement ("Motion for Approval of PAGA Settlement"). Within thirty (30) days of the full execution of this Agreement, Plaintiff will prepare and deliver to Defendant's counsel all documents necessary for obtaining settlement approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for PAGA Settlement that includes a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); and (ii) a draft proposed Order Granting Approval of PAGA Settlement and Judgment.

PAGA Counsel is responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 45 days after the full execution of this Agreement and obtaining a prompt hearing date for the Motion for Approval of PAGA Settlement. PAGA Counsel is responsible for delivering the Court's Order Granting Approval of PAGA Settlement and Judgment to the Administrator.

If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, PAGA Counsel and Defendant's counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, PAGA Counsel and Defendant's 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.

38. **Settlement Funding**.

a. Upon the Court entering the Final Order and Judgment, and within 15 days after the Effective Date, the Settlement Administrator shall send Defendant's counsel electronic wiring instructions to fund the Gross Settlement Amount.

b. Within 45 days after the Effective Date, Defendant will fund the Gross Settlement Amount.

c. Within 21 days after Defendant funds the Gross Settlement Amount, the Settlement Administrator shall issue all payments required by this Agreement (the "**Payment Date**").

39. **PAGA List**.

a. Within 21 days after the Effective Date, Defendant will provide a PAGA List to the Settlement Administrator which will identify all Aggrieved Employees by name, social security number, and last known home address ("**PAGA List**"). The PAGA List will also contain the number of pay periods credited to each Aggrieved Employee.

b. The PAGA List will not be provided to PAGA Counsel, but the Settlement Administrator will confirm with PAGA Counsel that the PAGA List was received.

40. **<u>List Of Individual Settlement Amounts</u>**.

a. Within 15 days after the Settlement Administrator receives the PAGA List, the Settlement Administrator will provide to PAGA Counsel and Defendant's counsel a Proceeds List reflecting the Individual PAGA Payment for each Aggrieved Employee ("**Proceeds List**"). The Proceeds List provided to PAGA Counsel will not include the Aggrieved Employees' names, social security numbers, or any contact information.

41. **<u>PAGA Payments to Aggrieved Employees</u>**.

a. On the Payment Date, the Settlement Administrator will mail to each Aggrieved Employee, via first-class United States Mail, the following: (a) the PAGA Settlement Notice in English, attached as <u>Exhibit A</u> to this Agreement and (b) their Individual PAGA Payment (collectively, the "**PAGA Packet**").

b. Prior to mailing, the Settlement Administrator will update all addresses using the National Change of Address System (NCOA). In the event that a PAGA Packet is returned to the Settlement Administrator with a forwarding address, the Settlement Administrator will re-send the PAGA Packet to the forwarding address identified. If no forwarding address is provided, then the Settlement Administrator will promptly conduct a "standard search," sometimes called, "Skip Trace" or "Credit Header" searches, to locate a better address. If a better address is found, the Settlement Administrator will promptly re-send the PAGA Packet. If a better address is not found or the PAGA Packet is ultimately returned without a forwarding address, neither the Settlement Administrator, the Parties, Defendant's counsel, or PAGA Counsel shall be required to take further action.

c. Aggrieved Employees shall have 180 calendar days after the date the PAGA Packet is mailed to them to cash their settlement payment checks. If any Aggrieved Employee's check is not cashed within that period, the settlement payment check will be voided and a stoppayment will be issued (the "**Void Date**"). Neither Defendant, Defendant's counsel, Representative Plaintiff, nor PAGA Counsel will have any liability for lost or stolen settlement payment checks, forged signatures on settlement payment checks, unauthorized negotiation of settlement payment checks or failure to timely cash a settlement payment check within the 180 day period.

d. Funds represented by settlement checks remaining uncashed as of the Void Date shall be paid to the State Controller's Unclaimed Property Fund in the names of the Aggrieved Employees who did not cash their settlement checks.

42. **<u>Payments Of Plaintiff's Individual Settlement Amount, PAGA Counsel Fees Payment, PAGA Counsel Costs Payment, and the LWDA Payment</u>**.

a. On the Payment Date, the Settlement Administrator will pay from the Gross Settlement Amount the Representative Plaintiff's Individual Settlement Amount as approved by the Court.

b. On the Payment Date, the Settlement Administrator will pay from the Gross Settlement Amount to PAGA Counsel the Court-approved PAGA Counsel Fees Payment and PAGA Counsel Costs Payment.

c. On the Payment Date, the Settlement Administrator will pay the LWDA Payment from the Net Settlement Fund by issuing a check to "California Labor Workforce and Development Agency."

43. **<u>Deadlines</u>**.

If any deadline specified in this Agreement falls on a Saturday, Sunday, or Court holiday, the deadline will be automatically extended to the next regular business day. Unless specified otherwise, all references to "days" shall mean calendar days.

44. **<u>Enforcement and Continuing Jurisdiction of the Court</u>**.

Pursuant to the Parties' agreement, this Settlement Agreement will be approved by the Court and will be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6. Even after the entry of the Final Order and Judgment, this Court will have and retain continuing jurisdiction over the Actions and over all Parties and the Aggrieved Employees, to the fullest extent necessary or convenient to enforce and effectuate the terms and intent of this Settlement Agreement and all matters provided for in it, and to interpret it.

45. **Mutual Full 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. If the Parties disagree on any aspect of the proposed motion or application with the Court requesting approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defendant's 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.

46. **Non-Admission Of Liability**.

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

47. **Effective Date Of Defendant's Obligations Under This Agreement**.

Defendant's obligations under this Settlement Agreement will become final and effective only upon the occurrence of the Effective Date. In the event that any of the conditions specified in this Settlement Agreement are not satisfied, or in the event that this Settlement does not obtain approval of the Court for any reason, all matters covered by this Agreement will be null and void. In such event, neither this Agreement nor any negotiations leading to this Settlement will be used or construed by or against any Party as a determination, admission, or concession of any issue of law or fact in the litigation; and the Parties do not waive, and instead expressly reserve, their respective rights regarding the prosecution and defense of the Actions, including all available defenses and affirmative defenses, and to challenge any claim, as if this Settlement Agreement never existed.

48. **Nullification**.

If: (1) the Court should for any reason fail to enter the Final Order and Judgment; or (2) the Court's Final Order and Judgment is reversed or modified as to any material term as defined above, or declared or rendered void as to any material term as defined above, then (a) the Settlement Agreement shall become null and void; (b) the Parties will revert to their respective positions immediately prior to reaching the settlement; and (c) the Parties will be equally responsible for any Settlement Administration Costs.

49. **Invalidation**.

Invalidation of any material term of this Settlement Agreement will invalidate this Agreement in its entirety unless the Parties subsequently agree in writing that the remaining provisions will remain in full force and effect.

50. **No Publicity**.

Representative Plaintiff and their counsel agree that the terms of this Settlement Agreement (including, but not limited to, the Gross Settlement Amount), the negotiations leading to the execution of this Settlement Agreement, and the Settlement Agreement itself, shall not be discussed with or publicized or promoted to the media (including, without limitation, legal periodicals and publications such as “Jury Verdicts,” or disclosure of the Settlement Agreement on any web site of the Plaintiffs’ counsel), or the public at large, without the advance written consent of Defendant. The Parties intend this Paragraph to prohibit Representative Plaintiff and their counsel from discussing, answering questions about, promoting or publicizing the Settlement Agreement, its terms, or the negotiations leading to the Settlement Agreement with anyone other than the Court or those individuals necessary to effectuate the terms of the Agreement. Notwithstanding the foregoing, Representative Plaintiff and their counsel (1) may tell the public in general only that certain claims “have been resolved by the Parties;” and (2) may disclose the terms of the Settlement Agreement (a) in appropriate filings with the Court in this case; (b) where required by law (*e.g.*, income tax returns); (c) to accountants or other tax professionals for the purpose of preparing tax returns; and (d) as otherwise ordered by the Court or as necessary to effectuate the Agreement (*e.g.*, disclosure to the Settlement Administrator, posting of judgment on Settlement Administrator’s website if required, etc.). In addition, PAGA Counsel may respond to questions received from, and discuss any aspect of this Agreement with Aggrieved Employees.

51. **Entire Agreement**.

This Settlement Agreement constitutes the entire integrated agreement between the Parties relating to the Actions, and no oral representations, warranties, or inducements have been made to any party concerning this Settlement Agreement other than the representations, warranties, and covenants contained and memorialized in this Settlement Agreement. This Agreement supersedes any and all prior oral or written understandings, agreements (including, for example, the Memorandum of Understanding entered into on or about December 24, 2024) and arrangements between the Parties with respect to the settlement of the Actions and the Released Claims against the Released Parties.

52. **Authorization To Act**.

PAGA Counsel warrants and represents that they are authorized by the Representative Plaintiff, and counsel of record for Defendant warrants that they are authorized by Defendant, to take all appropriate action required or permitted to be taken by such Parties pursuant to this

Settlement Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement Agreement, except for any documents, including but not limited to this Settlement Agreement, that are required to be executed by the Parties.

53. **Modification Only In Writing**.

This Settlement Agreement may be amended or modified only by a written instrument signed by all Parties or their successors in interest.

54. **Binding On Successors**.

This Settlement Agreement is binding upon and will inure to the benefit of the Parties to this Agreement, as well as their respective attorneys, past, present, and future predecessors, successors, shareholders, officers, directors, employees, agents, trustees, representatives, administrators, fiduciaries, assigns, insurers, executors, partners, parent corporations, subsidiaries, and related or affiliated entities.

55. **No Prior Assignments**.

The Representative Plaintiff and Aggrieved Employees are deemed by operation of the Final Order and Judgment to represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, cause of action, or rights released and discharged by this Agreement.

56. **Governing Law**.

All terms of this Settlement Agreement will be governed by and interpreted according to the laws of the State of California, without giving effect to conflicts of laws principles.

57. **Counterparts**.

This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument. Counsel for the Parties will exchange among themselves signed counterparts.

58. **Headings For Convenience Only**.

The descriptive headings of any paragraphs or sections of this Settlement Agreement are inserted for convenience of reference only and do not constitute a part of this Settlement Agreement.

59. **Construction Of This Agreement**.

The Parties agree that the terms and conditions of this Settlement Agreement are the result of arms-length negotiations between the Parties and that this Settlement Agreement will not be construed in favor of or against any Party by reason of the extent to which any Party, or his or her or its counsel participated in the drafting of this Agreement. This Settlement Agreement constitutes the entire agreement between the Parties. Except as expressly provided in this Agreement, this Settlement Agreement has not been executed in reliance upon any other oral or written representations or terms and no such extrinsic oral or written representations or terms will modify, vary or contradict the terms of this Settlement Agreement. In entering this Settlement Agreement, the Parties explicitly recognize California Civil Code section 1625 and California Code of Civil Procedure section 1856(a), which provide that a written agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence. The Representative Plaintiff and Defendant had available to them the advice and assistance of independent counsel. As such, neither Representative Plaintiff nor Defendant may claim that any ambiguity in this Settlement Agreement should be construed against the other.

60. **Corporate Signatories**.

Any person executing this Settlement Agreement or any related document on behalf of a corporate signatory warrants and promises for the benefit of all Parties that such person has been duly authorized by such corporation to execute this Settlement Agreement or any related document.

61. **Representation By Counsel**.

All of the Parties to this Agreement acknowledge that they have been represented by counsel throughout all negotiations which preceded the execution of this Settlement Agreement and that this Agreement has been executed with the consent and advice of counsel.

62. **Attorneys' Fees And Costs**.

Except as otherwise provided in this Agreement, the Parties will bear responsibility for their own attorneys' fees and costs, taxable or otherwise, incurred by them or arising out of the Actions and will not seek reimbursement thereof from any Party to this Settlement Agreement.

63. **Stay of Litigation**. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

IT IS SO AGREED:

Dated: 2/26/25, 2025

Doelisha Kelly

Dated: March 19, 2025

Pan American Properties, Inc.

By: Lauren Owen

Its: Vice President

APPROVED AS TO FORM AND CONTENT:

Dated: February 26, 2025

JUSTICE FOR WORKERS, P.C.

By:

William C. Sung
Attorneys for Plaintiff Doelisha Kelly

Dated: March 19, 2025

FISHER & PHILLIPS LLP

By:

Talar Tavlian
Attorneys for Defendant Pan American Properties, Inc.

EXHIBIT A

<u>Exhibit A</u>

<u>NOTICE OF PAGA SETTLEMENT AND RELEASE OF CLAIMS</u>

Doelisha Kelly v. Pan American Properties, Inc.
Orange County Superior Court, Case No. 30-2023-01362739-CU-OE-CXC

*You are **<u>not</u>** being sued. This is **<u>not</u>** an advertisement. This notice affects your rights.*
YOU ARE RECEIVING A SETTLEMENT PAYMENT.
PLEASE READ THIS NOTICE CAREFULLY.

[Date], 2025

[Settlement Administrator]
[Address]
[City, State, Zip Code]

[Employee Name]
[Employee Street Address]
[City, State Zip]

Re: PAGA Settlement Payment

Dear Current or Former Employee of Pan American Properties, Inc.:

I. <u>NOTICE OF PAGA SETTLEMENT</u>

On ______________, 2025, the Honorable William Claster of Dept. CX101 of the Superior Court of California for the County of Orange granted approval of the Settlement in the case entitled *Doelisha Kelly v. Pan American Properties, Inc.*, Orange County Superior Court Case No. 330-2023-01362739-CU-OE-CXC (the "Action"). Judge Claster ordered that all Aggrieved Employees (also known as PAGA Settlement Members) be notified of the Settlement and mailed their share of the Settlement.

You have received this notice because records indicate that you worked as a non-exempt, hourly paid employee for Pan American Properties, Inc ("Defendant") in California during the period between November 17, 2022 through December 29, 2024.

In the Action, Doelisha Kelly ("Plaintiff") asserts claims under the California Private Attorneys General Act ("PAGA"), a law which allows Plaintiff to attempt to recover penalties on behalf of the State of California and on behalf of employees who Plaintiff claims were "aggrieved" by alleged wage and hour violations on the part of Defendant.

Defendant strongly disputes Plaintiff's allegations and maintains that it was in compliance with the California Labor Code at all times and enters into this Settlement with no admission of liability and solely for the purposes of compromising and settling the action to avoid the cost and operational burden of continued litigation. The Court has not issued any ruling regarding the merits of the Action. Nonetheless, to avoid the cost and distraction of litigation, Defendant has made a business decision to settle the Action, which settlement has been approved by the Court.

II. CALCULATION OF INDIVIDUAL PAGA PAYMENTS

By law, under the Private Attorney Generals Act, the amount recovered in settlement, after paying for attorney's fees and costs, Plaintiff Doelisha Kelly's individual payment, and costs of administration of settlement, are to be split between the State of California and the PAGA Settlement Members. The State receives 75% of the net settlement amount and the PAGA Settlement Members receive 25% of the net settlement (to be allocated on a pro rata basis).

Each PAGA Settlement Member will receive a pro rata share of the PAGA Settlement Members Payment based on their Eligible Pay Periods relative to the total Eligible Pay Periods of all PAGA Settlement Members ("Individual PAGA Settlement Member Payment").

You worked [___]_ pay periods during the PAGA Period. The total amount of pay periods worked by all Aggrieved Employees during the PAGA Period is [ ]. Therefore, your Individual PAGA Settlement Member Payment is $[______].

The enclosed settlement check represents your portion of the Court-approved PAGA settlement. You will not be retaliated against for cashing your check. Checks that are not cashed within 180 days of issuance will be voided (the "Void Date"). Funds represented by a settlement check remaining uncashed as of the Void Date shall be paid to the State Controller's Unclaimed Property Fund in the name of the employee who did not cash the settlement check.

III. RELEASE OF CLAIMS

Regardless of what you do with the settlement check, you will have released Released Claims against the Released Parties. "Released Claims" means all claims for civil penalties under the California Private Attorneys General Act ("PAGA") that are alleged or which reasonably could have been alleged against Released Parties during the PAGA Period based on the facts alleged in the operative First Amended Complaint, including, but not limited to claims pursuant to California Labor Code sections 201, 202, 203, 204, 210, 218.5, 226, 226.3, 226.7, 246, 510, 512, 516, 558, 558.1, 1021.5, 1182.12, 1174, 1182.8, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2698 through 2699.5, 2802, Business and Professions Code section 17200 et seq., 17202 and 17203, Code of Civil Procedure section 1021.5, California Code of Regulations, Title 8, Section 11070 and California Wage Order No. 5-2001.

"Released Parties" means Defendant and any of its present and former parent companies, subsidiaries, divisions, concepts, related or affiliated companies and their shareholders, officers, directors, employees, agents, attorneys, insurers (including but not limited to Accelerant Specialty Insurance Company and Premier Claims Management, LLC), successors and assigns, and any individual or entity that could be liable for any of the Released Claims, and Defendant's counsel of record in the Action.

IV. ADDITIONAL INFORMATION

This Notice is only a summary of this case and the Settlement. For a more detailed statement of the matters involved in this case and the Settlement, you may refer to the pleadings, the Stipulation and Agreement for PAGA Representative Action Settlement, and other papers filed in this case, which may be inspected at the Office of the Clerk of the Superior Court of California for the County of Orange, during regular business hours of each court day.

All questions by PAGA Settlement Members regarding this Notice of PAGA Settlement and/or the Settlement should be directed to the Settlement Administrator, whose contact information is below:

APEX CLASS ACTION LLC
Email: claims@apexclassaction.com
Address: P.O. Box 54668, Irvine, CA 92619
Telephone: (800) 355-0700
Fax Number: (949) 989-4428

You may call the Settlement Administrator with any questions. You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.

Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall direct all unclaimed funds to the California Department of Industrial Relations Unpaid Wage Fund in the name of the Aggrieved Employee to whom the check was issued. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE MERITS OF THE CLAIMS OR DEFENSES BY EITHER SIDE IN THE ACTION. PLEASE DO NOT CONTACT THE COURT REGARDING THE LAWSUITS.

PLEASE DO NOT CONTACT THE CLERK OF THE COURT OR THE JUDGE WITH QUESTIONS.

EXHIBIT 2

JUSTICE FOR WORKERS
3600 WILSHIRE BOULEVARD, SUITE 1815, LOS ANGELES, CA 90010
TEL: (323) 922-2000
FAX: (323) 922-2000
www.JusticeForWorkers.com

November 17, 2023

VIA PAGA ONLINE FILING ONLY

California Labor and Workforce Development Agency
Attn: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
https://dir.tfaforms.net/308

Re: *Doelisha Kelly v. Pan American Properties, Inc.*
Notice of Private Attorneys General Act Claim

Dear PAGA Administrator:

This office has been retained by aggrieved employee Doelisha Kelly ("Plaintiff") concerning a representative action pursuant to the Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.* ("PAGA") against Pan American Properties, Inc. (including any and all affiliates, subsidiaries, parents, directors, officers, managing agents, and executive employees) (collectively referred to as "Defendants") for violations of California wage and hour laws. Plaintiff seeks civil penalties for violations of the Labor Code and all other remedies available under PAGA.

Plaintiff seeks these remedies on behalf of the State of California and "aggrieved employees," as defined herein. This letter is sent in compliance with the notice requirements of Labor Code § 2699.3.

Defendants own and operate a residential property management company in the State of California. Defendants employed Plaintiff as an hourly-paid, non-exempt on-site apartment manager from approximately January 21, 2023 to approximately November 2, 2023 in Long Beach, California. The "aggrieved employees" that Plaintiff seeks civil penalties on behalf of are all current and former hourly-paid or non-exempt employees who worked for any of the above-referenced entities within the State of California.

Based on the following facts and theories, Defendants violated and/or continue to violate, among other provisions of the Labor Code and applicable wage law, California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 246, 256, 510, 512, 516, 558, 558.1, 1174, 1182.8, 1194, 1197, 1197.1, 1198, and 2802, and IWC Wage Orders including Wage Order 5-2001.

Labor Code §§ 1194, 1197, and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. The applicable Wage Order defines "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." *See* §2 of all applicable Wage Orders. Therefore, employers are required to pay employees for all time spent subject to the control of the employer and all time the employee is suffered or permitted to work. During the relevant time period, Defendants required Plaintiff and other aggrieved employees to perform work before clocking in, after clocking out, and/or during off-the-clock meal breaks, including during evenings and weekends, and failed to compensate aggrieved employees for this time.

Labor Code §§ 510 and 1198 require employers to pay time-and-a-half or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates at one-and-one-half times or double the regular rate of pay, including additional remuneration. During the relevant time period, Plaintiff and other aggrieved employees worked in excess of 8 hours in a day and 40 hours in a week but were not paid for all hours worked before clocking in, after clocking out, and/or during off-the-clock meal breaks including during evenings and weekends, and failed to compensate aggrieved employees for this time. Plaintiff and other aggrieved employees were not paid overtime compensation at the regular rate of pay because Defendants failed to incorporate multiple rates of pay and/or all non-discretionary remuneration, including the discounted value of their apartment units which they were required to reside in as a condition of employment, into the regular rate of pay.

Labor Code §§ 226.7, 512, 516, and the Wage Orders require employers to pay an employee one additional hour of pay at the employee's regular rate of compensation for each meal or rest period that is not provided. During the relevant time period, Defendants required Plaintiff and other aggrieved employees to work during meal and rest periods and failed to compensate them properly and at the regular rate of compensation for non-compliant meal and rest periods including, *inter alia*, short, late, interrupted, and missed meal and rest periods, unlawful rounding of meal period punches, and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including the discounted value of their apartment units which they were required to reside in as a condition of employment, into the regular rate of compensation.

Labor Code § 246 mandates employers to comply with various requirements with respect to the provision of paid sick leave to employees. During the relevant time period, Defendants improperly calculated the sick leave rate of pay owed to Plaintiff and other aggrieved employees by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including the discounted value of their apartment units which they were required to reside in as a condition of employment, into the sick leave pay rate calculation.

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. During the relevant time period, Defendants failed to pay Plaintiff and other aggrieved employees all wages due to them within any time period specified by Labor Code §§ 201 and 202, including earned and unpaid minimum, overtime, and premium wages as discussed above.

Labor Code § 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. Labor Code § 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, Defendants failed to pay Plaintiff and other aggrieved employees all wages due to them within any time period specified by Labor Code § 204, including earned and unpaid minimum, overtime, and premium wages as discussed above.

Labor Code § 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, Defendants did not provide Plaintiff and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from Defendants were in violation of Labor Code § 226(a). The violations include, but are not limited to, the failure to include the total hours worked, including time spent working off the clock and during meal and rest periods, failure to state the correct gross and net wages earned for all time worked, and failure to state all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Labor Code § 1174 requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years. During the relevant time period, Defendants failed to keep accurate and complete payroll records showing the actual hours worked daily and the wages earned by Plaintiff and other aggrieved employees, including earned and unpaid minimum, overtime, and premium wages as discussed above.

Labor Code § 1198 provides: "The employment of any employee ... under conditions of labor prohibited by the [Industrial Wage Orders] is unlawful." The applicable Industrial Wage Orders, including Wage Order 5-2001, require that if an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay.

During the relevant time period, Defendants failed to pay Plaintiff and other aggrieved employees for two (2) hours at the employee's regular rate of pay on days in which Plaintiff and the other aggrieved employees were on call afterhours and were required to report for work a second time in one workday and were furnished less than two (2) hours of work upon the second reporting.

Labor Code § 1182.8 provides: "An employer may charge a resident apartment manager up to two-thirds of the apartment's fair rental value, provided that: (1) there is a voluntary written agreement, and (2) no credit for the apartment's value is used to meet the employer's minimum wage obligations." The applicable Industrial Wage Orders, including Wage Order 5-2001, prohibits an employer from charging rent in excess of values enumerated in the Wage Orders. Defendants violated the Wage Orders and Labor Code § 1182.8 by charging Plaintiff and other aggrieved employees who were residential apartment managers over two-thirds of their apartment's fair rental value.

Labor Code § 2802 requires an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During the relevant time period, Plaintiff and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by Defendants, including, but not limited to, required use of their personal cellphones.

Therefore, on behalf of all aggrieved employees, Plaintiff seeks all applicable penalties arising out of the above-referenced wage, hour, and payroll practices, or which could be assessed and collected by the LWDA, for violation of the Labor Code pursuant to PAGA. Labor Code § 2699.3 requires that a claimant send a certified letter (i.e. this letter) to the employer in question and file an online claim to the LWDA setting forth the claims and the basis for the claims, thereby giving the LWDA and employer an opportunity to investigate the claims and/or take any action they deem appropriate. If the LWDA and Defendants elect not to take any action with respect to any of the foregoing claims, Plaintiff will seek these penalties in a civil action on behalf of all aggrieved employees within one year of the date of this letter as allowed by law.

If you have any questions, please contact me at the phone number or address below:

William C. Sung
JUSTICE FOR WORKERS, P.C.
3600 Wilshire Boulevard
Suite 1815
Los Angeles, CA 90010
Office: 323-922-2000
Fax: 323-922-2000
Email: william@justiceforworkers.com

Thank you for your attention to this matter.

Very truly yours,

William C. Sung
JUSTICE FOR WORKERS, P.C.

Cc: **Via USPS Certified Mail – Return Receipt Requested**

Pan American Properties, Inc.
Attn: Rick Hoegler
Agent for Service of Process
17491 Irvine Blvd., Ste. 100
Tustin, CA 92780

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Pan American Properties, Inc.

Street and Apt. No., or PO Box No.
17491 Irvine Blvd., Ste. 100

City, State, ZIP+4®
Tustin, CA 92780

PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions

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JUSTICE FOR WORKERS, P.C.
3600 Wilshire Blvd Ste 1815
Los Angeles, CA 90010

Pan American Properties, Inc.
Attn: Rick Hoegler
Agent for Service of Process
17491 Irvine Blvd., Ste. 100
Tustin, CA 92780

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Pan American Properties, Inc.
Attn: Rick Hoegler
Agent for Service of Process
17491 Irvine Blvd., Ste. 100
Tustin, CA 92780

9590 9402 8545 3186 4098 74

2. Article Number *(Transfer from service label)*

9589 0710 5270 0840 5330 31

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by *(Printed Name)*

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

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- ☐ Signature Confirmation™
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PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

Subject: Thank you for submission of your PAGA Case.
Date: Friday, November 17, 2023 at 1:49:37 PM Pacific Standard Time
From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
To: William Sung

11/17/2023

LWDA Case No. LWDA-CM-995061-23
Law Firm : Justice for Workers, P.C.
Plaintiff Name : Doelisha Kelly
Employer: Pan American Properties, Inc.
Filing Fee : $75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

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

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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

EXHIBIT 3

JUSTICE FOR WORKERS, P.C.
William C. Sung, SB# 280792
E-Mail: william@justiceforworkers.com
Tiffany L. Luu, SB# 335127
E-Mail: tluu@justiceforworkers.com
3600 Wilshire Boulevard, Suite 1815
Los Angeles, CA 90010
Tel: 323-922-2000
Fax: 323-922-2000

Attorneys for Plaintiff DOELISHA KELLY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

DOELISHA KELLY, an individual and on behalf of all others similarly situated;

Plaintiff,

vs.

PAN AMERICAN PROPERTIES, INC., a California corporation; and DOES 1 through 50,

Defendants.

Case No.: 30-2023-01362739-CU-OE-CXC

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT:

(1) MINIMUM WAGE VIOLATIONS (LABOR CODE §§ 1182.12, 1194, 1194.2, 1197);

(2) OVERTIME WAGE VIOLATIONS (LABOR CODE §§ 204, 510, 1194, 1198);

(3) MEAL PERIOD VIOLATIONS (LABOR CODE §§ 226.7, 512, 558);

(4) REST PERIOD VIOLATIONS (LABOR CODE §§ 226.7, 516, 558);

(5) WAGE STATEMENT PENALTIES (LABOR CODE § 226);

(6) WAITING TIME PENALTIES (LABOR CODE §§ 201-203);

(7) FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES (LABOR CODE § 2802);

(8) FAILURE TO PAY CALL-BACK PAY PREMIUMS (LABOR CODE § 1198, WAGE ORDER 5);

(9) UNFAIR COMPETITION (BUS & PROF CODE §§ 17200, *et seq.*); and

(10) CIVIL PENALTIES UNDER THE CALIFORNIA PRIVATE

ATTORNEYS GENERAL ACT (LABOR CODE §§ 2698, *et seq*.)

DEMAND FOR JURY TRIAL

Plaintiff DOELISHA KELLY ("Plaintiff"), on behalf of herself and all others similarly situated, hereby brings this First Amended Class and Representative Action Complaint ("Complaint") against Defendants PAN AMERICAN PROPERTIES, INC., a California corporation, and DOES 1 to 50 inclusive (collectively "Defendants"), and on information and belief alleges as follows:

JURISDICTION AND VENUE

1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this Complaint for recovery of unpaid wages and penalties under California Business and Professions Code § 17200, *et seq.*, Labor Code §§ 201-204, 226, 226.7, 246, 510, 512, 516, 558, 1182.12, 1182.8, 1194, 1194.2, 1197, 1198, 2802, 2698, *et seq*., and Industrial Welfare Commission ("IWC") Wage Order 5-2001 ("Wage Order 5"), in addition to seeking injunctive relief, declaratory relief, and restitution. This Complaint is brought pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants' violations of the Labor Code because the amount in controversy exceeds $25,000.

2. Venue is proper in this judicial district because Defendants maintain offices, have agents, and/or transact business in the State of California, including Orange County, and some of the acts and omissions complained of herein occurred in Orange County. Furthermore, Plaintiff was employed by Defendants within Orange County.

PARTIES

3. Plaintiff is, and at all times relevant herein was, an individual over the age of eighteen (18) and is a California resident. Within the statute of limitations periods applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff was, and is, a victim of Defendants' policies, practices, and/or customs complained of herein and has been deprived of the rights guaranteed by Business and Professions Code § 17200, *et seq.*, Labor Code §§ 201-204, 226, 226.7, 246, 510, 512, 516, 558, 1182.12, 1182.8, 1194, 1194.2,

1197, 1198, 2802, 2698, *et seq.*, and Wage Order 5.

4. Plaintiff is informed and believes, and based thereon alleges, that during the applicable statute of limitations for each cause of action pled herein and continuing to the present, Defendants engaged in, and continue to engage in, business, and employed Plaintiff and other, similarly-situated non-exempt employees within Orange County, and the State of California and, therefore, were (and are) doing business in Orange County and the State of California.

5. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and based thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, was responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff, the Classes (as defined below), and Aggrieved Employees (as defined below) to be subject to the unlawful employment practices, wrongs, injuries, and damages complained of herein.

6. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendant; and furthermore, Defendants, and each of them, were the agents, servants, and employees of each of the other defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting within the course and scope of said agency and employment.

7. Plaintiff is informed and believes, and based thereon alleges, that at all times material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or joint venturer of, or working in concert with each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

8. At all times herein mentioned, Defendants, and each of them, were members of, and engaged in, a joint venture, partnership, and common enterprise, and acting within the course and

scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

9. At all times herein mentioned, the acts and omissions of various Defendants, and each of them, concurred and contributed to the various acts and omissions of each and all of the other Defendants in proximately causing the injuries and damages as herein alleged.

FACTUAL ALLEGATIONS

10. Defendants own and operate a residential property management company in the State of California. Defendants employed Plaintiff as an hourly-paid, non-exempt on-site apartment manager from approximately January 21, 2023 to approximately November 2, 2023 in Long Beach, California.

11. Throughout Plaintiff's employment with Defendants, Defendants' timekeeping and/or payroll policies and practices resulted in Plaintiff and other non-exempt employees not being compensated for all hours actually worked. Plaintiff and other non-exempt employees regularly worked more than eight hours in a workday or 40 hours in a workweek. Upon information and belief, Defendants required Plaintiff and other non-exempt employees to perform work before their scheduled shifts, after their scheduled shifts, and/or during off-the-clock meal breaks, including during evenings and weekends, and failed to compensate aggrieved employees for this time. Plaintiff and other aggrieved employees were not paid overtime compensation at the regular rate of pay because Defendants failed to incorporate multiple rates of pay and/or all non-discretionary remuneration, including the discounted value of their apartment units which they were required to reside in as a condition of employment, into the regular rate of pay. As a result, Plaintiff and other non-exempt employees were not compensated for all earned minimum and overtime wages.

12. Defendants failed to provide Plaintiff and other non-exempt employees with all legally compliant meal periods due to Defendants' meal period policies/practices, which have frequently resulted in late (commencing after the fifth hour of work), short (less than 30 minutes), and/or missed meal periods. Upon information and belief, Plaintiff and other non-exempt employees were not able to take their legally compliant meal breaks due to work demands imposed by Defendants. Upon information and belief, Defendants do not keep accurate records of Plaintiff's and other non-exempt employees' hours worked, including accurate time records showing when

employees take their meal periods. On those occasions when Plaintiff and other non-exempt employees were not provided with all legally compliant meal periods to which they were entitled, Defendants failed to compensate Plaintiff and other non-exempt employees with the required meal period premium(s) for each workday there was a meal period violation as mandated by Labor Code § 226.7. Upon information and belief, Defendants maintained no mechanism for the payment of meal period premium payments as required by Labor Code § 226.7 in the event that a legally compliant meal period was not provided to their non-exempt employees. Alternatively, Defendants failed to incorporate multiple rates of pay and/or all non-discretionary remuneration, including the discounted value of their apartment units which they were required to reside in as a condition of employment, into the regular rate of compensation.

13. Plaintiff and other non-exempt employees were not authorized and permitted to take all required rest periods due to Defendants' unlawful rest period policies/practices, which failed to authorize and permit a net 10-minute rest period for every four hours worked, or major fraction thereof. Plaintiff and other non-exempt employees were not able to take their legally compliant rest breaks due to work demands imposed by Defendants. Additionally, although Plaintiff and other non-exempt employees occasionally worked shifts in excess of 10 hours, Plaintiff and other non-exempt employees were not authorized and permitted a third rest period during shifts in excess of 10 hours. On those occasions when Plaintiff and other non-exempt employees were not authorized and permitted to take all legally compliant rest periods to which they were entitled, Defendants failed to compensate them with the required rest period premium(s) for each workday there was a rest period violation as mandated by Labor Code § 226.7. Upon information and belief, Defendants maintained no mechanism for the payment of rest period premium payments as required by Labor Code § 226.7, in the event that a legally compliant rest period was not authorized and permitted to their non-exempt employees.

14. Additionally, upon information and belief, Defendants violated Labor Code § 246 by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration into the paid sick leave pay rate.

/ / /

15. Labor Code § 1198 provides: “The employment of any employee ... under conditions of labor prohibited by the [Industrial Wage Orders] is unlawful.” Wage Order 5 requires that if an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay. During the relevant time period, Defendants failed to pay Plaintiff and other non-exempt employees for two (2) hours at the employee's regular rate of pay on days in which Plaintiff and the other non-exempt employees were on call afterhours and were required to report for work a second time in one workday and were furnished less than two (2) hours of work upon the second reporting.

16. Labor Code § 1182.8 provides: “An employer may charge a resident apartment manager up to two-thirds of the apartment’s fair rental value, provided that: (1) there is a voluntary written agreement, and (2) no credit for the apartment’s value is used to meet the employer’s minimum wage obligations.” The applicable Industrial Wage Orders, including Wage Order 5-2001, prohibits an employer from charging rent in excess of values enumerated in the Wage Orders. Defendants violated the Wage Orders and Labor Code § 1182.8 by charging Plaintiff and other aggrieved employees who were residential apartment managers over two-thirds of their apartment’s fair rental value.

17. As a result of Defendants’ failure to pay all minimum and overtime wages, failure to pay all meal and rest period premium wages, unlawful deductions by overcharging for rent, failure to pay call-back pay premiums, and unlawful timekeeping and payroll practices as alleged above, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiff and other non-exempt employees. As a further result of Defendants’ failure to pay all minimum and overtime wages, sick leave wages, and meal and rest period premium wages, Defendants failed to timely pay all final wages to Plaintiff and other former non-exempt employees upon their separation of employment from Defendants.

18. Additionally, Defendants required Plaintiff and other non-exempt employees to use their personal cellphones. Despite requiring employees to incur these necessary business expenses, Defendants failed to reimburse Plaintiff and other non-exempt employees for the cost of their

personal cellphones.

CLASS ACTION ALLEGATIONS

19. **Class Definitions**: Plaintiff brings this action on behalf of herself and the following Classes pursuant to § 382 of the California Code of Civil Procedure:

a. Minimum Wage Class: All current and former non-exempt employees of Defendants in the State of California who were subject to Defendants' timekeeping and payroll policies and/or practices, during the four years immediately preceding the filing of this action through the present.

b. Overtime Class: All current and former non-exempt employees of Defendants in the State of California who worked more than eight hours per day and/or 40 hours per week and were subject to Defendants' timekeeping policies and/or practices, during the four years immediately preceding the filing of this action through the present.

c. Meal Period Class: All current and former non-exempt employees of Defendants in the State of California who: (i) worked at least one shift in excess of 5.0 hours; and/or (ii) worked at least one shift in excess of 10.0 hours, during the four years immediately preceding the filing of this action through the present.

d. Rest Period Class: All current and former non-exempt employees of Defendants in the State of California who worked at least one shift of 3.5 or more hours, during the four years immediately preceding the filing of this action through the present.

e. Wage Statement Class: All current and former non-exempt employees of Defendants in the State of California who received a wage statement, during the one year immediately preceding the filing of this action through the present.

f. Waiting Time Penalty Class: All of Defendants' formerly employed members of the Minimum Wage Class, Overtime Class, Rest Period Class, and/or Meal Period Class during the three years immediately preceding the filing of this action through the present.

g. Expense Reimbursement Class: All current and former non-exempt employees of Defendants in the State of California who were not reimbursed for all necessary business expenses, during the four years immediately preceding the filing of this action through the present.

h. Callback Pay Class: All current and former non-exempt employees of Defendants in the State of California who were on call afterhours and were required to report for work a second time in one workday and were furnished less than two (2) hours of work upon the second reporting.

20. **Numerosity/Ascertainability**: The members of the Classes are so numerous that joinder of all members would be impractical, if not impossible. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than 50 individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records, including payroll records.

21. **Common Questions of Law and Fact Predominate/Well-Defined Community of Interest**: There are predominant common questions of law and fact as to Plaintiff and members of the Classes, which predominate over questions affecting only individual members including, without limitation to:

a. Whether Defendants properly paid all overtime wages to members of the Overtime Class;

b. Whether Defendants paid at least the minimum wage for all hours worked to members of the Minimum Wage Class;

c. Whether Defendants provided all legally compliant meal periods or paid meal period premium wages due to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;

d. Whether Defendants authorized and permitted all legally compliant rest periods or paid all rest period premium wages due to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;

e. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226;

/ / /

f. Whether Defendants reimbursed members of the Expense Reimbursement Class for all necessary business expenses pursuant to Labor Code § 2802;

g. Whether Defendants failed to pay call-back pay premiums to Members of the Call-Back Pay Class; and

h. Whether Defendants timely paid all final wages to members of the Waiting Time Class at the time of their separation of employment pursuant to Labor Code §§ 201 and 202.

These common questions of law and fact set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member. As such, the common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

22. **Typicality**: The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged herein, Plaintiff, like the members of the Classes, was not paid all minimum and overtime wages owed due to Defendants' timekeeping and payroll policies/practices, was not provided all required meal periods, was not authorized and permitted all rest periods, did not receive premium pay for non-compliant meal and rest periods, was not paid all final wages upon separation of employment, was not provided with accurate, compliant, itemized wage statements, was no paid call-back pay premiums, and was not reimbursed for all necessary business expenses.

23. **Adequacy of Representation**: Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have litigated numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

24. **Superiority**: The Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws

and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources.

25. Moreover, requiring each member of the Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. The claims of the individual members of the Class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending hereto.

26. Furthermore, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. As such, the Classes identified hereinabove are maintainable as classes under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

(Against All Defendants)

27. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

/ / /

28. Labor Code §§ 1182.12, 1197, and Wage Order 5, § 4 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state or local law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform its pay practices to the requirements of the law by failing to pay Plaintiff and members of the Minimum Wage Class for all hours worked, including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the Labor Code and Wage Order 5.

29. Labor Code § 1198 makes unlawful the employment of an employee under conditions that the IWC prohibits. California Labor Code § 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

30. As a consequence of Defendants' non-payment of minimum wages, Plaintiff and members of the Minimum Wage Class seek recovery of the balance of unpaid wages, including interest thereon, statutory penalties, attorneys' fees, and costs of suit according to Labor Code §§ 218.6, 558, 1194, 1194.2, and 1199, Code of Civil Procedure § 1021.5; and Civil Code §§ 3287 and 3289.

SECOND CAUSE OF ACTION

OVERTIME WAGE VIOLATIONS

(Against All Defendants)

31. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

32. This cause of action is brought pursuant to Labor Code §§ 204, 510, 1194, 1198, and Wage Order 5, § 3, which provide that non-exempt employees are entitled to all overtime wages and compensation for all overtime hours worked and provide a private right of action for the failure

to pay all overtime compensation for overtime work performed.

33. At all times relevant herein, Defendants were required to properly compensate non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime hours worked pursuant to Labor Code § 1194 and Wage Order 5. Wage Order 5, § 3 requires an employer to pay an employee one and one-half (1½) times and two times the employee's regular rate of pay for overtime and double time hours work. Defendants caused Plaintiff and members of the Overtime Class to work overtime hours but failed to compensate these employees for all overtime hours actually worked.

34. As a consequence of Defendants' non-payment of overtime wages, Plaintiff and members of the Overtime Class seek recovery of the balance of unpaid overtime wages, including interest thereon, statutory penalties, attorneys' fees, and costs of suit according to Labor Code §§ 204, 210, 216, 218.6, 510, 1194, and 1198; Code of Civil Procedure § 1021.5; and Civil Code §§ 3287 and 3289.

<u>THIRD CAUSE OF ACTION</u>

MEAL PERIOD VIOLATIONS

(Against All Defendants)

35. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

36. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California, including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods in accordance with the mandates of the Labor Code and Wage Order 5, § 11.

37. Despite Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members of the Meal Period Class at their respective regular rates of compensation, in accordance with California Labor Code §§ 204, 210, 226.7, and 512.

38. As a consequence of Defendants' unlawful meal period practices, Plaintiff and members of the Meal Period Class seek recovery of unpaid premium wages for meal period violations including interest thereon, statutory penalties, and costs of suit, pursuant to Labor Code

§§ 226.7, 512, 558, Wage Order 5, and Civil Code §§ 3287 and 3289.

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(Against All Defendants)

39. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

40. Labor Code §§ 226.7, 516, 558, and Wage Order 5, § 12 and establish the right of employees to be provided with a rest period of at least 10 minutes for each four-hour period worked, or major fraction thereof. Plaintiff is informed and believes, and based thereon alleges, that despite Defendants' failure to authorize and permit Plaintiff and members of the Rest Period Class to take all legally compliant rest periods as alleged herein, Defendants did not pay these individuals an additional hour of pay at their respective regular rate for the rest periods that they failed to authorize and permit them to take, as required by Labor Code § 226.7.

41. As a consequence of Defendants' unlawful rest period practices, Plaintiff and members of the Rest Period Class seek recovery of unpaid premium wages for rest period violations including interest thereon, statutory penalties, and costs of suit, statutory penalties, attorneys' fees, and costs of suit according to Labor Code §§ 226.7, 516, 558, Wage Order 5, and Civil Code §§ 3287 and 3289.

FIFTH CAUSE OF ACTION

WAGE STATEMENT PENALTIES

(Against All Defendants)

42. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

43. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and members of the Wage Statement Class with accurate and complete, itemized wage statements that included, among other requirements, all hours worked, total gross wages earned, all rates of pay and corresponding number of hours worked, total net wages earned, the inclusive dates of the pay

period, and/or the correct name and address of the legal entity that is the employer in violation of Labor Code § 226.

44. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class with accurate and complete, itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of minimum and overtime wages and meal and rest period premium wages owed and deprived them of the information necessary to identify the discrepancies in Defendants' reported payroll data.

45. As a consequence of Defendants' unlawful wage statement practices, Plaintiff and members of the Wage Statement Class seek damages and/or statutory penalties, reasonable attorneys' fees, and costs of suit according to California Labor Code § 226.

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(Against All Defendants)

46. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

47. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of separation of employment in the event the employer discharges the employee or the employee provides at least 72 hours of notice of their intent to quit. In the event the employee provides less than 72 hours of notice of their intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

48. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them at their separation from employment, including unpaid minimum and overtime wages as well as unpaid meal and rest period and call-back pay premium wages.

49. Furthermore, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to

the requirements of Labor Code §§ 201-202.

50. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting Time Class their earned wages upon separation from employment results in continued payment of daily wages up to thirty days from the time the wages were due.

51. As a consequence of Defendants' unlawful practices, Plaintiff and members of the Waiting Time Class seek statutory penalties, and costs of suit according to California Labor Code § 203.

SEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES

(Against All Defendants)

52. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

53. At all relevant times herein, Defendants were subject to Labor Code § 2802, which states that "an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or obedience to the directions of the employer."

54. Defendants violated Labor Code § 2802 by failing to reimburse Plaintiff and members of the Expense Reimbursement Class all necessary business expenses they incurred in the performance of their job duties.

55. As a consequence of Defendants' unlawful practices, Plaintiff and members of the class seek recovery of unreimbursed business expenses, including interest thereon, reasonable attorneys' fees, and costs of suit pursuant to Labor Code § 2802.

EIGHTH CAUSE OF ACTION

FAILURE TO PAY CALL-BACK PAY PREMIUMS

(Against All Defendants)

56. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

57. Labor Code § 1198 provides: "The employment of any employee ... under conditions of labor prohibited by the [Industrial Wage Orders] is unlawful." Wage Order 5 requires that if an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay.

58. During the relevant time period, Defendants failed to pay Plaintiff and other non-exempt employees for two (2) hours at the employee's regular rate of pay on days in which Plaintiff and the other non-exempt employees were on call afterhours and were required to report for work a second time in one workday and were furnished less than two (2) hours of work upon the second reporting.

59. As a consequence of Defendants' unlawful practices, Plaintiff and members of the class seek recovery of unpaid call-back pay premiums, including interest thereon, reasonable attorneys' fees, and costs of suit pursuant to Labor Code § 1198 and Wage Order 5.

NINTH CAUSE OF ACTION

UNFAIR COMPETITION

(Against All Defendants)

60. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

61. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of Business and Professions Code § 17200, *et seq.*, by:

a. failing to pay Plaintiff and members of the Minimum Wage Class all minimum wages due;

b. failing to pay Plaintiff and members of the Overtime Class all overtime wages due;

c. failing to provide Plaintiff and members of the Meal Period Class with all meal periods to which they are entitled, and failing to pay them all meal period premium wages due;

d. failing to authorize and permit Plaintiff and members of the Rest Period Class all rest periods to which they are entitled, and failing to pay them all rest period premium wages due;

e. failing to issue accurate and itemized wage statements to Plaintiff and members of the Wage Statement Class;

f. failing to timely pay all final wages to Plaintiff and members of the Waiting Time Penalty Class;

g. failing to pay call-back pay premiums to Plaintiff and members of the Call-Back Pay Class; and

h. failing to reimburse all necessary business expenses to Plaintiff and members of the Expense Reimbursement Class.

62. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiff and continues to deprive members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

63. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

64. The acts complained of herein occurred within the last four years immediately preceding the filing of the Complaint in this action.

<u>TENTH CAUSE OF ACTION</u>

PRIVATE ATTORNEYS GENERAL ACT

(Against All Defendants)

65. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

66. Plaintiff, an "aggrieved employee" within the meaning of Labor Code §§ 2698, *et seq.*, acting on behalf of herself and other aggrieved employees (collectively, "Aggrieved Employees"), brings this representative action against Defendants to recover the civil penalties due

to Plaintiff and other Aggrieved Employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) $100.00 for each initial violation for each failure to pay each employee and $200 for each subsequent violation or willful or intentional violation pursuant to Labor Code §§ 210 and/or 225.5 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) $50.00 for each initial violation and $100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) $100 for each initial violation and $250 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) $250 for each initial violation and $1,000 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (5) pursuant to Labor Code § 256, a civil penalty in an amount not exceeding 30 days per former employee as waiting time under the terms of Labor Code § 203; and/or (6) $100 for each initial violation and $200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

a. Failing to pay minimum wages for all hours worked to Aggrieved Employees in violation of Labor Code § 558, 1182.12, 1194, 1194.2, 1197, and 1198;

b. Failing to pay Aggrieved Employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;

c. Failing to provide all legally required meal periods, and failure to pay meal period premium wages, to Aggrieved Employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 512, 558, and 1198;

d. Failing to authorize and permit all legally required rest periods, and failure to pay rest period premium wages, to Aggrieved Employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 516, 558, and 1198;

e. Failing to furnish Aggrieved Employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;

f. Failing to timely pay all final wages and compensation earned by Aggrieved Employees at the time of separation in violation of Labor Code §§ 201-202;

g. Failing to pay call-back pay to Aggrieved Employees in violation of Labor Code § 1198;

h. Overcharging Aggrieved Employees who were employed as residential apartment managers for rent in violation of Labor Code §§ 1182.8 and 1198;

i. Failure to reimburse Aggrieved Employees for all necessary business expenses in violation of Labor Code § 2802;

j. Failing to pay Aggrieved Employees all paid sick leave wages in violation of Labor Code § 246;

k. Failing to pay Aggrieved Employees all earned wages at least twice during each calendar month in violation of Labor Code § 204; and

l. Failing to maintain accurate records on behalf of Aggrieved Employees in violation of Labor Code §§ 1174 and 1198.

67. On or about November 17, 2023, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency ("LWDA") via its website, of Defendants' violations of the Labor Code and Plaintiff's intent to bring a claim for civil penalties under Labor Code §§ 2698, *et seq.* with respect to the violations of the Labor Code identified in the preceding paragraph. Now that 33 days and 65 days have passed from Plaintiff notifying Defendants and the LWDA of these violations, Defendants have not cured any curable violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

68. Plaintiff has incurred attorneys' fees and costs, which Plaintiff is entitled to receive under California Labor Code § 2699(g).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;

2. For an order appointing Plaintiff as representative of the Classes;

3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;

4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and 1197;

5. Upon the Second Cause of Action, for payment of overtime wages and penalties according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;

6. Upon the Third Cause of Action, for meal period premium wages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;

7. Upon the Fourth Cause of Action, for rest period premium wages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;

8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code § 226;

9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code § 203;

10. Upon the Seventh Cause of Action, for unreimbursed business expenses according to proof pursuant to Labor Code § 2802;

11. Upon the Eighth Cause of Action, for unpaid call-back pay premiums according to proof pursuant to Wage Order 5;

12. Upon the Ninth Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code §§ 17200, *et seq*.;

13. Upon the Tenth Cause of Action, for civil penalties due to Plaintiff, other Aggrieved Employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) $100.00 for each initial violation for each failure to pay each employee and $200 for each subsequent violation or willful or intentional violation pursuant to Labor Code §§ 210 and/or 225.5 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) $50.00 for each initial violation and $100 for each subsequent

violation pursuant to Labor Code § 558 per employee per pay period; (3) $100.00 for each initial violation and $250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) $250.00 for each initial violation and $1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (5) pursuant to Labor Code § 256, a civil penalty in an amount not exceeding 30 days per former employee as waiting time under the terms of Labor Code § 203; and/or (6) $100.00 for each initial violation and $200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided;

14. Prejudgment interest on all due and unpaid wages pursuant to Labor Code § 218.6 and Civil Code §§ 3287 and 3289;

15. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 218.5, 226, 1194, 2699(g), and Code of Civil Procedure § 1021.5; and

16. For such other and further relief, the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all claims.

DATED: January 31, 2024

JUSTICE FOR WORKERS, P.C.

By: ______________________

William C. Sung
Tiffany L. Luu
Attorneys for Plaintiff DOELISHA KELLY

EXHIBIT 4

JUSTICE FOR WORKERS

February 26, 2025

Kelly v. Pan American Properties
Orange County Superior Court, Case No. 30-2023-01362739-CU-OE-CXC

Date	Description of Cost Item	Invoice #	Amount
11/17/23	LWDA Filing Fee for Initial PAGA Notice	LWDA-CM-995061-23	$75.00
11/17/23	Postage for Mailing Initial PAGA Notice	95890710527008405 33031	$8.53
11/22/23	e-Filing, Initial Appearance, and Complex Fees for Class Complaint	8617510	$1,490.62
1/30/24	e-Filing Fee for Notice of Case Management Conference	02585Q	$15.00
2/6/24	e-Filing Fee for First Amended Complaint	9004002	$12.57
2/26/24	e-Filing Fee for Notice and Acknowledgment of Receipt	9153200	$12.57
3/11/24	e-Filng Fee for Case Management Statement	9244395	$12.57
5/16/24	e-Filng Fee for Joint Updated Case Management Conference Statement	9656186	$12.57
10/8/24	Plaintiff's Share of Mediation Fees to Cha Mediation Services	820	$5,000.00
11/19/24	e-Filng Fee for Stipulation And [Proposed] Order To Continue Status Conference	10800320	$12.57
1/2/25	Expert Fee for Data Analysis for Accuratus Data Consulting	1640	$705.83
2/14/25	e-Filng Fee for Joint Stipulation And [Proposed] Order To Continue Status Conference	11334987	$33.17
3/28/25	e-Filng Fee for Plaintiff's Request for Dismissal of Class Claims Without Prejudice	11645945	$12.57
Estimated Future Cost	eFiling Fee for Motion for Approval of PAGA Settlement	N/A	$75.91
Estimated Future Cost	eFiling Fee Declaration of Compliance by Administrator	N/A	$12.57
TOTAL			**$7,492.05**

EXHIBIT 5

Deolisha Kelly v. Pan American Properties, Inc.

Orange County Superior Court Case No. 30-2023-01362739-CU-OE-CXC

Time and Task Chart - William C. Sung

Description of Work	Hours
Review client intake and client documents; attend initial client meeting; communicate with client re case	3.5
Research potential causes of action, theories of liability, and/or background on Defendant	3.2
Draft Complaint and PAGA letter	2.8
Review initial court notices	1
Analyze arbitration agreement signed by client; communicate with client re same	1.6
Draft First Amended Complaint	1.2
Confer with Defendant's counsel re case management conference and arbitration agreement; draft Joint CMC Statement	0.5
Conferences/communications with Defendant's counsel re mediator selection, mediation scheduling, and pre-mediation document and data request; research proposed mediators; communications with mediator	1.1
Conferences/communications with client re mediation strategy	0.5
Analyze pre-mediation records produced by Defendant; prepare analysis protocol for expert; work with expert to conduct PAGA damages analysis	4.8
Draft/revise mediation brief; conduct legal research for same	5.3
Prepare for and attend full-day mediation	8
Draft MOU; conferences/communications with Defendant's counsel re same	2.5
Conferences/communications with client and counsel re settlement terms	2
Draft/revise long-form PAGA settlement agreement and exhibits; conferences/commuications with Defendant's counsel re same	3.4
Communications with administrator re administration bid, declaration and exhibits for settlement approval, and declaration and exhibits for final approval	1.8
Draft/revise Motion for Approval of PAGA Settlement, supporting declarations, and proposed order	13.5
Conferences/communications with client re case updates and settlement approval	1.5
Misc. internal meetings regarding case strategy and case status	8
Total Hours:	66.20
Requested Rate:	$800
Requested Fee Amount:	$52,960

EXHIBIT 6

Deolisha Kelly v. Pan American Properties, Inc.
Orange County Superior Court Case No. 30-2023-01362739-CU-OE-CXC
Time and Task Chart - Tiffany L. Luu

Description of Work	Hours
Confer with Defendant's counsel re accepting service of process; prepare Notice of Acknowledgment of Receipt packet	1.5
Confer with Defendant's counsel re case management conference and arbitration agreement; draft Joint CMC Statement	1.8
Prepare for and attend initial CMC	1.3
Conferences/communications with Defendant's counsel re mediator selection, mediation scheduling, and pre-mediation document and data request; research proposed mediators; communications with mediator	1.7
Analyze pre-mediation records produced by Defendant; prepare analysis protocol for expert; work with expert to conduct PAGA damages analysis	1
Draft/revise mediation brief; conduct legal research for same	0.8
Prepare for and attend full-day mediation	8
Draft MOU; conferences/communications with Defendant's counsel re same	0.3
Draft/revise long-form PAGA settlement agreement and exhibits; conferences/commuications with Defendant's counsel re same	1.3
Draft/revise Motion for Approval of PAGA Settlement, supporting declarations, and proposed order	3.1
Conferences/communications with client re case updates and settlement approval	1.5
Misc. internal meetings regarding case strategy and case status	8
Total Hours:	30.30
Requested Rate:	$450
Requested Fee Amount:	$13,635

EXHIBIT 7