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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

JESSE GALINDO, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiffs,

vs.

PAQ, INC., DBA FOOD 4 LESS and/or
RANCHO SAN MIGUEL MARKETS; and
DOES 1 through 50, Inclusive;

Defendants.

Lead Case No. STK-CV-UOE-2022-0000452
*[Consolidated Case No. STK-CV-UOE-2022-
0001799]*

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA ACTION
SETTLEMENT**

Date:
Time:

Judge: Hon. Blanca Banuelos
Dept.: 10B

James R. Hawkins, Esq. (SBN 192925)
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Attorneys for Plaintiffs JESSE GALINDO and LAURA SMITH

1 This matter having come before the Honorable Judge Blanca Banuelos of the Superior Court of
2 the State of California, in and for the County of San Joaquin, at _____ a.m./p.m. on _____,
3 2024, with Jean-Claude Lapuyade, Esq., of the JCL Law Firm, APC, Shani O. Zakay, Esq. of the Zakay
4 Law Group, APLC, Isandra Fernandez, Esq. and Lance Dacre, Esq. from James Hawkin, APLC as
5 counsel for Plaintiffs JESSE GALINDO and LAURA SMITH (“Plaintiffs”), and Vladimir J. Kozina,
6 Esq. and William J. Gorham III, Esq. of Mayall Hurley, APC, appearing for Defendant PAQ, Inc., a
7 California Corporation (hereinafter “Defendant”). The Court, having carefully considered the briefs,
8 argument of counsel and all the matters presented to the Court, and good cause appearing, hereby
9 GRANTS Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement.

10 **IT IS HEREBY ORDERED:**

11 1. The Court preliminarily approves the Stipulation of Settlement of Class and PAGA
12 Action Claims and Release of Claims (“Settlement Agreement” or “Agreement”), a true and correct
13 copy of which is attached hereto as **Exhibit “1”**. This is based on the Court’s determination that the
14 Settlement Agreement is within the range of possible final approval, pursuant to the provisions of
15 Section 382 of the California Code of Civil Procedure and California Rules of Court, rule 3.769.

16 2. This Order incorporates by reference the definitions in the Agreement, and all terms
17 defined therein shall have the same meaning in this Order as set forth in the Agreement.

18 3. Subject to the terms of the Settlement Agreement, the Gross Settlement Amount that
19 Defendant shall pay is Four Million Five Hundred Thousand Dollars and Zero Cents (\$4,500,000.00).
20 It appears to the Court on a preliminary basis that the settlement amount and terms are fair, adequate,
21 and reasonable as to all Class Members when balanced against the probable outcome of further
22 litigation relating to certification, liability, and damages issues. It further appears that investigation and
23 research have been conducted such that counsel for the Parties are able to reasonably evaluate their
24 respective positions. It further appears to the Court that settlement at this time will avoid substantial
25 additional costs by all Parties, as well as avoid the delay and risks that would be presented by the further
26 prosecution of the litigation. It further appears that the Settlement has been reached as the result of
27 intensive, serious, and non-collusive arms-length negotiations.

28 4. The Court preliminarily finds that the Settlement appears to be within the range of

1 reasonableness of a settlement that could ultimately be given final approval by this Court. The Court
2 has reviewed the monetary recovery that is being granted as part of the Settlement and preliminarily
3 finds that the monetary settlement awards made available to the Class Members are fair, adequate, and
4 reasonable when balanced against the probable outcome of further litigation relating to certification,
5 liability, and damages issues.

6 5. Plaintiffs seek a Class Counsel Award in the amount of up-to one-third of the Total
7 Settlement Amount, currently estimated at One Million Five Hundred Thousand Dollars and Zero cents
8 (\$1,500,000.00), plus reimbursement of actually incurred litigation cost in an amount of up to Fifty
9 Thousand Dollars and Zero Centers (\$50,000.00), and proposed Class Representative Service Award
10 to the Class Representatives, Jesse Galindo and Laura Smith, in an amount of not more than Ten
11 Thousand Dollars and Zero Cents (\$10,000.00) to each individually. While these awards appear to be
12 within the range of reasonableness, the Court will not approve the Class Counsel Award or the Class
13 Representative Service Award until the Final Approval Hearing.

14 6. The Court recognizes that Plaintiffs and Defendant stipulate and agree to certification of
15 a class for settlement purposes only. This stipulation will not be deemed admissible in this, or any other
16 proceeding should this Settlement not become final. For settlement purposes only, the Court
17 conditionally certifies the following Class:

18 All current and former hourly-paid or non-exempt employees employed by
19 Defendant in California during the Class Period between March 9, 2018,
20 through June 28, 2023.

21 7. The Court concludes that, for settlement purposes only, the Class meets the requirements
22 for certification under section 382 of the California Code of Civil Procedure in that: (a) the Class is
23 ascertainable and so numerous that joinder of all members of the Class Members is impracticable; (b)
24 common questions of law and fact predominate, and there is a well-defined community of interest
25 amongst the Class Members with respect to the subject matter of the litigation; (c) the claims of the
26 Class Representative are typical of the claims of the Class Members; (d) the Class Representative will
27 fairly and adequately protect the interests of the Class Members; (e) a class action is superior to other
28 available methods for the efficient adjudication of this controversy; and (f) Class Counsel are qualified

1 to act as counsel for the Class Representative in his individual capacity and as the representative of the
2 Class Members.

3 8. The Court provisionally appoints Plaintiffs Jesse Galindo and Laura Smith as the
4 representatives of the Class.

5 9. The Court provisionally appoints Jean-Claude Lapuyade, Esq., of the JCL Law Firm,
6 APC, Shani Zakay, of the Zakay Law Group, APLC, Isandra Fernandez, Esq. and Lance Dacre, Esq.
7 from James Hawkin, APLC as Class Counsel for the Class Members.

8 10. The Court hereby approves, as to form and content, the Proposed Class Notice (“Class
9 Notice”) attached to the Agreement as **Exhibit “A”**. The Court finds that the notice appears to fully
10 and accurately inform the Class Members and Aggrieved Employees of all material elements of the
11 proposed Settlement, including the right of any Class Member to be excluded from the Class by
12 submitting a written request for exclusion, and of each Class Member’s right and opportunity to object
13 to the Settlement. The Court further finds that the distribution of the notices substantially in the manner
14 and form set forth in the Agreement and this Order meets the requirements of due process, is the most
15 reasonable notice under the circumstances, and shall constitute due and sufficient notice to all persons
16 entitled thereto. The Court orders the mailing of the notices by first class mail, pursuant to the terms
17 set forth in the Agreement.

18 11. The Court hereby appoints Apex Class Action LLC, as Settlement Administrator. Within
19 ten (10) business days after the Preliminary Approval Date, Defendant shall provide the Settlement
20 Administrator with the Class Data, including information regarding Class Members that Defendant will
21 in good faith compile from its records, including each Class Member’s full name; last known mailing
22 address; Social Security Number; and total number of Class Period Workweeks and PAGA Pay Periods.
23 No later than fourteen (14) calendar days after receiving the Class Data from Defendant, the Settlement
24 Administrator shall mail copies of the Notice Packet to all Class Members via regular First-Class U.S.
25 Mail.

26 12. The Court hereby preliminarily approves the proposed procedure for exclusion from the
27 Settlement. Any Class Member may individually choose to opt out of and be excluded from the
28 Settlement as provided in the Notice by following the instructions for requesting exclusion from the

1 Settlement of the Released Class Claims that are set forth in the Notice. All requests for exclusion must
2 be postmarked or received by the Response Deadline which is forty-five (45) calendar days after the
3 Settlement Administrator mails the Notice Packets to Class Members or, in the case of re-mailed
4 Notice, not more than ten (10) days from the original Response Deadline. Any such person who chooses
5 to opt out of and be excluded from the Settlement will not be entitled to an Individual Settlement
6 Payment under the Settlement and will not be bound by the Settlement, or have any right to object,
7 appeal or comment thereon. Class Members who have not requested exclusion shall be bound by all
8 determinations of the Court, the Agreement, and Judgment.

9 13. Any Class Member who has not opted out may appear at the final approval hearing and
10 may object or express the Class Member's views regarding the Settlement and may present evidence
11 and file briefs or other papers that may be proper and relevant to the issues to be heard and determined
12 by the Court as provided in the Notice. Class Members will have forty-five (45) calendar days from the
13 date the Settlement Administrator mails the Class Notice to postmark their written objections to the
14 Settlement Administrator.

15 14. A final approval hearing shall be held before this Court on _____ at
16 _____ AM/PM in Department 10B of the San Joaquin County Superior Court to determine all
17 necessary matters concerning the Settlement, including: whether the proposed settlement of the Action
18 on the terms and conditions provided for in the Agreement is fair, adequate and reasonable and should
19 be finally approved by the Court; whether an Order Granting Final Approval should be entered herein;
20 whether the plan of allocation contained in the Agreement should be approved as fair, adequate and
21 reasonable to the Class; and to finally approve the Class Counsel Award, Class Representative Service
22 Award, and the Claims Administration Expenses. All papers in support of the motion for final approval
23 and the Motion for Class Counsel Award and Class Representative Service Award shall be filed with
24 the Court and served on all counsel following the expiration of the Response Deadline.

25 15. In the event the Settlement does not become effective in accordance with the terms of the
26 Agreement, or the Settlement is not finally approved, or is terminated, canceled, or fails to become
27 effective for any reason, this Settlement Agreement shall be rendered null and void and shall be vacated,
28 and the Parties shall revert to their respective positions as of before entering into the Agreement. In

1 such an event, the Court's orders regarding the Settlement, including this Preliminary Approval Order,
2 shall not be used or referred to in litigation for any purpose. Nothing in this paragraph is intended to
3 alter the terms of the Settlement Agreement with respect to the effect of the Settlement Agreement if it
4 is not approved.

5 16. The Court reserves the right to adjourn or continue the date of the final approval hearing
6 and all dates provided for in the Agreement without further notice to Class Members and retains
7 jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

8
9
10
11 Dated: _____

JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

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[Attorney caption continued on next page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

JESSE GALINDO and LAURA SMITH,
individually, and on behalf of all persons
similarly situated,

Plaintiff,

v.

PAQ, INC., DBA FOOD 4 LESS and/or
RANCHO SAN MIGUEL MARKETS, a
California corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No. STK-CV-UOE-2022-0000452

[Complaint Filed: March 9, 2022]

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

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9 Attorneys for Plaintiffs JESSE GALINDO and LAURA SMITH
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1 This Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims is
2 entered into by and between Plaintiffs JESSE GALINDO (“Plaintiff Galindo”) and LAURA SMITH
3 (“Plaintif Smith”) (hereinafter collectively “Plaintiffs” and/or “Plaintiff”), individually and on behalf
4 of the Class, and in their representative capacity on behalf of the State of California and the
5 Aggrieved Employees, and Defendant PAQ, INC., dba FOOD 4 LESS and/or RANCHO SAN
6 MIGUEL MARKETS, a California corporation (hereinafter “Defendant”).

7 **I. DEFINITIONS**

8 A. “Action” shall mean the consolidated putative class and PAGA representative action
9 lawsuit designated *Galindo. v. PAQ, Inc.*, San Joaquin County Superior Court, Lead Case No. STK-
10 CV-UOE-2022-0000452, filed January 24, 2022, as amended.

11 B. “Agreement,” “Settlement Agreement,” or “Class and PAGA Settlement” means this
12 Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims.

13 C. “Aggrieved Employees” and/or “PAGA Class” means all non-exempt employees
14 who are or previously were employed by PAQ, Inc. dba Food4Less and Rancho San Miguel Markets
15 (“Defendant”) and performed work in California during the PAGA Period.

16 D. “Aggrieved Employee Payment” shall mean an Aggrieved Employee’s pro rata share
17 of twenty-five percent (25%) of the PAGA Payment (\$50,000.00) that will be distributed to the
18 Aggrieved Employee based on the Aggrieved Employee’s PAGA Payment Ratio, as described in
19 this Agreement.

20 E. “California Class” and/or “Class Members” means all non-exempt employees who
21 are or previously were employed by PAQ, Inc. dba Food4Less and Rancho San Miguel Markets
22 (“Defendant”) and performed work in California during the Class Period.

23 F. “Claims Administrator” means APEX CLASS ACTION, 18 Technology Drive, Suite
24 168, Irvine, CA 92618; Toll Free:1-800-355-0700. The Claims Administrator shall establish,
25 designate, and maintain, a non-interest bearing QSF under Internal Revenue Code section 468B and
26 Treasury Regulation section 1.468B-1, into which the Gross Settlement Amount will be deposited.
27 The Claims Administrator shall maintain the funds until distribution in an account(s) segregated from
28 the assets of Defendant and any person related to Defendant.

1 G. “Claims Administration Expenses” shall mean the amount paid to the Claims
2 Administrator from the Gross Settlement Amount for administering the Settlement pursuant to this
3 Agreement currently estimated not to exceed \$54,000.00.

4 H. “Class Counsel” shall mean JCL Law Firm, APC, James Hawkins, APLC, and Zakay
5 Law Group, APLC.

6 I. “Class Counsel Award” means the award of fees and expenses that the Court
7 authorizes to be paid to Class Counsel for the services they have rendered to Plaintiffs, the California
8 Class, and the Aggrieved Employees in the Action, consisting of attorneys’ fees not to exceed
9 \$1,500,000.00 (one-third of the Gross Settlement Amount of \$4,500,000.00), plus costs of up to
10 \$50,000.00. The attorneys’ fees portion of the Class Counsel Award shall be collocated between
11 Class Counsel in the following percentages: 25% to JCL Law Firm, APC, 25% to Zakay Law Group,
12 APLC, and 50% to James Hawkins, APLC, subject to court approval. Payment for attorneys’
13 expenses shall be made to the firm or firms that incurred the expenses as demonstrated through
14 declarations with supporting invoices submitted to the court, in a total amount not to exceed
15 \$50,000.00.

16 J. “Class Data” means information regarding Class Members that Defendant will in
17 good faith compile from their records and provide to the Claims Administrator. It shall be formatted
18 as a Microsoft Excel spreadsheet and shall include: each Class Member’s full name; last known
19 address; employee ID number; Social Security Number; his or her number of workweeks worked
20 during the Class Period as a Class Member; and his or her number of pay periods worked during the
21 PAGA Period as an Aggrieved Employee (if applicable).

22 K. “Class Payment Ratio” means the respective Workweeks for each Settlement Class
23 Member divided by the total Workweeks for all Settlement Class Members.

24 L. “Class Period” means the period between March 9, 2018, to the earlier of June 28,
25 2023, or the date on which the number of Workweeks covered by the settlement exceeds 435,000.

26 M. “Class Representatives” shall mean plaintiffs Laura Smith and Jesse Galindo.

27 N. “Court” means the Superior Court for the State of California, County of San Joaquin,
28 currently presiding over the Action.

1 O. "Defendant" and/or "Defendants" shall mean PAQ Inc. dba Food4Less and Rancho
2 San Miguel Markets.

3 P. "Funding Date" shall mean the date by which Defendant pays the Gross Settlement
4 Amount, including payment for all claims, payment of Claims Administration Expenses, Attorneys'
5 Fees, Attorneys' Expenses, Service Awards, and PAGA Payment to the Claims Administrator in
6 accordance with the terms of this Agreement. Defendant will pay the Gross Settlement Amount,
7 including payment for all claims, payment of Claims Administration Expenses, Attorneys' Fees,
8 Attorneys' Expenses, Service Awards, and PAGA Payment sixty (60) days after notice of entry of
9 an order and judgement by the Court granting final approval of this Settlement, provided no notice
10 of appeal or petition for review is filed by any Class Member or intervenor. Should any Class
11 Member or intervenor file a notice of appeal or petition for review, the "Funding Date" shall be thirty
12 (30) days following the final disposition of any such appeal or petition for review, provided that the
13 final approval of this Settlement is affirmed in full.

14 Q. "Gross Settlement Amount" means Four Million, Five Hundred Thousand Dollars
15 and Zero Cents (\$4,500,000.00) for payment of all claims, including payment of Claims
16 Administration Expenses; Attorneys' Fees; Attorneys' Expenses; Service Awards; and the PAGA
17 Payment. The Gross Settlement Amount is all-in with no reversion and exclusive of the employer's
18 share of payroll tax, if any, triggered by any payment under this Settlement, as calculated by the
19 Claims Administrator. Under no condition will Defendant be required to pay more than the Gross
20 Settlement Amount, except as provided in Section III(A)(2) below. Any amounts not approved by
21 the Court shall be added to the Net Settlement Amount to be distributed to Settlement Class Members
22 and shall not be grounds to object to or terminate the Settlement.

23 R. "Individual Settlement Payments" means the amount payable from the Net Settlement
24 Amount to each Settlement Class Member, as calculated by the Claims Administrator, and excludes
25 any amounts distributed to Aggrieved Employees pursuant to PAGA.

26 S. "LWDA" shall mean the California Labor and Workforce Development Agency.

27 T. "LWDA Payment" shall mean the seventy-five percent (75%) of the PAGA Payment
28 (\$150,000.00) payable to the to the LWDA.

1 U. “Net Settlement Amount” or “NSA” means the Gross Settlement Amount, less Class
2 Counsel Award, Service Awards, PAGA Payment, and Claims Administration Expenses.

3 V. “Notice Packet” means the Settlement Notice to be provided to the Class Members
4 by the Claims Administrator in substantially the same form set forth as Exhibit A to this Agreement
5 (other than formatting changes to facilitate printing by the Claims Administrator), as approved by
6 the Court.

7 W. “Operative Complaint” shall mean the Second Amended Complaint that will be filed
8 in the Action pursuant to this Agreement that adds all of the previously unalleged claims and parties
9 asserted in the following matters, *Galindo v. PAQ, Inc., et al.*, San Joaquin Superior Court Case
10 Number STK-CV-UOE-2022-1799 filed on March 9, 2022, and *Smith v. PAQ, Inc., et al.*, San
11 Joaquin Superior Court Case Number STK-CV-UOE-2020-0005825 filed on July 9, 2020, and which
12 shall add the previously unasserted claims pursued at mediation, including claims for cellular phone
13 reimbursement under Labor Code section 2802 and alleged “off-the-clock” COVID checks.

14 X. “PAGA” means the California Labor Code Private Attorneys General Act of 2004,
15 Labor Code § 2698 et seq.

16 Y. “PAGA Payment Ratio” means the respective Pay Periods during the PAGA Period
17 for each Aggrieved Employee divided by the total Pay Periods for all Aggrieved Employees during
18 the PAGA Period.

19 Z. “PAGA Pay Periods,” for purposes of calculating the distribution of the Aggrieved
20 Employee Payment, as defined herein, means the number of pay periods of employment during the
21 PAGA Period that each Aggrieved Employee worked in California.

22 AA. “PAGA Period” means the period between April 6, 2019 to the earlier of June 28,
23 2023 or the date on which the number of Workweeks covered by the settlement does not exceed
24 435,000.

25 BB. “PAGA Payment” shall mean Two Hundred Thousand Dollars and Zero Cents
26 (\$200,000.00) to be allocated from the Gross Settlement Amount for settlement of PAGA Claims
27 asserted in the Action, as approved by the Court.

1 CC. "Parties" means Plaintiffs and Defendant, collectively, and "Party" shall mean either
2 Plaintiffs or Defendant, individually.

3 DD. "Plaintiffs" shall mean Laura Smith and Jesse Galindo.

4 EE. Qualified Settlement Fund or "QSF" means the account established, designated, and
5 maintained under Internal Revenue Code section 468B and Treasury Regulation section 1.468B-1
6 by the Claims Administrator to fund the Gross Settlement Amount.

7 FF. "Released Class Claims" shall mean all class claims alleged, or reasonably could have
8 been alleged based on the facts alleged, in the Operative Complaint in the Action which occurred
9 during the Class Period, including but not limited to claims for violations of and/or for wages,
10 compensatory damages, business expense reimbursement, meal and rest period compensation, actual
11 damages, restitution, liquidated damages, declaratory relief, injunctive or other equitable relief,
12 interest, attorney's fees and/or costs, and/or penalties recoverable under Labor Code sections 201,
13 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d),
14 1174.5, 1194, 1197, 1197.1, 1198, 2802, 2804, and the applicable IWC Wage Order(s), and Business
15 and Professions Code sections 17200, *et seq.*, and expressly excluding other claims, including claims
16 for vested benefits, wrongful termination, unemployment insurance, disability, social security,
17 workers' compensation, and class claims outside of the Class Period, and any and all claims alleged
18 in the *Melissa Destarac et al. vs. PAQ, Inc.* (San Joaquin Superior Court Case No. STK-CV-UOE-
19 2022-2981) not encompassed by the *Smith* and *Galindo* actions.

20 GG. "Released PAGA Claims" shall mean all PAGA claims alleged in the Operative
21 Complaints in the Action, plaintiff Galindo's November 16, 2021 PAGA notice to the LWDA and
22 plaintiff Smith's July 9, 2020 PAGA notice to the LWDA, which occurred during the PAGA Period,
23 including but not limited to claims for civil penalties, attorneys' fees and/or costs, or interest for
24 violations of Labor Code sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3,
25 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804,
26 and the applicable IWC Wage Order(s), and expressly excluding all other claims, including claims
27 for vested benefits, wrongful termination, unemployment insurance, disability, social security,
28 workers' compensation, and PAGA claims outside of the PAGA Period, and any and all claims for

PAGA penalties alleged in the *Melissa Destarac et al. vs. PAQ, Inc.* (San Joaquin Superior Court Case No. STK-CV-UOE-2022-2981) not encompassed by the *Smith* and *Galindo* actions.

HH. “Released Parties” shall mean Defendant and their attorneys, insurers, brands, concepts, parents, affiliates, subsidiaries, predecessors, successors, assigns, and any past, present or future officers, directors, and exempt employees, and any individual or entity that could be jointly liable with Defendant.

II. “Response Deadline” means the date forty-five (45) calendar days from the date the Notice Packet is first mailed.

JJ. “Service Award” means an award in the amount of up to \$10,000.00 or in an amount that the Court authorizes to be paid to each individual Class Representative, in addition to their Individual Settlement Payment and their individual Aggrieved Employee Payment, in recognition of their efforts and risks in assisting with the prosecution of the Action.

KK. “Settlement” means the disposition of the Action pursuant to this Agreement.

LL. “Settlement Class Members” or “Settlement Class” means all Class Members who have not submitted a timely and valid request for exclusion as provided in this Agreement and determined by the Claims Administrator.

MM. “Workweeks” shall mean any seven (7) consecutive days beginning on Sunday and ending on Saturday, in which a Class Member is employed by Defendant during the Class Period in California and recorded any time worked. The Workweeks will be calculated by the Claims Administrator based on the Class Data and will be presumed to be correct, unless a particular Class Member proves otherwise to the Claim Administrator by credible written evidence. All Workweek disputes will be resolved and decided by the Claims Administrator, and the Claims Administrator’s decision on all Workweek disputes will be final. Defendant’s Counsel has advised that approximately 163 individuals were employed by Defendant as hourly employees but do not have recorded work time during the class period due to the employee(s) being on a leave of absence or because the employee(s) were hired but failed to appear for their scheduled shift. The Parties have agreed to assign these employees one workweek for purposes of the settlement.

1 **II. RECITALS**

2 A. On July 9, 2020, plaintiff Smith served the LWDA with a PAGA notice and served
3 the same on Defendant. On the same date, plaintiff Smith filed a class action complaint against
4 Defendant in the San Joaquin County Superior Court, Case Number STK-CV-UOE-2020-0005825
5 (“*Smith Action*”). The *Smith Action* alleged the following: (1) Failure to Pay Wages; (2) Failure to
6 Provide Meal Periods as Required; (3) Failure to Provide Rest Periods as Required; (4) Failure to
7 Pay Timely Wages; (5) Failure to Provide Accurate Itemized Wage Statements; and (6) Violations
8 of Business and Professions Code § 17200 *et seq.*

9 B. On November 30, 2020, Plaintiff Smith amended the *Smith Action* adding an
10 additional cause of action for Violations of the Private Attorneys General Act. Thereafter, Plaintiff
11 Smith filed a Second Amended Representative Action in the San Joaquin Superior Court, Case No.
12 STK-CV-UOE-2020-0005825.

13 C. On November 16, 2021, Plaintiff Galindo served the LWDA with a PAGA Notice
14 and served the same on Defendant.

15 D. On January 24, 2022, Plaintiff Galindo filed this Action, a Representative Action
16 Complaint in the San Joaquin County Superior Court, Case Number STK-CV-UOE-2022-0000452,
17 alleging a single cause of action for Violations of the Private Attorneys General Act (“*Galindo*
18 *PAGA Action*”).

19 E. On March 9, 2022, Plaintiff Galindo filed a class action complaint against Defendant
20 in the San Joaquin County Superior Court, Case Number STK-CV-UOE-2022-01799 (“*Galindo*
21 *Class Action*”) asserting eight causes of action against Defendant. The complaint alleged the
22 following: (1) Unfair Competition In Violation Of Cal. Bus. & Prof. Code §17200 *et seq*; (2) Failure
23 To Pay Minimum Wages In Violation Of Cal. Lab. Code §§ 1194, 1197 & 1197.1; (3) Failure To
24 Pay Overtime Wages In Violation Of Cal. Lab. Code §§ 510, *et seq*; (4) Failure To Provide Required
25 Meal Periods In Violation Of Cal. Lab. Code §§ 226.7 & 512 and the applicable IWC Wage Order;
26 (5) Failure To Provide Required Rest Periods In Violation Of Cal. Lab. Code §§ 226.7 & 512 and
27 the applicable IWC Wage Order; (6) Failure To Provide Accurate Itemized Statements In Violation
28 Of Cal. Lab. Code § 226; (7) Failure To Provide Wages When Due In Violation Of Cal. Lab. Code

1 §§ 201, 202 And 203; and (8) Failure To Reimburse Employees For Required Expenses In Violation
2 Of Cal. Lab. Code § 2802

3 F. On May 3, 2022, Plaintiff Galindo filed a First Amended Complaint in the *Galindo*
4 PAGA Action.

5 G. On June 20, 2022, the *Galindo* Class Action and *Galindo* PAGA Action were
6 consolidated; the earlier filed *Galindo* PAGA Action designated as the lead matter (STK-CV-UOE-
7 2022-0000452).

8 H. The Class Representatives believe they have claims based on alleged violations of the
9 California Labor Code, and the Industrial Welfare Commission Wage Orders, and that class
10 certification is appropriate because the prerequisites for class certification can be satisfied in the
11 Action, and this action is manageable as a PAGA representative action.

12 I. Defendant denies any liability or wrongdoing of any kind associated with the claims
13 alleged in the Action, disputes any wages, damages and penalties claimed by the Class
14 Representatives, alleged in the Operative Complaint, and/or alleged in the Class Representatives'
15 PAGA notices to the LWDA are owed, and further contends that, for any purpose other than
16 settlement, the Action is not appropriate for class or representative action treatment. Defendant
17 contends, among other things, that at all times they complied with the California Labor Code,
18 Industrial Welfare Commission Wage Orders, and applicable law.

19 J. The Class Representatives are represented by Class Counsel. Class Counsel
20 investigated the facts relevant to the Action, including conducting an independent investigation as to
21 the allegations, reviewing documents and information exchanged through informal discovery, and
22 reviewing documents and information provided by Defendant pursuant to informal requests for
23 information to prepare for mediation. Defendant produced for the purpose of settlement negotiations
24 certain employment data concerning the Class, which Class Counsel reviewed and analyzed with the
25 assistance of an expert. Based on their own independent investigation and evaluation, Class Counsel
26 are of the opinion that the Settlement with Defendant is fair, reasonable, and adequate, and is in the
27 best interest of the Class considering all known facts and circumstances, including the risks of
28 significant delay, defenses asserted by Defendant, uncertainties regarding class certification, and

1 numerous potential appellate issues. Although it denies any liability, Defendant agrees to this
2 Settlement solely to avoid the inconveniences and cost of further litigation. The Parties and their
3 counsel have agreed to settle the claims on the terms set forth in this Agreement.

4 K. On June 28, 2023, the Parties participated in full day mediation presided over by
5 Jeffrey A. Ross, Esq., an experienced mediator of wage and hour class and PAGA actions. The
6 Parties accepted a Mediator's settlement proposal, which was subsequently memorialized in the form
7 of a Memorandum of Understanding.

8 L. This Agreement replaces and supersedes the Memorandum of Understanding and any
9 other agreements, understandings, or representations between the Parties. This Agreement
10 represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is
11 intended or will be construed as an admission by Defendant that the claims in the Action of Plaintiffs
12 or the California Class Members have merit or that Defendant bears any liability to Plaintiffs or the
13 California Class on those claims or any other claims, or as an admission by Plaintiffs that Defendant's
14 defenses in the Action have merit.

15 M. The Parties believe that the Settlement is fair, reasonable, and adequate. The
16 Settlement was arrived at through arm's-length negotiations, considering all relevant factors. The
17 Parties recognize the uncertainty, risk, expense, and delay attendant to continuing the Action through
18 trial and any appeal. Accordingly, the Parties desire to settle, compromise and discharge all disputes
19 and claims arising from or relating to the Action fully, finally, and forever.

20 N. The Parties agree to certification of the Class for purposes of this Settlement only. If
21 for any reason the Settlement does not become effective, Defendant reserves the right to contest
22 certification of any class for any reason and reserves all available defenses to the claims in the Action.
23 The Settlement, this Agreement, and the Parties' willingness to settle the Action will have no bearing
24 on and will not be admissible in connection with any litigation.

25 Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

26 **III. TERMS OF AGREEMENT**

27 A. Settlement Consideration and Settlement Payments by Defendants.
28

1 1. Settlement Consideration. In full and complete settlement of the Action, and
2 in exchange for the releases set forth below, Defendant will pay the Gross Settlement Amount. Other
3 than Defendant's share of employer payroll taxes, as determined by the Claims Administrator,
4 Defendant shall not be required to pay more than the Gross Settlement Amount.

5 2. Class Size. Defendant represents that, at the time of mediation, the California
6 Class was comprised of approximately 8,085 individuals who collectively worked approximately
7 435,000 Workweeks during the Class Period. In regard hereto, Defendant will provide a declaration
8 under penalty of perjury confirming these numbers seven (7) days prior to Plaintiffs' deadline to file
9 their motion for preliminary approval of the settlement.

10 3. Settlement Payment. Defendant shall deposit the Gross Settlement Amount
11 into a non-interest bearing QSF, through the Claims Administrator on or before the Funding Date.

12 4. Defendant's Share of Payroll Taxes. Defendant's share of employer-side
13 payroll taxes shall be calculated by the Claims Administrator and paid into the QSF in addition to
14 the Gross Settlement Amount on the Funding Date.

15 B. Release by Settlement Class Members. Upon entry of final judgment and funding of
16 the Gross Settlement Amount, in exchange for the consideration set forth in this Agreement,
17 Plaintiffs and the Settlement Class Members release the Released Parties from the Released Class
18 Claims.

19 C. Release by the Aggrieved Employees. Upon entry of final judgment and funding of
20 the Gross Settlement Amount, in exchange for the consideration set forth in this Agreement, the
21 Plaintiffs, and the LWDA release the Released Parties from the Released PAGA Claims. As a result
22 of this release, the Aggrieved Employees shall be precluded from bringing claims against Defendant
23 for the Released PAGA Claims.

24 D. Additional General Release and Waiver of Claims by Plaintiffs.

25 1. In addition to the releases set forth above, Plaintiffs, in their individual
26 capacity, agree to release the Released Parties from any and all claims, known and unknown, under
27 federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law,
28 arising as of the date of execution of this Agreement, including but not limited to claims arising from

1 or related to Plaintiffs' employment with Defendant, separation of employment from Defendant, and
2 any acts that have or could have been asserted in any legal action or proceeding against Defendant,
3 whether known or unknown, arising under any federal, state or local law or statute, including, inter
4 alia, those arising under the California Labor Code, Fair Labor Standards Act, Americans with
5 Disabilities Act, Title VII of the Civil Rights Act of 1964, Employee Retirement Income Security
6 Act, National Labor Relations Act, California Corporations Code, California Business and
7 Professions Code, California Fair Employment and Housing Act, California Constitution (all as
8 amended), and law of contract and tort, as well as for discrimination, harassment, retaliation,
9 wrongful termination, lost wages, benefits, other employment compensation, emotional distress,
10 medical expenses, other economic and non-economic damages, attorney fees, and costs (collectively,
11 "Plaintiffs' Released Claims").

12 2. Plaintiffs execute this release with the full knowledge that the release
13 covers all possible claims against the Released Parties, to the fullest extent permitted by law, except
14 claims based on an alleged breach of this Agreement.

15 3. Notwithstanding the foregoing, the Parties expressly agree and
16 acknowledge that nothing in this Agreement releases or waives any rights or claims the Parties may
17 have with respect to any claims for workers' compensation or to other rights and claims that cannot
18 be waived as a matter of law or public policy.

19 4. Even if Plaintiffs discover facts in addition to or different from those
20 that they now know or believe to be true with respect to the subject matter of Plaintiffs' Released
21 Claims, those claims will remain released and forever barred. To effect a full and complete general
22 release as described above, Plaintiffs expressly waive and relinquish all rights and benefits of section
23 1542 of the Civil Code of the State of California, and does so understanding and acknowledging the
24 significance and consequence of specifically waiving section 1542. Section 1542 of the Civil Code
25 of the State of California states as follows:

26 **A general release does not extend to claims that the creditor or releasing**
27 **party does not know or suspect to exist in his or her favor at the time of**
28

1 **executing the release and that, if known by him or her, would have materially**
2 **affected his or her settlement with the debtor or released party.**

3 5. Thus, notwithstanding the provisions of section 1542, and to implement
4 a full and complete release and discharge of the Released Parties, Plaintiffs expressly acknowledge
5 this Settlement is intended to include in its effect, without limitation, all claims Plaintiffs do not
6 know or suspect to exist in Plaintiffs' favor at the time of signing this Settlement, and that this
7 Settlement contemplates the extinguishment of any such claims. Plaintiffs warrant that they have
8 read this Settlement, including this waiver of California Civil Code section 1542, and that Plaintiffs
9 have consulted with or had the opportunity to consult with counsel of Plaintiffs' choosing about this
10 Settlement and specifically about the waiver of section 1542, and that Plaintiffs understand this
11 Settlement and the section 1542 waiver, and so Plaintiffs freely and knowingly enter into this
12 Settlement. Plaintiffs further acknowledge that Plaintiffs later may discover facts different from or
13 in addition to those Plaintiffs now know or believe to be true regarding the matters released or
14 described in this Settlement, and even so Plaintiffs agree that the releases and agreements contained
15 in this Settlement shall remain effective in all respects notwithstanding any later discovery of any
16 different or additional facts. Plaintiffs expressly assume any and all risk of any mistake in connection
17 with the true facts involved in the matters, disputes, or controversies released or described in this
18 Settlement or with regard to any facts now unknown to Plaintiffs relating thereto. Plaintiffs further
19 acknowledge this waiver of the provisions of section 1542 was separately bargained for and is an
20 essential and material term of this Agreement.

21 E. Amended Pleading and Dismissal of *Smith* PAGA Action. The Parties hereby
22 stipulate and agree to the filing a Second Amended Complaint ("SAC") in the *Galindo* PAGA Action.
23 The SAC will name plaintiff Smith as plaintiff in the Action and assert all class claims alleged in
24 both in the *Smith* Action and the *Galindo* Class Action. Additionally, the SAC shall assert previously
25 unalleged theories that were pursued by Plaintiffs at mediation, including a claim for cell-phone
26 reimbursement under Labor Code Section 2802, and alleged "off-the-clock" COVID checks. As part
27 of this Settlement, the Parties will execute a Stipulation for leave to file the SAC prior to seeking
28 preliminary approval of this Settlement. Within ten (10) calendar days of the filing of the SAC,

1 Plaintiffs will dismiss the *Smith* action (*Smith v. PAQ, Inc., et al.*, San Joaquin Superior Court Case
2 Number STK-CV-UOE-2020-0005825) with prejudice.

3 F. Nullification of Settlement Agreement. In the event: (i) the Court does not grant
4 preliminary or final approve this Settlement Agreement; (ii) the Court does not enter a final order
5 and Judgment approving the Settlement; (iii) the Settlement does not become final or Effective; (iv)
6 Defendant is in any way prevented or prohibited from obtaining a complete resolution of the
7 Released Class Claims and Released PAGA Claims, or (v) if Defendant fails to fully fund the Gross
8 Settlement Amount:

9 1. This Settlement Agreement shall be void *ab initio* and of no force or effect,
10 and shall not be admissible in any judicial, administrative, or arbitral proceeding for any purpose or
11 with respect to any issue, substantive or procedural;

12 2. The conditional class certification (obtained for any purpose) shall be void ab
13 initio and of no force or effect, and shall not be admissible in any judicial, administrative, or arbitral
14 proceeding for any purpose or with respect to any issue, substantive or procedural; and

15 3. None of the Parties to this Settlement will be deemed to have waived any
16 claims, objections, defenses, or arguments in the Action, including with respect to the issue of class
17 certification.

18 4. In the event that Defendant fails to fund the Gross Settlement Amount,
19 Defendant shall bear the sole responsibility for any cost to issue or reissue any curative notice to the
20 Settlement Class Members and all Claims Administration Expenses incurred to the date of
21 nullification.

22 G. Certification of the Class. The Parties stipulate to conditional class certification of
23 the Class for the Class Period for purposes of settlement only. In the event that this Settlement is not
24 approved by the Court, fails to become effective, or is reversed, withdrawn or modified by the Court,
25 or in any way prevents or prohibits Defendant from obtaining a complete resolution of the Released
26 Class Claims and Released PAGA Claims, the conditional class certification (obtained for any
27 purpose) shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial,
28

1 administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or
2 procedural.

3 H. Tax Liability. The Parties make no representations as to the tax treatment or legal
4 effect of the payments called for, and California Class Members and/or Aggrieved Employees are
5 not relying on any statement or representation by the Parties in this regard. California Class Members
6 and/or Aggrieved Employees understand and agree that they will be responsible for the payment of
7 any taxes and penalties assessed on the Individual Settlement Payments and/or Aggrieved
8 Employees' individual shares of the Aggrieved Employee Payment described and will be solely
9 responsible for any penalties or other obligations resulting from their personal tax reporting of
10 Individual Settlement Payments and/or Aggrieved Employees' individual shares of the Aggrieved
11 Employee Payment.

12 I. No Tax Advice. Neither Class Counsel nor Defendant's Counsel intends anything
13 contained in this Settlement to constitute advice regarding taxes or taxability, nor shall anything in
14 this Settlement be relied upon as such within the meaning of United States Treasury Department
15 Circular 230 (31 CFR Part 10, as amended) or otherwise. Plaintiffs, California Class Members, and
16 Aggrieved Employees understand and agree that except for Defendant's payment of the employer's
17 portion of any payroll taxes, they will be solely responsible for the payment of any taxes and penalties
18 assessed on the payments described herein.

19 J. Preliminary Approval Motion. Class Counsel shall draft and file with the Court a
20 Motion for Order Granting Preliminary Approval within thirty (30) days of the execution of this
21 Agreement.

22 K. Claims Administrator. The Claims Administrator shall be responsible for:
23 establishing and administering the QSF; establishing, hosting and maintaining a dedicated webpage
24 throughout the administration process with links to pertinent documents, i.e., notice and related
25 forms, and updates on settlement; calculating, processing and mailing payments to the Class
26 Representatives, Class Counsel, LWDA and California Class Members; formatting, printing and
27 mailing the Notice Packets to the Class Members as directed by the Court; conducting a National
28 Change of Address search to update California Class Member addresses before mailing the Notice

1 Packets; receiving and reviewing for validity all objections and requests for exclusion; calculating
2 workweeks, Individual Settlement Payments and Aggrieved Employee Payments, and resolving
3 workweek disputes; re-mailing Notice Packets that are returned to the Class Member's new address;
4 setting up, printing, and mailing reminder post cards, as needed; setting up a toll-free telephone
5 number to receive calls from Class Members; hosting a dedicated webpage containing pertinent
6 settlement information throughout the administration process, issuing checks to effectuate the
7 payments due under this Settlement; calculating, deducting and remitting all legally required taxes
8 from Individual Settlement Payments and Aggrieved Employee Payments and distributing tax forms
9 for the Wage Portion, the Penalties Portion and the Interest Portion of the Individual Settlement
10 Payments and/or Aggrieved Employee Payment; processing and mailing tax payments to the
11 appropriate state and federal taxing authorities and providing documentation of same to Defendant;
12 providing declaration(s) as necessary in support of preliminary and/or final approval of this
13 Settlement; and other tasks as the Parties mutually agree or the Court orders the Claims Administrator
14 to perform. The Claims Administrator shall keep the Parties timely apprised of the performance of
15 all Claims Administrator responsibilities by among other things, sending a weekly status report to
16 the Parties' counsel stating the date of the mailing, the number of opt outs from the Settlement it
17 receives (including the numbers of valid and deficient), and number of objections received. The
18 Claims Administrator will have the authority to resolve all disputes concerning the calculation of
19 Individual Settlement Payments and Aggrieved Employee Payments, subject to the dollar limitations
20 and calculations set forth in this Agreement. The Claims Administration Expenses, including
21 without limitation the cost of printing and mailing the Notice Packet, will be paid out of the Gross
22 Settlement Amount.

23 L. Notice Procedure.

24 1. Class Data. No later than ten (10) business days after notice of entry of the
25 Court's order granting preliminary approval of this Settlement, Defendant shall provide the Claims
26 Administrator with the Class Data for purposes of preparing and mailing Notice Packets to the Class
27 Members.
28

2. Notice Packets. The Notice Packet shall contain the Notice of Pendency of Class and PAGA Representative Action Settlement and Final Hearing Date in a form substantially similar to the form attached as **Exhibit A**. The Notice Packet shall inform California Class Members and Aggrieved Employees that they need not do anything in order to receive an Individual Settlement Payment and/or an Aggrieved Employee Payment and of their obligation to keep the Claims Administrator apprised of their current mailing address, to which the Individual Settlement Payments and/or Aggrieved Employee Payment will be mailed following the Funding Date. The Notice Packet shall set forth the release to be given by all members of the Class who do not request to be excluded from the Settlement Class and the release to be given by Aggrieved Employees regardless of whether they exclude themselves from the Class, in exchange for their Individual Settlement Payment and Aggrieved Employee Payment, respectively; the number of Workweeks worked by each Class Member during the Class Period; and the number of PAGA Periods worked by each Aggrieved Employee during the PAGA Period, if any; and the estimated amount of their Individual Settlement Payment if they do not request to be excluded from the Settlement and the estimated amount of their Aggrieved Employee Payment, if any. The Claims Administrator shall use the Class Data to determine Class Members' Workweeks and PAGA Pay Periods. The Notice Packet will also advise the Aggrieved Employees that they will release the Released PAGA Claims and will receive their Aggrieved Employee Payment regardless of whether they request to be excluded from the Class. The Notice Packet will be provided in both English and Spanish.

3. Notice by First Class U.S. Mail. Upon receipt of the Class Data, the Claims Administrator will perform a search based on the National Change of Address Database to update and correct any known or identifiable address changes. No later than fourteen (14) calendar days after receipt of the Class Data, the Claims Administrator shall mail copies of the Notice Packet to all Class Members via regular First-Class U.S. Mail. The Claims Administrator shall exercise its best judgment to determine the current mailing address for each Class Member. The address identified by the Claims Administrator as the current mailing address shall be presumed to be the best mailing address for each Class Member.

1 4. Undeliverable Notices. Any Notice Packets returned to the Claims
2 Administrator as non-delivered on or before the Response Deadline shall be re-mailed to any
3 forwarding address provided within seven (7) days of receiving the returned notice. If no forwarding
4 address is provided, the Claims Administrator shall promptly attempt to determine a correct address
5 by lawful use of skip-tracing, or other search using the name, address and/or Social Security number
6 of the Class Member involved, and shall then perform a re-mailing, if another mailing address is
7 identified by the Claims Administrator. In addition, if the Notice Packet sent to any Class Member
8 who is currently employed by Defendant is returned to the Claims Administrator as non-delivered
9 and no forwarding address is provided, the Claims Administrator shall notify Defendant. Defendant
10 will request that the currently employed Class Member provide a corrected address and transmit to
11 the Claims Administrator any corrected address provided by the Class Member. Class Members who
12 received a re-mailed Notice Packet shall have their Response Deadline extended ten (10) days from
13 the original Response Deadline. If these procedures are followed, notice to Class Members shall be
14 deemed to have been fully satisfied, and if the intended recipient of the Notice Packet does not
15 receive the Notice Packet, the intended recipient shall nevertheless remain a Class Member and
16 Aggrieved Employee (if applicable) and shall be bound by all terms of the Settlement and the final
17 order and Judgment.

18 M. Disputes Regarding Individual Settlement Payments. Class Members will have the
19 opportunity to dispute the number of Workweeks listed on his/her Notice Packet (“Workweek
20 Dispute”). Any such dispute must be mailed to the Claims Administrator by the Response Deadline.
21 The date of the postmark on the mailing envelope will be the exclusive means to determine whether
22 a Workweek Dispute has been timely submitted. A valid Workweek Dispute must be in writing and
23 should contain: (i) the Class Member’s full name, signature, address, telephone number, and the last
24 four digits of his or her Social Security number; (ii) the number of Workweeks the Class Member
25 contends is correct; and (iii) any evidence supporting his or her contention. The information
26 identified by Defendants in the Class Data will be presumed to be correct, unless a particular Class
27 Member proves otherwise to the Claims Administrator by credible evidence. All Workweek Disputes
28

will be resolved and decided by the Claims Administrator and the Claim Administrator's decision on all Workweek Disputes will be final.

N. Disputes Regarding Administration of Settlement. Any dispute not resolved by the Claims Administrator concerning the administration of the Settlement will be resolved by the Court under the laws of the State of California. Before any such involvement of the Court, counsel for the Parties will confer in good faith to resolve the disputes without the necessity of involving the Court.

O. Exclusions. The Notice Packet shall state that Class Members who wish to exclude themselves from the Settlement must submit a written request ("Request for Exclusion") to the Claims Administrator by the Response Deadline. To be valid, the Request for Exclusion must be in writing and must: (i) be signed by the Class Member; (ii) contain the name, address, telephone number, and the last four digits of the Social Security number of the Class Member requesting exclusion; (iii) clearly state the Class Member does not wish to be included in the Settlement; (iv) be returned via mail to the Claims Administrator as specified in the Notice Packet; and (v) be postmarked on or before the Response Deadline. The date of the postmark on the return mailing envelope will be the exclusive means to determine whether a Request for Exclusion has been timely submitted. Any Class Member who submits a valid Request for Exclusion shall be excluded from the Settlement Class and will not be entitled to an Individual Settlement Payment and will not be otherwise bound by the terms of the Settlement or have any right to object, appeal, or comment thereon. However, any Class Member that submits a valid Request for Exclusion that is also an Aggrieved Employee will still receive his/her Aggrieved Employee Payment, and in consideration, will be bound by the Release by the PAGA Class as set forth herein. Class Members who fail to submit a valid Request for Exclusion shall be bound by all terms of the Settlement and any final judgment entered in this Action if the Court approves the Settlement. No later than seven (7) calendar days after the Response Deadline, the Claims Administrator shall provide counsel for the Parties with a final list of the Class Members who have submitted valid Requests for Exclusion. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage members of the Class to submit Requests for Exclusion from the Settlement.

P. Objections.

1 1. The Notice Packet shall state that Class Members who wish to object to the
2 Settlement may submit to the Claims Administrator a written statement of objection (“Notice of
3 Objection”) by the Response Deadline. The postmark date of mailing shall be deemed the exclusive
4 means for determining that a Notice of Objection was served timely. The Notice of Objection, if in
5 writing, must be signed by the Settlement Class Member and state: (1) the case name and number;
6 (2) the name of the Settlement Class Member; (3) the address of the Settlement Class Member; (4)
7 the last four digits of the Settlement Class Member’s Social Security number; (5) the basis for the
8 objection; and (6) if the Settlement Class Member intends to appear at the Final Approval/Settlement
9 Fairness Hearing. Settlement Class Members who fail to make objections in writing in the manner
10 specified above may still make their objections orally at the Final Approval/Settlement Fairness
11 Hearing with the Court’s permission. Settlement Class Members will have a right to appear at the
12 Final Approval/Settlement Fairness Hearing to have their objections heard by the Court regardless
13 of whether they submitted a written objection. At no time shall any of the Parties or their counsel
14 seek to solicit or otherwise encourage Class Members to file or serve written objections to the
15 Settlement or appeal from the Order and Final Judgment. Class Members who submit a written
16 Request for Exclusion may not object to the Settlement. Class Members may not object to the PAGA
17 Payment.

18 2. A Class Member who does not submit a valid Request for Exclusion and who
19 objects to the Settlement will still be considered a Settlement Class Member. If any Class Member
20 submits a valid Request for Exclusion and also submits an objection to the Settlement or otherwise
21 objects at the Final Approval/Settlement Fairness Hearing, the objection shall nullify the Request for
22 Exclusion and the Class Member will be deemed a Settlement Class Member. In the event of a
23 dispute regarding the validity of any objection to the Settlement, Class Counsel and Defendants’
24 Counsel shall meet and confer in an attempt to reach agreement and, if they are unable to do so, the
25 issue shall be submitted to the Court for determination on an expedited basis, through the submission
26 of letter briefs of no more than five pages.

27 Q. Allocation of the Gross Settlement Amount.
28

1 1. Calculation of Individual Settlement Payments. Individual Settlement
2 Payments shall be paid from the Net Settlement Amount and shall be paid pursuant to the formula
3 set forth herein. Using the Class Data, the Claims Administrator shall add up the total number of
4 Workweeks for all Class Members. The respective Workweeks for each Class Member will be
5 divided by the total Workweeks for all Class Members, resulting in the Class Payment Ratio for each
6 Class Member. Each Class Member's Class Payment Ratio will then be multiplied by the Net
7 Settlement Amount to calculate each Class Member's estimated Individual Settlement Payments.
8 Each Individual Settlement Payment will be reduced by any legally mandated employee tax
9 withholdings (e.g., employee payroll taxes, etc.). Individual Settlement Payments for Class
10 Members who submit valid and timely requests for exclusion will be redistributed to Settlement
11 Class Members who do not submit valid and timely requests for exclusion on a pro rata basis based
12 on their respective Class Payment Ratios.

13 2. Calculation of Aggrieved Employee Payments. Using the Class Data, the
14 Claims Administrator shall add up the total number of PAGA Pay Periods for all Aggrieved
15 Employees during the PAGA Period. The respective PAGA Pay Periods for each Aggrieved
16 Employees will be divided by the total PAGA Pay Periods for all Aggrieved Employees, resulting
17 in the "PAGA Payment Ratio" for each Aggrieved Employee. Each Aggrieved Employee's PAGA
18 Payment Ratio will then be multiplied by \$50,000.00 (i.e., 25% of the PAGA Payment that is to be
19 allocated to Aggrieved Employees pursuant to PAGA), to calculate the individual's Aggrieved
20 Employee Payment.

21 3. Allocation of Individual Settlement Payments. For tax purposes, Individual
22 Settlement Payments shall be allocated and treated as one-third (1/3) wages ("Wage Portion"), and
23 two-thirds (2/3) non-wage income, including penalties and interest ("Penalties and Interest Portion").
24 The Wage Portion of the Individual Settlement Payments shall be reported on IRS Form W-2 and
25 the Penalty and Interest Portion of the Individual Settlement Payments shall be reported on IRS Form
26 1099 issued by the Settlement Agreement.

4. Allocation of Aggrieved Employee Payments. For tax purposes, Aggrieved Employee Payments shall be allocated and treated as 100% penalties and shall be reported on IRS Form 1099.

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

6. No Additional Compensation or Benefits. All monies received by Settlement Class Members under the Settlement which are attributable to wages shall constitute income to such Settlement Class Members solely in the year in which such monies are received by the Settlement Class Members. It is the intent of the Parties that Individual Settlement Payments and Aggrieved Employee Payments are the sole payments to be made by Defendant to Settlement Class Members and/or Aggrieved Employees in connection with this Settlement Agreement, with the exception of Plaintiffs' Service Awards, and that the Settlement Class Members and/or Aggrieved Employees are not entitled to any new or additional compensation or benefits as a result of having received the Individual Settlement Payments and/or their shares of the Aggrieved Employee Payment.

7. Mailing. Individual Settlement Payments and Aggrieved Employee Payments shall be mailed by regular First-Class U.S. Mail to Settlement Class Members' and/or Aggrieved Employees' last known mailing address no later than fifteen (15) business days after the Funding Date. The Claims Administrator may, in its discretion, distribute Individual Settlement Payments and Aggrieved Employee Payments by way of a single check that combines both payments.

8. Expiration. Any checks issued to Settlement Class Members and Aggrieved Employees shall remain valid and negotiable for one hundred and eighty (180) days from the date of their issuance. If a Settlement Class Member and/or Aggrieved Employees does not cash his or her settlement check within ninety (90) days, the Claims Administrator will send a letter to such persons,

advising that the check will expire after the 180th day, and invite that Settlement Class Member and/or Aggrieved Employees to request reissuance in the event the check was destroyed, lost, or misplaced. In the event an Individual Settlement Payment and/or Aggrieved Employees' individual share of the PAGA Payment check has not been cashed within one hundred and eighty (180) days, all funds represented by such uncashed checks, plus any interest accrued thereon, shall be paid in accord with California Code of Civil Procedure Section 384 to the Children's Advocacy Institute ("CAI"), a nonprofit founded at the University of San Diego School of Law in 1989, and is one of the nation's premiere academic, research, and advocacy organizations working to improve the lives of children and youth, with special emphasis on improving the child protection and foster care systems and enhancing resources that are available to youth aging out of foster care. Should the Court not approve CAI as the recipient of the uncashed funds, the uncashed funds shall be deposited with the State Controller's Unclaimed Property Fund in the name of the Class Member who did not claim the funds.

9. Service Award. In addition to the Individual Settlement Payment as a Settlement Class Member and their Aggrieved Employee Payment, Plaintiffs will apply to the Court for an award of not more than \$10,000.00 each, as the Service Award. Defendant will not oppose a Service Award of not more than \$10,000.00 for each Plaintiff. The Claims Administrator shall pay the Service Award, either in the amount stated herein if approved by the Court or some other amount as approved by the Court, to Plaintiffs from the Gross Settlement Amount no later than the Funding Date. Any portion of the requested Service Award that is not awarded to the Class Representatives shall be part of the Net Settlement Amount and shall be distributed to Settlement Class Members as provided in this Agreement. The Claims Administrator shall issue an IRS Form 1099 — MISC to Plaintiff for his Service Award. Plaintiffs shall be solely and legally responsible to pay any and all applicable taxes on their Service Award and shall hold harmless the Released Parties from any claim or liability for taxes, penalties, or interest arising as a result of the Service Award. Approval of this Settlement shall not be conditioned on Court approval of the requested amount of the Service Award. If the Court reduces or does not approve the requested Service Award, Plaintiffs shall not have the right to object to or revoke the Settlement, and it will remain binding. To receive the Service Award,

1 Plaintiffs agree to a California Civil Code section 1542 waiver and general release of all claims as
2 set forth below.

3 10. Class Counsel Award. Defendant understands, and will not oppose, a motion
4 for Attorneys' Fees not to exceed one-third of the Gross Settlement Amount, currently estimated to
5 be One Million Five Hundred Thousand and Zero Cents (\$1,500,000.00), and Attorneys' Expenses
6 supported by declaration not to exceed Fifty Thousand Dollars and Zero Cents (\$50,000.00). Any
7 awarded Class Counsel Award shall be paid from the Gross Settlement Amount. Any portion of the
8 requested Attorneys' Fees and/or Attorneys' Expenses that are not awarded to Class Counsel shall
9 be part of the Net Settlement Amount and shall be distributed to Settlement Class Members as
10 provided in this Agreement. The Claims Administrator shall allocate and pay the Class Counsel
11 Award to Class Counsel from the Gross Settlement Amount no later than the Funding Date. Class
12 Counsel shall be solely and legally responsible to pay all applicable taxes on the payment made
13 pursuant to this paragraph. The Claims Administrator shall issue an IRS Form 1099 — MISC to
14 Class Counsel for the payments made pursuant to this paragraph. If the Court reduces or does not
15 approve the requested Class Counsel Award, Plaintiffs and Class Counsel shall not have the right to
16 object to or revoke the Settlement, or to appeal such order, and the Settlement will remain binding.

17 11. PAGA Payment. Two Hundred Thousand Dollars and Zero Cents
18 (\$200,000.00) shall be allocated from the Gross Settlement Amount for settlement of claims for civil
19 penalties under the Private Attorneys General Act of 2004 ("PAGA Payment"). The Claims
20 Administrator shall pay seventy-five percent (75%) of the PAGA Payment (\$150,000.00) to the
21 California Labor and Workforce Development Agency no later than the Funding Date (hereinafter
22 "LWDA Payment"). Twenty-five percent (25%) of the PAGA Payment (\$50,000.00) will be
23 distributed to the Aggrieved Employees as described in this Agreement. For purposes of distributing
24 the PAGA Payment to the Aggrieved Employees, each Aggrieved Employee shall receive their pro-
25 rata share using the PAGA Payment Ratio as defined above. If the Court approves a PAGA Payment
26 of less than \$200,000, the difference between \$200,000 and the amount approved will be retained in
27 the Net Settlement Amount for distribution to Settlement Class Members. If the Court requires a
28 larger PAGA Payment than \$200,000 then such additional sum will come out of the Net Settlement

1 Amount and will not be grounds to object to or revoke the Settlement, or to appeal such order, and
2 the Settlement will remain binding.

3 12. Claims Administration Expenses. The Claims Administrator shall be paid for
4 the costs of administration of the Settlement from the Gross Settlement Amount, as documented and
5 approved by the Court. The estimate of the Claims Administration Expenses is \$54,000.00. The
6 Claims Administrator shall be paid the Claims Administration Expenses no later than the Funding
7 Date. To the extent the Claims Administration Expenses that are documented and approved by the
8 Court are less than \$54,000.00, the remainder will be retained in the Net Settlement Amount for
9 distribution to Settlement Class Members.

10 R. Final Approval Motion. Class Counsel and Plaintiffs shall use best efforts to obtain a
11 hearing date for final approval when the Court grants preliminary approval of the Settlement and will
12 comply with the Court's requirements on timely filing a motion for final approval ("Final Approval
13 Motion"). Unless otherwise ordered by the Court, the Final Approval Motion will seek determination
14 and approval of the amounts payable for the Service Award, the Class Counsel Award, the PAGA
15 Payment, and the Claims Administration Expenses, and provide supporting document and
16 declarations as necessary. Plaintiffs will provide Defendant with a draft of the Final Approval Motion
17 at least three (3) business days prior to filing it to give Defendant an opportunity to propose changes
18 or additions to the Motion.

19 1. Declaration by Claims Administrator. No later than seven (7) days after the
20 Response Deadline, the Claims Administrator shall submit a declaration in support of Plaintiff's
21 motion for final approval of this Settlement detailing the number of Notice Packets mailed and re-
22 mailed to Class Members, the number of undeliverable Notice Packets, the number of timely requests
23 for exclusion, the employee number of any Class Members who opt out of the Settlement, the
24 number of objections received, the amount of the average, lowest, and highest Individual Settlement
25 Payments, the amount of the average, lowest, and highest Aggrieved Employee Payments, the Claims
26 Administration Expenses, and any other information as the Parties mutually agree or the Court orders
27 the Claims Administrator to provide.
28

2. Final Approval Order and Judgment. Class Counsel shall present an Order Granting Final Approval of Class Action Settlement to the Court for its approval, and Judgment thereon, at the time Class Counsel files the Motion for Final Approval.

S. Review of Motions for Preliminary and Final Approval. Class Counsel will provide an opportunity for Counsel for Defendant to review the Motions for Preliminary and Final Approval, including the Order Granting Final Approval of Class Action Settlement, and Judgment at least three (3) business days in advance of filing with the Court. The Parties and their counsel will cooperate with each other and use their best efforts to affect the Court's approval of the Motions for Preliminary and Final Approval of the Settlement, and entry of Judgment.

T. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts to implement the Settlement.

U. Court Filings. The Parties agree not to object to any Court filings consistent with this Agreement.

V. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval/Settlement Fairness Hearing to be conducted by the Court.

W. Amendment or Modification. This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest.

X. Entire Agreement. This Agreement and any attached Exhibit constitutes the entire Agreement among these Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning this Agreement or its Exhibit other than the representations, warranties and covenants contained and memorialized in this Agreement and its Exhibit.

Y. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate Action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The person signing this Agreement on behalf of Defendant represents and warrants that he/she is authorized to sign this Agreement on behalf of Defendant.

1 Plaintiffs represent and warrant that they are authorized to sign this Agreement and that they have
2 not assigned any claim, or part of a claim, covered by this Settlement to a third-party.

3 Z. No Public Comment: The Parties and their counsel agree that they will not issue any
4 press releases, initiate any contact with the press, respond to any press inquiry, or have any
5 communication with the press about the fact, amount, or terms of the Settlement Agreement. Class
6 Counsel further agrees not to use the Settlement Agreement or any of its terms for any marketing or
7 promotional purposes. Nothing herein will restrict Class Counsel from including publicly available
8 information regarding this settlement in future judicial submissions regarding Class Counsel's
9 qualifications and experience. Further, Class Counsel will not include, reference, or use the
10 Settlement Agreement for any marketing or promotional purposes, either before or after the Motion
11 for Preliminary Approval is filed.

12 AA. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure
13 to the benefit of, the heirs, successors and/or assigns of the Parties, as previously defined.

14 BB. California Law Governs. All terms of this Agreement and the Exhibit and any
15 disputes shall be governed by and interpreted according to the laws of the State of California.

16 CC. Counterparts. This Agreement may be executed in one or more counterparts by
17 facsimile, electronic signature, or email which for purposes of this Agreement shall be accepted as
18 an original. All executed counterparts and each of them will be deemed to be one and the same
19 instrument. Any executed counterpart will be admissible in evidence to prove the existence and
20 contents of this Agreement.

21 DD. This Settlement Is Fair, Adequate, and Reasonable. The Parties believe this
22 Settlement is a fair, adequate, and reasonable settlement of this Action and have arrived at this
23 Settlement after extensive arms-length negotiations, taking into account all relevant factors, present
24 and potential.

25 EE. Continuing Jurisdiction. The Parties agree that the Court shall retain continuing
26 jurisdiction over this case under California Code of Civil Procedure §664.6 to ensure the continuing
27 implementation of the provisions of this settlement and that the time within which to bring this Action
28 to trial under California Code of Civil Procedure §583.310 shall be extended from the date of the

1 signing of this Agreement by all parties until the entry of the final approval order and judgment or if
2 not entered, the date of this Agreement shall no longer be of any force or effect.

3 FF. Invalidity of Any Provision. Before declaring any provision of this Agreement
4 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible
5 consistent with applicable precedents so as to define all provisions of this Agreement valid and
6 enforceable.

7 GG. No Unalleged Claims. Plaintiffs and Class Counsel represent that they do not
8 currently intend to pursue any claims against the Released Parties, including, but not limited to, any
9 and all claims relating to or arising from Plaintiffs' employment with Defendants, regardless of
10 whether Class Counsel is currently aware of any facts or legal theories upon which any claims or
11 causes of action could be brought against Released Parties, including those facts or legal theories
12 alleged in the operative complaint in this Action. The Parties further acknowledge, understand, and
13 agree that this representation is essential to the Agreement and that this Agreement would not have
14 been entered into were it not for this representation.

15 HH. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to
16 class certification for purposes of this Settlement only.

17 II. Financial Audit. Defendant has provided financial documents, including Audited
18 financials for 2022 (which include 2021), Interim financials for the first half of 2023, financial
19 projections through the end of 2023, Documents showing the existence and the terms of the loan
20 covenants, A document showing how a \$4.5M settlement would impact the company's conformance
21 to the covenants (collectively, "Financial Documents"), to support Defendant's representations
22 regarding its condition during mediation to Plaintiffs' financial expert. Plaintiffs and Class Counsel
23 have had adequate opportunity to review these documents, have reviewed these documents, and
24 hereby reaffirm their support for this Settlement Agreement and that it is fair, reasonable, and
25 adequate to the Class Members and Aggrieved Employees in light of all relevant factors. It is a
26 material term of this Agreement that, unless otherwise ordered by the Court, the Financial Documents
27 and the information contained therein are confidential and shall not be disclosed to anyone. Should
28 the Court order disclosure of any part of the Financial Documents or of the information contained

therein, Plaintiffs agree to limit such disclosure to *in camera* review by the Court or, if the Court requires that any part of the Financial Documents or the information contained therein to be filed, to file such documents and/or information under seal.

JJ. No Admissions by the Parties. Plaintiffs have claimed and continue to claim that the Released Class Claims and Released PAGA Claims have merit and give rise to liability on the part of Defendant. Defendant claims that the Released Class Claims and Released PAGA Claims have no merit and do not give rise to liability. This Agreement is a compromise of disputed claims. Nothing contained in this Agreement and no documents referred to and no action taken to carry out this Agreement may be construed or used as an admission by or against the Defendant or Plaintiffs or Class Counsel as to the merits or lack thereof of the claims asserted. Other than as may be specifically set forth herein, each Party shall be responsible for and shall bear its/his own attorney's fees and costs.

AGREED AS TO FORM AND CONTENT, BY PLAINTIFFS:

DATED: 01/19/2024

Jesse Galindo

JESSE GALINDO

DATED: 1/19/2024

DocuSigned by:

Laura Smith

55E904D55GEG40B...

LAURA SMITH

AGREED AS TO FORM AND CONTENT, BY DEFENDANT:

DATED: _____

PAQ, INC.

Printed Name

Title

1 therein, Plaintiffs agree to limit such disclosure to *in camera* review by the Court or, if the Court
2 requires that any part of the Financial Documents or the information contained therein to be filed, to
3 file such documents and/or information under seal.

4 JJ. No Admissions by the Parties. Plaintiffs have claimed and continue to claim that the
5 Released Class Claims and Released PAGA Claims have merit and give rise to liability on the part
6 of Defendant. Defendant claims that the Released Class Claims and Released PAGA Claims have
7 no merit and do not give rise to liability. This Agreement is a compromise of disputed claims.
8 Nothing contained in this Agreement and no documents referred to and no action taken to carry out
9 this Agreement may be construed or used as an admission by or against the Defendant or Plaintiffs
10 or Class Counsel as to the merits or lack thereof of the claims asserted. Other than as may be
11 specifically set forth herein, each Party shall be responsible for and shall bear its/his own attorney's
12 fees and costs.

13 AGREED AS TO FORM AND CONTENT, BY PLAINTIFFS:

14 DATED: _____

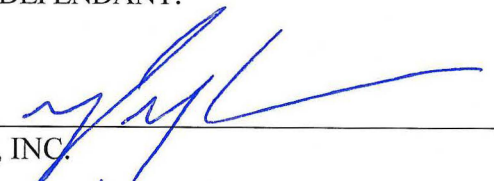
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16 JESSE GALINDO

17 DATED: _____

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19 LAURA SMITH

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21
22 AGREED AS TO FORM AND CONTENT, BY DEFENDANT:

23 DATED: 1/11/2024

24 
PAQ, INC.

25
26 Printed Name

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28 Title

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1 AGREED AS TO FORM BY COUNSEL:

2
3 DATED: January 19, 2024

JCL LAW FIRM, A.P.C.

4 By: 

5 Jean-Claude Lapuyade, Esq.

6 Attorneys for Plaintiffs and the Settlement Class
7 Members

8
9 DATED: January 19, 2024

ZAKAY LAW GROUP, APLC

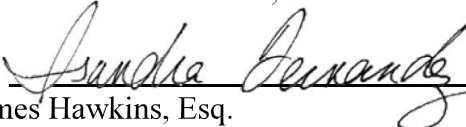
10 By: 

11 Shani O. Zakay, Esq.

12 Attorneys for Plaintiffs and the Settlement Class
13 Members

14 DATED: January 19, 2024

JAMES HAWKINS, APLC

15 By: 

16 James Hawkins, Esq.

17 Isandra Y. Fernandez, Esq.

18 Anthony L. Draper, Esq.

19 Attorneys for Plaintiffs and the Settlement Class
20 Members

21 DATED: January 17, 2024

MAYALL HURLEY, APC

22 By: 

23 Vladimir J. Kozina, Esq.

24 William J. Gorham III, Esq.

25 Attorneys for Defendant

EXHIBIT A

**NOTICE OF PENDENCY OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT
AND FINAL HEARING DATE**

(Jesse Galindo v. PAQ, Inc., San Joaquin County Superior Court Case No. STK-CV-UOE-2022-452)

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT ACT.
PLEASE READ THIS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. Your estimated Individual Settlement Payment is: \$<<__>>. See the explanation below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Claims Administrator as explained below. In exchange for the settlement payment, you will release claims against the Defendants as detailed below.
Exclude Yourself	If you wish to exclude yourself from the Settlement, you must send a written request for exclusion to the Claims Administrator as provided below. If you request exclusion, you will receive no money from the Settlement. Instructions are set forth below.
Object	You may write to the Court about why you believe the settlement should not be approved. Directions are provided below.

1. Why did I get this Notice?

A proposed class and PAGA representative action settlement (the “Settlement”) of the above-referenced lawsuit pending in the Superior Court for the State of California, County of San Joaquin (the “Court”) has been reached between Plaintiff Jesse Galindo (“Plaintiff Galindo”) and Plaintiff Laura Smith (“Plaintiff Smith”) (hereinafter collectively referred to as “Plaintiffs”) and Defendant PAQ, Inc. dba Food4Less and/or Rancho San Miguel Markets (together, “Defendant”). The Court has granted preliminary approval of the Settlement. **You may be entitled to receive money from this Settlement.**

You have received this Settlement Notice because you have been identified as a member of the Class, which is defined as:

All non-exempt employees who are or previously were employed by PAQ, Inc. dba Food4Less and/or Rancho San Miguel Markets (“PAQ”) and performed work in California during the period between March 9, 2018, to the earlier of June, 28, 2023, or the date on which the number of Workweeks covered by this settlement does not exceed 435,000 (“Class Period”).

This Settlement Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

2. What is this class action lawsuit about?

On July 9, 2020, plaintiff Smith served the LWDA with a PAGA notice and served the same on Defendant. On the same date, plaintiff Smith filed a class action complaint against Defendant in the San Joaquin County Superior Court, Case Number STK-CV-UOE-2020-0005825 (“*Smith* Action”). The *Smith* Action alleged the following: (1) Failure to Pay Wages; (2) Failure to Provide Meal Periods as Required; (3) Failure to Provide Rest Periods as Required; (4) Failure to Pay Timely Wages; (5) Failure to Provide Accurate Itemized Wage Statements; and (6) Violations of Business and Professions Code § 17200 *et seq.*

On November 30, 2020, Plaintiff Smith amended the *Smith* Action adding an additional cause of action for Violations of the Private Attorneys General Act. Thereafter, Plaintiff Smith filed a Second Amended Representative Action in the San Joaquin Superior Court, Case No. STK-CV-UOE-2020-0005825.

On January 24, 2022, Plaintiff Galindo filed a representative action lawsuit against Defendant, alleging a single cause of action for Violations of the Private Attorneys General Act (“PAGA”). Plaintiff Galindo also filed a Notice of Violations with the Labor and Workforce Development Agency (“LWDA”) pursuant to PAGA, and served the same on Defendant. On May 3, 2022, Plaintiff Galindo filed a First Amended Complaint.

On March 9, 2022, Plaintiff Galindo initiated the present action (“Action”) against Defendant under PAGA, alleging similar underlying wage-and-hour violations as the class action. The class and PAGA actions were ultimately consolidated in the present action. The operative complaint is the Complaint that alleges claims for: (1) Unfair Competition In Violation Of Cal. Bus. & Prof. Code §17200 *et seq.*; (2) Failure To Pay Minimum Wages In Violation Of Cal. Lab. Code §§ 1194, 1197 & 1197.1; (3) Failure To Pay Overtime Wages In Violation Of Cal. Lab. Code §§ 510, *et seq.*; (4) Failure To Provide Required Meal Periods In Violation Of Cal. Lab. Code §§ 226.7 & 512 and the applicable IWC Wage Order; (5) Failure To Provide Required Rest Periods In Violation Of Cal. Lab. Code §§ 226.7 & 512 and the applicable IWC Wage Order; (6) Failure To Provide Accurate Itemized Statements In Violation Of Cal. Lab. Code § 226; (7) Failure To Provide Wages When Due In Violation Of Cal. Lab. Code §§ 201, 202 And 203; and (8) Failure To Reimburse Employees For Required Expenses In Violation Of Cal. Lab. Code § 2802.

On [[DATE]] Plaintiff Galindo filed a Second Amended Complaint amended the Action to include all claims asserted in the *Smith* and *Galindo* PAGA Actions and to include additional claims asserted in mediation, including claims for cellular phone reimbursement and alleged “off the clock” COVID-19 checks.

Defendant expressly denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, dispute any wages, damages and penalties claimed by the Class Representatives are owed, and further contend that, for any purpose other than settlement, the Action is not appropriate for class or representative action treatment. Defendant contends, among other things, that at all times they complied with the California Labor Code, the Industrial Welfare Commission Wage Orders, and all applicable law.

On June 28, 2023, the Parties participated in an all-day mediation with Jeffrey A. Ross, Esq., an experienced mediator of wage and hour class and PAGA actions. The Parties reached an agreement for settlement. The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiffs to serve as the Class Representatives, and the law firms of JCL Law Firm, APC, Zakay Law Group, APLC, and James Hawkins, APLC to serve as Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendant has agreed to pay an “all in” amount of Four Million, Five Hundred Thousand Dollars and Zero Cents (\$4,500,000.00) (the “Gross Settlement Amount”) to fund the settlement.

The Gross Settlement Amount includes the payment of all Individual Settlement Payments, Claims Administration Expenses, Class Counsel Award, Service Award, and the PAGA Payment.

After the Judgment becomes Final, Defendant will pay the Gross Settlement Amount by depositing the money with the Claims Administrator. “Final” means the date the Judgment is no longer subject to appeal, or if an appeal is filed, the date the appeal process is completed, and the Judgment is affirmed.

Amounts to be Paid from the Gross Settlement Amount. The Settlement provides for certain payments to be made from the Gross Settlement Amount, which will be subject to final Court approval, and which will be deducted from the Gross Settlement Amount before settlement payments are made to Class Members, as follows:

- i. Claims Administration Expenses. Payment to the Claims Administrator, estimated not to exceed \$54,000.00, for expenses incurred in administering the Settlement, including expenses of sending this Notice, processing opt outs, and distributing settlement payments.
 - ii. Class Counsel Award. Payment to Class Counsel of an award of attorneys’ fees of no more than 1/3 of the Gross Settlement Amount (currently \$1,500,000.00) and actually incurred litigation expenses of not more than \$50,000 for all expenses incurred as documented in Class Counsel’s billing records, both subject to Court approval. Class Counsel have been prosecuting the Action on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.
 - iii. Service Award. A Service Award of up to Ten Thousand Dollars and Zero Cents (\$10,000.00) to each individual Plaintiff, or such lesser amount as may be approved by the Court, to compensate them for services on behalf of the Class in initiating and prosecuting the Action.
 - iv. PAGA Payment. A payment of \$200,000.00 for PAGA penalties, \$150,000.00 of which will be paid to the LWDA and the remaining \$50,000.00 (“Individual PAGA Portion”) will be distributed to Aggrieved Employees as described herein.
- Calculation of Payments to Settlement Class Members. After all the above payments of the court-approved Class Counsel Award, the Service Award, the PAGA Payment, and the Claims Administration Expenses are deducted from the Gross Settlement Amount, the remaining portion, called the “Net Settlement Amount,” shall be distributed to class members who do **not** request exclusion (“Settlement Class Members”). The Individual Settlement Payment for each Settlement Class Member will be calculated by dividing the respective Workweeks for that Settlement Class Member by the total Workweeks for all Settlement Class Members, and multiplying that result by the Net Settlement Amount.
 - A “Workweek” is defined as any seven (7) consecutive days beginning on Sunday and ending on Saturday, in which a Class Member is employed by Defendant during the Class Period in California and recorded any work performed. The Workweeks will be calculated by the Settlement Administrator based on the Class Data and will be presumed to be correct, unless a particular Class Member proves otherwise to the Claim Administrator by credible written evidence. All Workweek disputes will be resolved and decided by the Claims Administrator, and the Claims Administrator’s decision on all Workweek disputes will be final.
 - Calculation of Aggrieved Employees Payments to Aggrieved Employees. The Individual PAGA Portion shall be distributed to Aggrieved Employees irrespective of whether they exclude themselves or opt-out of this Settlement. An Aggrieved Employee’s payment from the Individual PAGA Portion (“Aggrieved Employee Payment”) will be calculated by dividing the individual’s respective pay periods worked during the PAGA Period by the total pay periods for all Aggrieved Employees during the PAGA Period, and multiplying that result by the Individual PAGA Portion. “Aggrieved Employee” means all non-

exempt employees who are or previously were employed by PAQ, Inc. dba Food4Less and Rancho San Miguel Markets and performed work in California at any time during the period between April 6, 2019 to the earlier of June 28, 2023 or the date on which the number of workweeks covered by this settlement does not exceed 435,000 (“PAGA Period”).

If the Court grants final approval of the Settlement, you will automatically be mailed a check for your Individual Settlement Payment and Aggrieved Employee Payment (if applicable) to the same address as this Settlement Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Claims Administrator to inform them of your correct address to ensure you receive your payment.

Tax Matters. One-third (1/3) of each Individual Settlement Payment is allocated to wages. Taxes are withheld from this amount, and each Settlement Class Member will be issued an Internal Revenue Service Form W-2 for such payment. Two-thirds (2/3) of each Individual Settlement Payment is allocated to penalties and pre-judgment interests (“Penalty and Interest Portion”). Each Settlement Class Member will be issued an Internal Revenue Service Form 1099 for their Penalty Portion and Interest Portion of the Individual Settlement Payments. In addition, no taxes will be withheld from the Aggrieved Employee Payment, and each Aggrieved Employee will be issued an Internal Revenue Service Form 1099 for such payment. Neither Class Counsel nor Defendants’ counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement. The Claims Administrator may distribute the Individual Settlement Payment and Aggrieved Employee Payment to you in a single check that combines both payments.

No Credit Toward Benefit Plans. The Individual Settlement Payments and Aggrieved Employee Payments will not be utilized to calculate any additional benefits under any benefit plans to which any Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties’ intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

4. What Do I Release Under the Settlement?

Released Claims. Upon funding of the Gross Settlement Amount by Defendant, Plaintiffs and the Settlement Class Members shall release the Released Parties from all Released Class Claims for the Class Period. Released Class Claims means all class claims alleged, or reasonably could have been alleged based on the facts alleged, in the operative complaint in the *Galindo* action which occurred during the Class Period, including but not limited to claims for violations of and/or for wages, compensatory damages, business expense reimbursement, meal and rest period compensation, actual damages, restitution, liquidated damages, declaratory relief, injunctive or other equitable relief, interest, attorney’s fees and/or costs, and/or penalties recoverable under Labor Code sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 2802, 2804, and the applicable IWC Wage Order(s), and Business and Professions Code sections 17200, *et seq.*, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers’ compensation, and class claims outside of the Class Period, and any and all claims alleged in the *Melissa Destarac et al. vs. PAQ, Inc.* (San Joaquin Superior Court Case No. STK-CV-UOE-2022-2981) not encompassed by the *Smith* and *Galindo* actions. Upon funding of the Gross Settlement Amount by Defendant, Plaintiffs, all Aggrieved Employees, the LWDA, and the State of California shall release the Released Parties from all Released PAGA Claims for the PAGA Period, irrespective of whether they opted-out of the class settlement, and will be bound by this PAGA Release (the “PAGA Release”). “Released PAGA Claims” means all PAGA claims alleged in the operative complaint in the *Smith* and *Galindo* actions and Plaintiffs’ PAGA notices to the LAWDA which occurred during

the PAGA Period, including but not limited to claims for civil penalties, attorneys' fees and/or costs, or interest for violations of Labor Code sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and the applicable IWC Wage Order(s), and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the PAGA Period, and any and all claims for PAGA penalties alleged in the *Melissa Destarac et al. vs. PAQ, Inc.* (San Joaquin Superior Court Case No. STK-CV-UOE-2022-2981) not encompassed by the *Smith* and *Galindo* actions

This means that, if you do not timely and formally exclude yourself from the settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant about the legal issues resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

5. How much will my payment be?

Defendant's records reflect that you have << _____ >> Workweeks worked during the Class Period March 9, 2018 through <<INSERT END DATE>>.

Based on this information, your estimated Individual Settlement Payment is << _____ >>.

Defendants' records reflect that you have << _____ >> pay periods worked during the PAGA Period (April 6, 2019 through <<INSERT END DATE>>).

Based on this information, your estimated Aggrieved Employee Payment is << _____ >>.

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Claims Administrator at the address provided in this Notice no later than _____ [forty-five (45) days after the Notice or ten (10) days from the original response deadline for a re-mailed Notice].

6. How can I get a payment?

To get money from the settlement, you do not have to do anything. A check for your settlement payment will be mailed automatically to the same address as this Settlement Notice. If your address is incorrect or has changed, you must notify the Claims Administrator. The Claims Administrator is: Apex Class Action LLC.

The Court will hold a hearing on _____ to decide whether to finally approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed within a few months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient. After entry of the Judgment, the Claims Administrator will provide notice of the final judgment to the Class Members by posting a copy of the Judgment on the administrator's website at www._____.com.

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will receive NO money from the Settlement, and you will not be bound by its terms, except as provided as follows.** Irrespective of whether you exclude yourself from the Settlement or "opt out," you will be bound by the PAGA Release, you will be deemed to have released the Released PAGA Claims, and you will receive your Aggrieved Employee Payment (if you qualify).

To opt out, you must submit to the Claims Administrator, by First Class Mail, a written, signed and dated request for exclusion postmarked no later than _____. The address for the Claims Administrator is 18 Technology Drive, Suite 164; Tel: (800) 355-0700. The request for exclusion must state in substance that the Class Member has read the Class Notice and that he or she wishes to be excluded from the settlement of the class action lawsuit entitled *Jesse Galindo v. PAQ, Inc.*, currently pending in Superior Court of San Joaquin, Case No. STK-CV-UOE-2022-452. The request for exclusion must contain your name, current address, telephone number, signature and the last four digits of your Social Security Number for verification purposes. The request for exclusion must be signed by you. No other person may opt out for a member of the Class.

Written requests for exclusion that are postmarked after _____, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

8. How do I tell the Court that I would like to challenge the Settlement?

If you have not opted out and believe the Settlement should not be finally approved by the Court for any reason, you may object to the proposed Settlement. Objections may be in writing and state your name, current address, telephone number, signature, and last four digits of your Social Security Number for verification purposes, and describe why you believe the Settlement is unfair and whether you intend to appear at the final approval hearing. All written objections or other correspondence must also state the name and number of the case, which is *Jesse Galindo v. PAQ, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2022-452*. Regardless of whether you submit a written objection, you may also appear at the final approval hearing (described in Section 9 below) and object..

To object to the Settlement, you cannot opt out. If the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided in this Class Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

Written objections must be delivered or mailed to the Claims Administrator no later than _____. The address for the Claims Administrator is 18 Technology Drive, Suite 164, CA 92618; Tel: 1-800-355-0700.

The addresses for the Parties' counsel are as follows:

Class Counsel:

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9. When and where will the Court decide whether

The Court will hold a Final Approval Hearing at 00:00 AM/PM on _____, at the San Joaquin County Superior Court, Department 10B, located at 180 E. Weber Ave., Stockton, CA 95202. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. The Court will listen to people who have made a timely written request to speak at the hearing or who appear at the hearing to object. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

10. How do I get more information about the Settlement?

You may call the Claims Administrator at _____ or write to *Jesse Galindo v. PAQ, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2022-452*, Claims Administrator, c/o _____.

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Final Judgment, or other Settlement documents by visiting the Claims Administrator's website at www._____.com.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Claims 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 Claims Administrator shall pay all funds from such uncashed checks to either a Cy Pres, in accordance with CCP §384, or the State Controller. If your check is lost or misplaced, you should contact the Claims Administrator immediately to request a replacement.