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Attorneys for Plaintiff JESSE GALINDO

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SAN JOAQUIN**

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| JESSE GALINDO, an individual, on behalf of himself, and on behalf of all persons similarly situated,<br><br>Plaintiffs,<br><br>vs.<br><br>PAQ, INC., DBA FOOD 4 LESS and/or RANCHO SAN MIGUEL MARKETS; and DOES 1 through 50, Inclusive;<br><br>Defendants. | Lead Case No. STK-CV-UOE-2022-0000452<br>*[Consolidated Case No. STK-CV-UOE-2022-0001799]*<br><br>**DECLARATION OF JEAN-CLAUDE LAPUYADE, ESQ. IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**<br><br>Date:<br>Time:<br><br>Judge: Hon. Blanca Banuelos<br>Dept.: 10B |

I, Jean-Claude Lapuyade, Esq., declare as follows:

1. I am over eighteen years of age and if called as a witness, I could and would competently testify to the following facts from my own personal knowledge. I am an attorney-at-law and the owner of the law firm of JCL LAW FIRM, APC (hereinafter "Class Counsel"). I am co-counsel of record for Plaintiff JESSE GALINDO and LAURA SMITH (hereafter "Plaintiffs") in this wage and hour class action filed against PAQ, INC., DBA FOOD 4 LESS and/or RANCHO SAN MIGUEL MARKETS (hereinafter "Defendant").

2. This declaration is being submitted in support of Plaintiffs' motion for Preliminary Approval of Class and PAGA Action Settlement.

## I. EXHIBITS

3. Attached hereto as **Exhibit "1"** is a true and correct copy of the fully executed Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims ("Agreement" or "Settlement Agreement"). Attached as **Exhibit "A"** to the Agreement is a true and correct copy of the proposed Class Notice.

4. Attached hereto as **Exhibit "2"** is a true and correct copy of the Notice of Violations filed with the Labor and Workforce Development Agency.

5. Attached hereto as **Exhibit "3"** is a true and correct copy of the proof of filing with the Labor and Workforce Development Agency notice of this settlement with the Settlement Agreement and Motion for Preliminary Approval of Class Action and PAGA Settlement evidencing Class Counsel's compliance with California Labor Code Section 2699(l)(2).

6. Attached hereto as **Exhibit "4"** is a true and correct copy of the JCL Law Firm "Firm Resume" detailing some of the major cases the JCL Law Firm has undertaken.

## II. INTRODUCTION

7. The "**Net Settlement Amount**" of approximately Two Million, Six Hundred Seventy-Six Thousand Dollars and Zero Cents ($2,676,000.00) (Gross Settlement Amount minus the Service Awards, Class Counsel Award, PAGA Payment and Claims Administration Expenses) will be allocated to all Settlement Class Members on a pro-rata basis according to the number of Workweeks each

Settlement Class Member worked during the Class Period. The entire Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of the Settlement Class**.**

8. An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the California Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm's length. The Settlement confers substantial benefits to the California Class. **This is a cash settlement**. Every Class Member who does not opt out of the Settlement will automatically be mailed an individual settlement payment. The relief offered by the Settlement is particularly impressive when viewed against the difficulties encountered by Plaintiffs pursuing wage and hour cases (*see infra)*. Indeed, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendant prevailing at trial.

9. As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval and falls within the range of reasonableness. The average Individual Settlement Payments to the Settlement Class meets or exceeds awards in similar wage and hour class actions. Moreover, the proposed California Class is appropriate for provisional certification. Accordingly, Plaintiffs respectfully request the Court grant preliminary approval of the Settlement.

## III. FACTS AND PROCEDURE

### A. Overview of the Litigation

10. Defendant owns, operates, and manages twenty-three (23) grocery stores in the State of California, including San Joaquin County, where Plaintiffs worked. Plaintiff Galindo was employed by Defendant in California from April 2, 2019, to September 9, 2021. Plaintiff Smith was employed by Defendant in California from September 13, 2016, to October 29, 2019. Throughout their employment, Plaintiffs were classified as non-exempt employees and were entitled to legally compliant meal and/or rest periods, minimum and regular wages. Additionally, Plaintiffs were subject to Defendant's written policies and procedures contained in, among other documents, the "Employee Handbook."

11. Generally, Plaintiffs claim that Defendant failed to pay minimum wages and overtime wages, failed to provide compliant meal and rest periods, failed to furnish accurate itemized wages statements, failed to pay all wages when due and failed to reimburse for mandatory business expenses.

Defendant forcefully denies liability for each of Plaintiffs' claims. Further, Defendant asserts that it fully complied with all applicable employment laws and raised several other significant defenses to Plaintiffs' claims, including but not limited to, facially compliant meal and rest period policies, compliant wage statements, reimbursement for all required business expenses, and payment of all wages upon separation.

12. On July 9, 2020, Plaintiff Smith through her counsel of record, James Hawkins APLC, served the Labor and Workforce Development Agency ("LWDA") with a PAGA Notice.

13. On or about November 30, 2020, Plaintiff Smith filed a First Amended Complaint in the San Joaquin Superior Court adding an additional cause of action for Violations of the Private Attorney General Act. Thereafter, Plaintiff Smith filed a Second Amended Representative Action Complaint.

14. On November 16, 2021, Plaintiff Galindo served the Labor and Workforce Development Agency ("LWDA") with a PAGA Notice. Plaintiff Galindo subsequently filed a Representative Action Complaint in the San Joaquin Superior Court alleging a single cause of action for Violations of the Private Attorney General Act. On May 3, 2022, Plaintiff Galindo filed a First Amended Complaint in the PAGA only action.

15. On March 9, 2022, Plaintiff Galindo filed a Class Action Complaint in the San Joaquin Superior Court asserting eight separate causes of action against Defendant PAQ, Inc. dba Food 4 Less and/or Rancho San Miguel Markets (hereinafter, "Defendant"). The Complaint alleged the following: (1) Unfair Competition in violation of Cal. Bus. & Prof. Code §17200; (2) Failure to pay minimum wages; (3) Failure to pay overtime; (4) Failure to provide meal periods; (5) Failure to provide rest periods; (6) Failure to provide accurate itemized statements; (7) Failure to provide wages when due; (8) Failure to reimburse employees for required expenses. On June 20, 2022, the Galindo Class and PAGA actions were consolidated; the PAGA action being the controlling action (STK-CV-UOE-2022-0000452).

16. Through both formal and informal discovery, Plaintiffs and Defendant have exchanged extensive documents and information. Prior to mediation, the Parties engaged in further investigation and the exchange of documents and information in connection with the Action. As part of this process, Defendant provided a significant sample of time records and payroll records, handbooks and written

policies, as well as other documents and information, to Class Counsel to review and analyze. On June 28, 2023, the Parties participated in a full day mediation with Jeffrey A. Ross, Esq., an experienced mediator of wage and hour class and PAGA actions. After arms-length negotiations and bargaining, the Parties reached an agreement to settle and signed a Memorandum of Understanding. After reaching an agreement in principle, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion.

**B. Class Counsel Thoroughly Investigated the Factual and Legal Issues**

17. Months before filing the Action, Class Counsel began their pre-filing investigation into the Plaintiffs' complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiffs. As part of the interview process, Plaintiffs produced documents related to their employment, including time and payroll records. At the conclusion of the interviews, Class Counsel determined that each of Plaintiffs' complaints appeared to substantiate Plaintiffs' claim that Defendants failed to, among other things, pay for all time worked, failed to provide compliant meal and rest periods, failed to reimburse for all mandatory business expenses, failed to issue accurate itemized wage statements, and failed to pay all wages when due.

18. Upon filing the complaint, Plaintiffs served multiple sets of written discovery, conducted more than one thousand telephonic interviews with Settlement Class Members, and obtained nearly fifty (50) draft declarations from Settlement Class Members in preparation of Plaintiffs' motion for class certification.

19. To prepare for mediation, Class Counsel requested documents and data points to further evaluate Plaintiffs' claims and Defendant's liability exposure to the Class Members. In response to Class Counsel's request, Defendant produced, among other things, the time and payroll records for a representative sampling of the Class Members, aggregate workweek and pay period data, and copies of applicable handbooks, policies, and agreements. In total, Defendant produced thousands of pages of pertinent policy documents, time records, and payroll records for Class Members for Class Counsel to analyze.

20. Class Counsel then retained the statisticians and economists at Desmond, Marcel and Amster, LLP ("DMA") to evaluate the Settlement Class Members' time and payroll data. DMA

provides litigation consulting, business valuation and asset appraisal services and is well regarded in the field of wage and hour data consulting. (See https://www.dmavalue.com/services/class-action-damages.).

21. Prior to mediation, Plaintiff obtained a random sample of time and payroll data for one-third of the Settlement Class Members. The time and payroll data comprised of nearly 11 million unique cells of time and payroll data for the Settlement Class Members. DMA analyzed this time and payroll data to assist in the development of various damage models. Among other things, DMA's analysis estimated the number of workweeks, pay periods, average rate of pay, the regular rate of pay, average length of shift and average number of hours worked per week. DMA also estimated the amount of unreimbursed business expenses, unpaid wages due to off-the-clock work and regular rate violations, the number of missed, late, or truncated meal and rest periods, number of missed meal and rest period premiums paid during the Class Period and the amount of resulting PAGA penalties for identified Labor Code violations.

22. Following the mediation, Defendant produced, subject to a confidentiality agreement, several financial documents, including credit agreements with institutional lenders. Plaintiff's counsel then retained Ken Creal, CPA, a forensic accountant at Creal & Creal, An Accountancy Corporation, to review Defendant's financials. Based on Mr. Creal's review of the documents and our communications with Mr. Creal, it was our understanding that generally, these financial documents established a threshold amount that Defendant could pay towards this settlement without breaching debt ratio covenants with its lenders. If Defendant exceeded specified debt ratio limits, it jeopardized Defendant's ability to continue operations.

23. Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiffs' suitability as a putative class representative through interviews, background investigations, and analysis of his employment files; (2) evaluating all of Plaintiffs' potential claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing 11 million unique cells of the Settlement Class's time and payroll data; (5) analyzing Defendant's labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating

Plaintiffs' claims and estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief; (9) reviewing Defendant's financial statements; and (9) participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed.

24. Class Counsel only agreed to enter the Settlement following this thorough investigation and evaluation of Plaintiffs' claims. Based on its investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay and uncertainty associated with litigation, and the various defenses asserted by Defendant, Class Counsel believes this Agreement to be in the best interest of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement.

**C. The Parties Settled at Mediation**

25. On June 28, 2023, the Parties conducted a full day of mediation with Jeffrey A. Ross, Esq., an experienced wage and hour mediator. Mediator Ross helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Mediator Ross' assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. At the conclusion of the mediation, the Parties reached a settlement, which was subsequently memorialized in the form of a Memorandum of Understanding. The complete and final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue.

26. Following the mediation, Defendant produced, subject to a confidentiality agreement, several financial documents, including credit agreements with institutional lenders. Plaintiff's counsel then retained Ken Creal, CPA, a forensic accountant at Creal & Creal, An Accountancy Corporation, to review Defendant's financials. Based on Mr. Creal's review of the documents and our communications with Mr. Creal, it was our understanding that generally, these financial documents established a threshold amount that Defendant could pay towards this settlement without breaching debt

ratio covenants with its lenders. If Defendant exceeded specified debt ratio limits, it jeopardized Defendant's ability to continue operations.

27. The proposed Settlement Class consists of all current and former hourly-paid or non-exempt employees employed by Defendant in California during the period between March 9, 2018, through June 28, 2023. The Settlement Class excludes any person who submits a timely and valid request for exclusion. In the data exchanged prior to the Mediation, there were approximately 7,652 Class Members who worked an estimated 397,138 workweeks through the conclusion of the Class Period.

28. Additionally, at the time of mediation, Plaintiffs' expert estimated that there were approximately 5,143 Aggrieved Employees who worked approximately 98,412 pay periods during the PAGA Period.

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

## IV. ARGUMENT

### A. The Court Should Preliminarily Approve the Class Action Settlement

30. The Parties participated in mediation with Jeffrey A. Ross, Esq., an experienced wage and hour class action mediator. Mediator Ross managed the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig,* No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation

weighs considerably against any inference of a collusive settlement); *D'Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure.").) At all times, the Parties' negotiations were at an arm's length, adversarial, and non-collusive. The Parties subsequently drafted and negotiated a long-form settlement which is the subject of the instant motion. The Agreement is the final product of these mediated negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the claims at issue.

31. As detailed *infra*, Class Counsel conducted a very thorough investigation into the factual and legal issues in dispute. Prior to mediation, Class Counsel fully assessed the nature and magnitude of the claims being settled, as well as the impediments to recovery. Ultimately, Class Counsel made an informed and independent assessment of the reasonableness of the terms to which the Parties have agreed.

32. Class Counsel only agreed to enter the Settlement following this thorough investigation and evaluation of Plaintiffs' claims. Based on this investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believes this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement.

33. The Total Settlement Amount of $4,500,000.00 is within the range of reasonableness. To determine whether a settlement is fair and reasonable, the court should "consider enough information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the 'ballpark of reasonableness.'" (*Id.* (emphasis added).) For this analysis, courts do "not require any such explicit statement of value; [they] require [] a record which allows an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a

settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might have received if they had succeeded at trial.[1] Indeed, "[t]he determination whether a settlement is reasonable does not involve the use of a 'mathematical equation yielding a particularized sum.'" (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting In re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).).

34. The Total Settlement Amount of $4,500,000.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained DMA to develop economic damage models measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel's investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendant's liability exposure for *class claims* (excluding PAGA Penalties) ranged between $11,207,033.00 ("Realistic Damages") and $33,095,083.00 ("Maximum Damages") if successful at trial. This range reflects the uncertainty regarding several of the claims. Thus, the Total Settlement Amount represents a recovery of between 40.15% ("Realistic Damages") and 13.60% ("Maximum Damages") of Defendant's class-wide exposure – well within the recognized range of reasonableness. The following summarizes Defendant's liability exposure.

35. Plaintiffs allege that Defendant *miscalculated* the regular rate of pay when paying overtime, redeemed sick pay and meal period premiums. Under California law, overtime work must be paid at a rate of "no less than one-and-one-half times the regular rate of pay" for non-exempt employees. Cal. Lab. Code § 510(a); California IWC Wage Order No. 7 § 3(A)(1). Plaintiffs assert that Defendant paid the overtime at one hour at the base rate and .5 at the regular rate of pay in violation of Labor Code

[1] Federal district courts recognize that there is an inherent "range of reasonableness" in determining whether to approve a settlement "which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693; *see In re Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; *see also Nat'l Rural Telecomm. Coop. v. Directv. Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 ("well settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery"); *In re Global Crossing Sec. and ERISA Litig.* (S.D.N.Y 2004) 225 F.R.D. 436, 460 ("settlement amount's ratio to the maximum potential recovery need not be the sole, or even dominant, consideration when assessing settlements fairness"); *In re IKON Office Solutions, Inc Sec Litig.* (E.D. Pa. 2000) 194 F.R.D. 166, 184 ("the fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in itself, weigh against the settlement; rather the percentage should be considered in light of strength of the claims"); *Officers for Justice v. Civil Serv. Comm.* (9th Cir. 1982) 688 F.2d 615, 628 (it is "the complete package, taken as a whole rather than the individual component parts, that must be examined for overall fairness").

section 510(a). Plaintiffs allege that Defendant's method of calculating the regular rate of pay for purpose of overtime resulted in an underpayment of wages to the Settlement Class Members. Importantly, there is no published authority supporting Plaintiffs' theory of liability.

36. Conversely, Defendant argued that it properly calculated the regular rate of pay for purposes of overtime pay. In support, Defendant cites a recent Ninth Circuit decision that expressly rejected Plaintiffs' interpretation of Labor Code Section 510(a). See *Bowen v. Target Corp.*, (9th Cir. Nov. 1, 2022) WL 16570815 (9th Cir. Nov. 1, 2022). Additionally, Defendant cited support for its regular rate of pay calculation at the 2002 Division of Labor Standards and Enforcement Policies and Enforcement Manual ("DLSE Manual") § 49.2.4 (revised August 2019.) which permits Defendant's method of calculation.

37. Although Plaintiffs' theory rested on the clear statutory language of Labor Code Section 510, the absence of published authority supporting Plaintiffs' theory, combined with Defendant's persuasive authority to the contrary, rendered this claim highly speculative. Plaintiffs estimated Defendant's maximum exposure for this claim at $1,269,647. However, after applying a 50% discount for the glaring risk factors, a more realistic exposure is estimated at $634,527.

38. Plaintiffs also alleged that Defendant paid meal and rest period premiums at the base hourly rate rather than the regular rate of pay in violation of *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858. In a written discovery response, Defendant conceded liability on this issue. Consequently, Plaintiffs did not apply any discount to this claim. Plaintiffs estimated Defendant's exposure for this claim at $60,894.00.

39. Plaintiffs also alleged that Defendant failed to include certain non-discretionary bonuses and additional remuneration in the form of "premiums" and/or shift differential pay when calculating the regular rate of pay for purposes of sick pay. Plaintiffs allege that Defendant paid out the base hourly rate and not the regular rate of pay. As a result, Plaintiffs estimated Defendant's exposure for regular rate of pay violations for purposes of sick pay premiums to be $271,476.00.

40. Plaintiffs also alleged that Defendant failed to furnish its employees with accurate itemized wage statements because of the violations discussed above. Stated differently, this is a derivative claim. Assuming Plaintiffs prevailed on each and every theory of liability, Defendant's

maximum exposure for wage statement penalties was estimated at $10,391,400. However, a more realistic measure of liability premised on violations resulting from Plaintiffs' more concrete claims was estimated at $3,460,330.

41. Plaintiffs further alleged that the Defendant's labor code violations resulted in derivative liability for waiting time penalties. Although these penalties represented Defendant's largest dollar amount of exposure, this is Plaintiffs' most uncertain claim. Specifically, Defendant argued that Plaintiffs could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Notwithstanding the uncertain nature of the claims, Plaintiffs estimated Defendant's exposure for these claims ranged between $6,266,800.00 and $19,590,948.00.

42. Plaintiffs alleged that because of their rigorous work schedules the Settlement Class Members were required to work through and/or take late, short, or interrupted meal and rest periods. Consequently, Plaintiffs allege that they are owed meal and rest period premiums for violations that occurred during the Class Period.

43. Defendant argued that they maintained and implemented facially compliant meal and rest period policies throughout the class period. In support, Defendant cited the time data produced in preparation of mediation. The analyzed data showed an overwhelming 95.5% meal period compliance rate. Further, Defendant's payroll data evidenced that premiums were paid on nearly 45% of all documented meal period violations. Defendant argued – admittedly effectively – that the complaint policies, miniscule violation rate and payment of premiums would defeat any attempt to certify a class for meal and/or rest period violations.

44. Assuming Plaintiffs prevailed on these claims, Defendant's maximum estimated liability was approximately $1,456,000. However, in light of the evidence, Plaintiffs discounted this claim 100% making a realistic recovery $0.

45. Plaintiffs alleged that Defendant failed to pay employees for time spent completing pre-shift COVID-19 screenings and questionnaires. Plaintiff asserts that the Settlement Class Members were required to answer questions about symptoms and take their temperature prior to clocking in for their shifts. Defendant argued that employees were instructed to clock in prior to performing COVID screenings. Defendant further argued that this claim was not suitable for class treatment because

individualized issues predominated. Plaintiffs estimated Defendant's exposure for unpaid wages to be $55,186.00.

46. Class Counsel's damage models also estimated Defendant's exposure for PAGA Payment. At the time of mediation, Plaintiffs estimated Defendant's PAGA exposure to be approximately $29,204,400.00 if successful at trial.

47. Here, the Parties negotiated a good faith PAGA Payment in the amount of $200,0000.00 which is 4.44% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Payment. Seventy-Five percent (75%) of the PAGA Payment ($150,000.00) will be paid to the LWDA ("LWDA PAGA Payment") with the remaining twenty-five percent (25%) of the PAGA Payment ($50,000.00) will be distributed to the PAGA Class Members, which is within the range of PAGA Payment approved by courts and should be approved.

**B. Inherent Risks of Continued Litigation Support Preliminary Approval**

48. With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a $110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment."); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees' declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues).

Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement.

49. Finally, continuing to litigate this action would require continued and extensive resources coupled with significant Court time to proceed through trial and post-trial motions, which can often take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. But even if Plaintiffs are successful at trial, Plaintiffs are acutely aware that a judgment does not end the litigation. Plaintiffs fully expect that Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra,* 999 F.3d 668, the risk of an appeal and subsequent reversal is real.

50. Given the amount of the settlement here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable.

**C. Proposed Notice Informs the Class About the Case and Settlement**

51. The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class Members of their rights and remedies. The Settlement Administrator will first verify addresses, then mail the proposed Class Notice to all Class Members. The Notice will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, the procedure and time period within which to requests for exclusions or objections to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the Released Claims. See generally Agreement at § III(L). The Parties negotiated this method to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost effective administration of the Settlement.

52. Accordingly, both the method of disseminating the Class Notice and content of the Class Notice satisfy due process. (*See* C.R.C. 3.776(e)-(f); *State of Cal. v. Levi* Strauss (1986) 41 Cal.3d 460,485 (the class notice must "fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members.").).

/ / /

**D. The Court Should Preliminarily Approve the Class Representative Service Award**

53. The Settlement provides for a Class Representative Service Award of up to $10,000.00[2] for each Plaintiff, subject to the Court's approval. The service award is fair and reasonable compensation for Plaintiffs efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of their case and the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class, and agreeing to provide Defendants and the Released Parties a general release of all claims arising out of their employment.

54. Class Counsel on behalf of Plaintiffs will file a formal motion for the negotiated Class Representative Service Award once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated Class Representative Service Award.

**E. The Court Should Preliminary Approve the Negotiated Class Counsel Award**

55. Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiffs' claims. As discussed *supra*, the estimated average

[2] The amount of the requested enhancement payment-$10,000-is reasonable by reference to the amounts that California courts (both federal and state) have repeatedly found to be reasonable for wage and hour class action settlements: *See Baker v. LA. Fitness Int'l, LLC,* No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012) (awarding $10,000 enhancement payments to three of the named plaintiffs); *Blue v. Codwell Banker Residential Brokerage Co.,* No. BC417335 (L.A. County Super. Ct Mar. 21, 2011) (awarding $10,000 enhancement payment); *Buckmire v. Jo-Ann Stores, Inc.,* No. BC394795 (L.A. County Super. Ct. June 11, 2010) (awarding $10,000 enhancement payments to the named plaintiff); *Coleman v. Estes Express Lines, Inc.,* No. BC429042 (LA. County Super. Ct. Oct. 3, 2013) (awarding $10,000 enhancement payment); *Ethridge v. Universal Health Services, Inc.,* No. BC391958 (L.A. County Super. Ct. May 27, 2011) (awarding $10,000 enhancement payment); *Hickson v. South Coast Auto Insurance Marketing, Inc.,* No. BC390395 (L.A. County Super. Ct. Mar. 27, 2012) (awarding $10,000 enhancement payment); *Hill v. Sunglass Hut Int'l, Inc,* No. BC422934 (LA. County Super. Ct. July 2, 2012) (awarding $10,000 enhancement payments to the named plaintiffs); *Kabamba v. Victoria's Secret Stores. LLC,* No. BC368528 (L.A. County Super. Ct. Aug. 19, 2011) (awarding enhancement payments of $ 10,000 to the named plaintiffs along with additional compensation for their general release of claims); *Magee v. American Residential Services, LLC,* No. BC423798 (LA. County Super. Ct Apr. 21, 2011) (awarding $15,000 enhancement payment); *Mares v. BFS Retail & Commercial Operations, LLC,* No. BC375967 (L.A. County Super. Ct. June 24, 2010) (awarding $15,000 enhancement payments to the named plaintiffs); *Nevarez v. Trader Joe's Co.,* No. BC373910 (LA. County Super. Ct. Jan. 29, 2010) (awarding $10,000 enhancement payment); *Ordaz v. Rose Hills Mortuary, LP.,* No. BC386500 (LA. County Super. Ct. Mar. 19, 2010) (awarding 10,000 enhancement payments to the named plaintiffs); *Sheldon v. AHMC Monterey Park Hospital LP,* No. BC440282 (L.A. County Super. Ct. Feb. 22, 2013) (awarding $10,000 enhancement payment); *Silva v. Catholic Moray Services, Inc.,* No. BC408054 (L.A. County Super. Ct. Feb. 8, 2011) (awarding $10,000 enhancement payments to the named plaintiffs); *Weisbarth v. Banc West Investment Services, Inc,* No. BC422202 (L.A. County Super. Ct. May 24, 2013) (awarding $10,000 enhancement payment); *Zamora v. Balboa Life & Casualty LLC,* No. BC360026 (LA. County Super. Ct. Mar. 7, 2013) (awarding $25,000 enhancement payments to the named plaintiffs); *Acheson v. Express, LLC, No.* 109CV135335 (Santa Clara County Super. Ct. Sep. 13, 2011) (awarding $10,000 enhancement payment); *Aguiar v. Cinguar Wireless. LLC,* No. CV 06-8197 DDP (AJWx) (C.D. Cal. Mar. 17, 2011) (awarding $14,767 enhancement payment); *Bejarano v. Amerisave Mortgage Corp.,* No. EDCV 08-00599 SGL (Opx) (C.D. Cal. June 22, 2010) (awarding $10,000 enhancement payment); *Carbajal v. Sally Beauty Supply LLC,* No. CIVVS 1004307 (San Bernardino Super. Ct. Aug. 6, 2012) (awarding $10,000 enhancement payments to the named Plaintiffs); *Contreras v. Serco Inc.,* No. 10-cv-04526-CAS-JEMx (CD. Cal. Sep. 10, 2012) (awarding $10,000 enhancement payment); *Guerrero v. R.R. Donnelley & Sons Co.,* No. RIC 10005196 (Riverside Super. Ct July 16, 2013) (awarding $10,000 enhancement payment); *Kisliuk v. ADT Security Services, Inc.,* No. CV08-0324 DSF (RZx) (C.D. Cal. Jan. 10, 2011) (awarding $10,000 enhancement payment); *Morales v. BCBG Maxaria Int'l Holdings, Inc.,* No. JCCP 4582 (Orange County Super. Ct Jan. 24, 2013) (awarding $10,000 enhancement payment); and *Barrett v. Doyon Security Services, LLC,* Nos. BS900199, BS900517 (San Bernardino County Super. Ct. Apr. 23, 2010) (awarding $10,000 enhancement payment).

Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class Members. Considering the positive outcome for the Class Members, and in light of the supporting authority, the proposed award of Class Counsel Award is fair and reasonable.

56. Plaintiffs will file a formal motion for the negotiated award of the Class Counsel Award once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees.

**F. The Court Should Provisionally Certify the Settlement Class**

57. For Settlement only, Plaintiffs contend, and Defendant does not dispute, that provisional certification of the Class is appropriate.

58. Because all Class Members are Defendant's current and former employees, the class is readily ascertainable from Defendant's regular business records, i.e., payroll records.

59. The statutes relating to each of Plaintiffs' claims apply with equal force and effect to the entire Settlement Class. Factually, Defendant's policies and practices apply class-wide, and Defendant's liability can be determined by facts common to all members of the class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Settlement Class.

60. Plaintiffs' wage and hour claims are typical of the proposed Settlement Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiffs' interests are entirely coextensive with the interests of the Settlement Class. Plaintiffs allege that they were injured by the same company-wide practices to which the proposed Class Members were subject to and seek the same relief. Plaintiffs have already demonstrated their ability to advocate for the interests of the Class Members by initiating this litigation, undertaking extensive class discovery, and evaluating the proposed settlement to assure that it is fair.

61. Additionally, Plaintiffs are represented by competent Class Counsel who have extensive experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and gained state court settlement approval of the same class-wide causes of action that are at issue in this case. Class Counsel's wage and hour class action experience establishes that they are well qualified to represent the interests of this.

62. A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual claim, the Class Members likely have little incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication.

**F. Class Counsel's Experience**

63. Additionally, Plaintiffs are represented by competent Class Counsel who have extensive experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and gained state court settlement approval of the same class-wide causes of action that are at issue in this case. Class Counsel's wage and hour class action experience establishes that they are well qualified to represent the interests of this Class.

64. Plaintiffs and Class Members are represented by competent and experienced counsel to pursue their claims. I established the JCL Law Firm, APC ("Firm"), in 2010. The Firm is a boutique Plaintiff firm representing aggrieved employees and consumers throughout California in wage and hour class actions, PAGA Actions and complex multi-party product liability matters. The Firm currently consists of myself, Jean-Claude Lapuyade, Esq. (Partner/Owner), Sydney Castillo-Johnson, Esq. (Associate Attorney), Monnett De La Torre, Esq. (Associate Attorney), Andrea Amaya, Esq. (Associate Attorney), Tesla Stone (Paralegal), Jennifer Heming (Paralegal), Nicole Teller (Legal Assistant), and Madelyn Uchiyama (Legal Assistant).

65. I am qualified to represent the Plaintiffs, the Class Members, the State of California and the Aggrieved Employees. I have extensive experience with wage and hour class and representative actions litigation like this matter, and employment matters in general. Additionally, I have extensive complex mass tort litigation experience and complex construction product liability experience. I can, will and have adequately represented the interests of the Plaintiffs, the State of California and the Aggrieved Employees throughout this action.

66. I have represented consumers and employees in California class actions, and complex multi-party product liability actions exclusively for more than 13 years. I have been in practice as a plaintiffs' civil litigation attorney since April 2007.

67. I have significant class counsel and collective action counsel experience, as outlined in the firm resume.

68. Since 2010, my firm has successfully resolved more than sixty-five (65) cases and recovered in excess of $75 million on behalf of the Firm's clients.

69. Since 2010, I have successfully tried two (2) cases to conclusion, each resulting in a favorable verdict for the firm's clients.

70. Finally, I have published appellate experience in *William Blanchette et al., v. The Superior Court of Imperial County, (GHA Enterprises)*, 8 Cal.App.5th 521.

71. Consequently, I was named to the prestigious Thomson Reuters, Super Lawyers, Rising Star in 2015, 2016, 2017 and, again, in 2018. According to Thomson Reuters, the Super Lawyers, Rising Star list recognizes the top 2.5% of eligible attorneys. (see https://www.superlawyers.com/about/selection_process.html.)

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 27th day of March 2024, at San Diego, California.

**JCL LAW FIRM, APC**

By: ______________________________
Jean-Claude Lapuyade
Attorneys for Plaintiffs

# EXHIBIT 1

**JCL LAW FIRM, APC**
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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,<br><br>Plaintiff,<br><br>v.<br><br>PAQ, INC., DBA FOOD 4 LESS and/or RANCHO SAN MIGUEL MARKETS, a California corporation; and DOES 1-50, Inclusive,<br><br>Defendants. | Case No. STK-CV-UOE-2022-0000452<br><br>[Complaint Filed: March 9, 2022]<br><br>**STIPULATION OF SETTLEMENT OF CLASS AND PAGA ACTION CLAIMS AND RELEASE OF CLAIMS** |

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

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

## I. <u>DEFINITIONS</u>

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

B. "Agreement," "Settlement Agreement," or "Class and PAGA Settlement" means this Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims.

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

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

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

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

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

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

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

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

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

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

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

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

O. “Defendant” and/or “Defendants” shall mean PAQ Inc. dba Food4Less and Rancho San Miguel Markets.

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

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

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

S. “LWDA” shall mean the California Labor and Workforce Development Agency.

T. “LWDA Payment” shall mean the seventy-five percent (75%) of the PAGA Payment ($150,000.00) payable to the to the LWDA.

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

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

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

X. "PAGA" means the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698 et seq.

Y. "PAGA Payment Ratio" means the respective Pay Periods during the PAGA Period for each Aggrieved Employee divided by the total Pay Periods for all Aggrieved Employees during the PAGA Period.

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

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

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

CC. “Parties” means Plaintiffs and Defendant, collectively, and “Party” shall mean either Plaintiffs or Defendant, individually.

DD. “Plaintiffs” shall mean Laura Smith and Jesse Galindo.

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

FF. “Released Class Claims” shall mean all class claims alleged, or reasonably could have been alleged based on the facts alleged, in the Operative Complaint in the 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 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.

GG. “Released PAGA Claims” shall mean all PAGA claims alleged in the Operative Complaints in the Action, plaintiff Galindo’s November 16, 2021 PAGA notice to the LWDA and plaintiff Smith’s July 9, 2020 PAGA notice to the LWDA, 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 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.

## II. RECITALS

A. 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.*

B. 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.

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

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

E. On March 9, 2022, Plaintiff Galindo filed a class action complaint against Defendant in the San Joaquin County Superior Court, Case Number STK-CV-UOE-2022-01799 ("*Galindo* Class Action") asserting eight causes of action against Defendant. The complaint alleged the following: (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

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

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

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

I. Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, disputes any wages, damages and penalties claimed by the Class Representatives, alleged in the Operative Complaint, and/or alleged in the Class Representatives' PAGA notices to the LWDA are owed, and further contends 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, Industrial Welfare Commission Wage Orders, and applicable law.

J. The Class Representatives are represented by Class Counsel. Class Counsel investigated the facts relevant to the Action, including conducting an independent investigation as to the allegations, reviewing documents and information exchanged through informal discovery, and reviewing documents and information provided by Defendant pursuant to informal requests for information to prepare for mediation. Defendant produced for the purpose of settlement negotiations certain employment data concerning the Class, which Class Counsel reviewed and analyzed with the assistance of an expert. Based on their own independent investigation and evaluation, Class Counsel are of the opinion that the Settlement with Defendant is fair, reasonable, and adequate, and is in the best interest of the Class considering all known facts and circumstances, including the risks of significant delay, defenses asserted by Defendant, uncertainties regarding class certification, and numerous potential appellate issues. Although it denies any liability, Defendant agrees to this Settlement solely to avoid the inconveniences and cost of further litigation. The Parties and their counsel have agreed to settle the claims on the terms set forth in this Agreement.

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

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

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

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

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

## III. <u>TERMS OF AGREEMENT</u>

A. <u>Settlement Consideration and Settlement Payments by Defendants</u>.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. Amended Pleading and Dismissal of *Smith* PAGA Action. The Parties hereby stipulate and agree to the filing a Second Amended Complaint ("SAC") in the *Galindo* PAGA Action. The SAC will name plaintiff Smith as plaintiff in the Action and assert all class claims alleged in both in the *Smith* Action and the *Galindo* Class Action. Additionally, the SAC shall assert previously unalleged theories that were pursued by Plaintiffs at mediation, including a claim for cell-phone reimbursement under Labor Code Section 2802, and alleged "off-the-clock" COVID checks. As part of this Settlement, the Parties will execute a Stipulation for leave to file the SAC prior to seeking preliminary approval of this Settlement. Within ten (10) calendar days of the filing of the SAC, Plaintiffs will dismiss the *Smith* action (*Smith v. PAQ, Inc., et al.,* San Joaquin Superior Court Case Number STK-CV-UOE-2020-0005825) with prejudice.

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

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

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

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

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

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

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

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

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

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

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

L. Notice Procedure.

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

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.

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

M. Disputes Regarding Individual Settlement Payments. Class Members will have the opportunity to dispute the number of Workweeks listed on his/her Notice Packet ("Workweek Dispute"). Any such dispute must be mailed to the Claims Administrator by the Response Deadline. The date of the postmark on the mailing envelope will be the exclusive means to determine whether a Workweek Dispute has been timely submitted. A valid Workweek Dispute must be in writing and should contain: (i) the Class Member's full name, signature, address, telephone number, and the last four digits of his or her Social Security number; (ii) the number of Workweeks the Class Member contends is correct; and (iii) any evidence supporting his or her contention. The information identified by Defendants in the Class Data will be presumed to be correct, unless a particular Class Member proves otherwise to the Claims Administrator by credible evidence. All Workweek Disputes 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. The Notice Packet shall state that Class Members who wish to object to the Settlement may submit to the Claims Administrator a written statement of objection ("Notice of Objection") by the Response Deadline. The postmark date of mailing shall be deemed the exclusive means for determining that a Notice of Objection was served timely. The Notice of Objection, if in writing, must be signed by the Settlement Class Member and state: (1) the case name and number; (2) the name of the Settlement Class Member; (3) the address of the Settlement Class Member; (4) the last four digits of the Settlement Class Member's Social Security number; (5) the basis for the objection; and (6) if the Settlement Class Member intends to appear at the Final Approval/Settlement Fairness Hearing. Settlement Class Members who fail to make objections in writing in the manner specified above may still make their objections orally at the Final Approval/Settlement Fairness Hearing with the Court's permission. Settlement Class Members will have a right to appear at the Final Approval/Settlement Fairness Hearing to have their objections heard by the Court regardless of whether they submitted a written objection. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to file or serve written objections to the Settlement or appeal from the Order and Final Judgment. Class Members who submit a written Request for Exclusion may not object to the Settlement. Class Members may not object to the PAGA Payment.

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

Q. <u>Allocation of the Gross Settlement Amount</u>.

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

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

3. Allocation of Individual Settlement Payments. For tax purposes, Individual Settlement Payments shall be allocated and treated as one-third (1/3) wages ("Wage Portion"), and two-thirds (2/3) non-wage income, including penalties and interest ("Penalties and Interest Portion"). The Wage Portion of the Individual Settlement Payments shall be reported on IRS Form W-2 and the Penalty and Interest Portion of the Individual Settlement Payments shall be reported on IRS Form 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. <u>Service Award</u>. 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,

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

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

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

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

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

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

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

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.

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

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

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

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

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

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

EE. Continuing Jurisdiction. The Parties agree that the Court shall retain continuing jurisdiction over this case under California Code of Civil Procedure §664.6 to ensure the continuing implementation of the provisions of this settlement and that the time within which to bring this Action to trial under California Code of Civil Procedure §583.310 shall be extended from the date of the signing of this Agreement by all parties until the entry of the final approval order and judgment or if not entered, the date of this Agreement shall no longer be of any force or effect.

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

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

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

II. Financial Audit. Defendant has provided financial documents, including Audited financials for 2022 (which include 2021), Interim financials for the first half of 2023, financial projections through the end of 2023, Documents showing the existence and the terms of the loan covenants, A document showing how a $4.5M settlement would impact the company's conformance to the covenants (collectively, "Financial Documents"), to support Defendant's representations regarding its condition during mediation to Plaintiffs' financial expert. Plaintiffs and Class Counsel have had adequate opportunity to review these documents, have reviewed these documents, and hereby reaffirm their support for this Settlement Agreement and that it is fair, reasonable, and adequate to the Class Members and Aggrieved Employees in light of all relevant factors. It is a material term of this Agreement that, unless otherwise ordered by the Court, the Financial Documents and the information contained therein are confidential and shall not be disclosed to anyone. Should 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. <u>No Admissions by the Parties</u>. 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
55E904D55CEC40D...

LAURA SMITH

AGREED AS TO FORM AND CONTENT, BY DEFENDANT:

DATED: ______________ ______________________________

PAQ, INC.

______________________________

Printed Name

______________________________

Title

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: ________________ ________________________________

JESSE GALINDO

DATED: ________________ ________________________________

LAURA SMITH

AGREED AS TO FORM AND CONTENT, BY DEFENDANT:

DATED: 1/11/2024 ________________________________

PAQ, INC.

Mike Molinar

Printed Name

President

Title

AGREED AS TO FORM BY COUNSEL:

DATED: January 19, 2024

JCL LAW FIRM, A.P.C.

By: ______________________

Jean-Claude Lapuyade, Esq.
Attorneys for Plaintiffs and the Settlement Class Members

DATED: January 19, 2024

ZAKAY LAW GROUP, APLC

By: ______________________

Shani O. Zakay, Esq.
Attorneys for Plaintiffs and the Settlement Class Members

DATED: January 19, 2024

JAMES HAWKINS, APLC

By: ______________________

James Hawkins, Esq.
Isandra Y. Fernandez, Esq.
Anthony L. Draper, Esq.
Attorneys for Plaintiffs and the Settlement Class Members

DATED: January 17, 2024

MAYALL HURLEY, APC

By: ______________________

Vladimir J. Kozina, Esq.
William J. Gorham III, Esq.
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.<br>**Your estimated Individual Settlement Payment is: $<<___>>. See the explanation below.**<br>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**.<br>Instructions are set forth below. |
| **Object** | You may write to the Court about why you believe the settlement should not be approved.<br>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?

<u>Gross Settlement Amount</u>. 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**:
Jean-Claude Lapuyade, Esq.
JCL Law Firm, APC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Tel.: (619) 599-8292
Fax: (619) 599-2891
E-Mail: jlapuyade@jcl-lawfirm.com

**Class Counsel:**
Shani O. Zakay, Esq.
Zakay Law Group, APLC
5440 Morehouse Drive, Suite 3600 San Diego, CA 92121
Tel: (619) 599-8292
Fax: (619) 599-8291
Email: shani@zakaylaw.com

**Class Counsel:**
James R. Hawkins, Esq.
Isandra Fernandez, Esq.
Lance Dacre, Esq.James Hawkins, APLC
9880 Research Drive, Suite 200
Irvine, CA 92618
Tel: (949) 387-7200
Fax:
Email:

**Counsel for Defendant**:
Vladimir J. Kozina, Esq.
Mayall Hurley, APC
2453 Grand Canal Blvd.
Stockton, CA 95207
T: 209-473-4616
F: 209-477-3633
VJKozina@mayallaw.com

wgorham@mayallaw.com

| | **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.

# EXHIBIT 2

5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Tel: 619-599-8292
Fax: 619-599-8291
Toll Free: 1-888-498-6999
www.jcl-lawfirm.com
Jean-Claude Lapuyade, Esq.
jlapuyade@jcl-lawfirm.com

November 16, 2021

**Via Online Filing to LWDA and Certified Mail to Defendant**
**Labor and Workforce Development Agency**
Online Filing

**PAQ, INC.**
c/o Michael Molinar
8014 Lower Sacramento Rd., Suite I
Stockton, CA 95210
***Sent Via Certified Mail & Return Receipt No. 7021 0350 0000 8465 3370***

**Re:** **Notice of Violations of California 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, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5**

Dear Sir/Madam:

This office represents JESSE GALINDO ("Plaintiff") and other aggrieved employees in a proposed lawsuit action against PAQ, INC., dba FOOD 4 LESS and/or RANCHO SAN MIGUEL MARKETS ("Defendant"). This office intends to file the enclosed PAGA Action Complaint on behalf of Plaintiff and other aggrieved employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff was employed by Defendant in California from April of 2019 to September of 2021. Plaintiff was paid on an hourly basis and entitled to legally required meal and rest periods. At all times during his employment, Defendant failed to, among other things, provide Plaintiff, and other aggrieved employees, with all legally mandated off-duty meal and rest periods.

As a consequence, Plaintiff contends that Defendant failed to fully compensate him and other aggrieved employees, for all earned wages and failed to provide California-compliant meal and rest breaks and accurate wage statements. Accordingly, Plaintiff contends that Defendant's conduct violated 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 applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq*.

**Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt and exempt employees who worked for Defendant during the relevant claim period.**

A true and correct copy of the proposed Complaint for by Plaintiff against Defendants is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendant. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendant is on notice that Plaintiff continues his investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

If the agency needs any further information, please do not hesitate to ask. The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiff and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Very truly yours,
JCL LAW FIRM, APC

Jean-Claude Lapuyade, Esq.

Enclosure (1)

**JCL LAW FIRM, APC**
Jean-Claude Lapuyade (State Bar #248676)
Eduardo Garcia (State Bar #290572)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
egarcia@jcl-lawfirm.com

**ZAKAY LAW GROUP, APLC**
Shani O. Zakay (State Bar #277924)
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Attorneys for Plaintiff JESSE GALINDO

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SAN JOAQUIN**

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|---|---|
| JESSE GALINDO, an individual, on behalf of himself, and on behalf of all persons similarly situated,<br><br>Plaintiffs,<br><br>vs.<br><br>PAQ, INC., DBA FOOD 4 LESS and/or RANCHO SAN MIGUEL MARKETS; and DOES 1 through 50, Inclusive;<br><br>Defendants. | Case No.<br><br>**REPRESENTATIVE ACTION COMPLAINT FOR:**<br><br>1. VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT PURSUANT TO LABOR CODE SECTIONS 2698, et seq.<br><br>**DEMAND FOR JURY TRIAL** |

Plaintiff JESSE GALINDO ("PLAINTIFF") on behalf of the people of the State of California and as "aggrieved employees" acting as a private attorney general under the Labor Code Private Attorney General Action of 2004, § 2699, *et seq.* ("PAGA") only, alleges on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

## INTRODUCTION

1. PLAINTIFF brings this action against PAQ, INC., dba FOOD 4 LESS and/or RANCHO SAN MIGUEL MARKETS ("DEFENDANT" or "DEFENDANTS") seeking only to recover <u>PAGA civil penalties</u> for himself, and on behalf of all current and former aggrieved employees that worked for DEFENDANTS. PLAINTIFF does **<u>not seek to recover anything other than penalties as permitted by California Labor Code § 2699</u>**. To the extent that statutory violations are mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special damages for those violations in this action, but simply the civil penalties permitted by California Labor Code § 2699. Notwithstanding, PLAINTIFF is not abandoning his right to pursue his individual claims for, *inter alia*, Defendant's alleged wage violations, and/or general or special damages arising from those violations, and he fully intends to, at a future date, pursue claims for those individual claims and damages.

2. California has enacted the PAGA to permit an individual to bring an action on behalf of himself and on behalf of others for PAGA penalties *only*, which <u>is the precise and sole nature of this action</u>.

3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for DEFENDANTS' violations under PAGA and solely for the relief as permitted by PAGA – that is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this complaint should be construed as attempting to obtain any relief that would not be available in a PAGA-only action.

## THE PARTIES

4. Defendant PAQ, INC., dba FOOD 4 LESS and/or RANCHO SAN MIGUEL MARKETS ("DEFENDANT") is a California Corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, county of San Joaquin, City of Lodi, owning, operating and managing 18 grocery stores throughout the state of California.

5. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief allege, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive (hereinafter collectively "DEFENDANTS"), are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

6. The agents, servants and/or employees of the DEFENDANTS and each of them acting on behalf of the DEFENDANT acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the DEFENDANT, and personally participated in the conduct alleged herein on behalf of the DEFENDANT with respect to the conduct alleged herein. Consequently, the acts of each of the DEFENDANTS are legally attributable to the other and all DEFENDANTS are jointly and severally liable to PLAINTIFF and those similarly situated, for the loss sustained as a proximate result of the conduct of the DEFENDANTS' agents, servants and/or employees.

7. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of PLAINTIFF's employer, within the meaning of California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

8. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of PLAINTIFF's employer either individually or as an officer, agent, or employee of another person, within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties for each underpaid employee.

9. PLAINTIFF was employed by DEFENDANTS at its Stockton and Lodi, California locations, as a non-exempt employee, paid on an hourly basis, entitled overtime pay and legally compliant meal and rest periods from April of 2019 to September of 2021.

10. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to himself and all individuals who are or previously were employed by DEFENDANT as non-exempt employees in California (the "AGGRIEVED EMPLOYEES") during the time period of November 16, 2020 until the present (the "PAGA PERIOD").

11. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative action pursuant to Labor Code § 2699, *et seq*. seeking penalties for DEFENDANT'S violation of California Labor Code §§ 201, 202, 203, 204, 210, 226.7, 510, 512, 558, 1102.5, 1194, 1197, 1197.1, 1198 1198.5 & 2802, and the applicable Wage Order. Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq*.

12. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Second Amended Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief alleges, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

13. The agents, servants and/or employees of the Defendants and each of them acting on behalf of the Defendants acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally

liable to PLAINTIFF and the other AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants and/or employees.

**JURISIDICTION AND VENUE**

14. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10.

15. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities in this County and/or conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against AGGRIEVED EMPLOYEES.

**THE CONDUCT**

16. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally complaint meal and rest period, failed to accurately compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES for missed meal and rest periods, failed to pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all time worked, and failed to issue to PLAINTIFF and the AGGRIEVED EMPLOYEES with accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who comply with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

**A. Meal Period Violations**

17. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time-to-time during the PAGA PERIOD, as a result

of their overburdened work requirements and inadequate staffing, DEFENDANTS required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them for all the time they were under DEFENDANTS' control. Specifically, DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time-to-time interrupted by work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break. As a result, the PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum wage and overtime wages by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked is evidenced by DEFENDANTS' business records.

18. From time-to-time during the PAGA PERIOD, as a result of their rigorous work schedules and inadequate staffing, PLAINTIFF and other AGGRIEVED EMPLOYEES were from time-to-time unable to take thirty (30) minute off duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED EMPLOYEES were required from time-to-time to perform work as ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANTS from time to time failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period for some workdays in which these employees were required by DEFENDANTS to work ten (10) hours of work from time to time. The nature of the work performed by the PLAINTIFF and other AGGRIEVED EMPLOYEES does not qualify for limited and narrowly construed "on-duty" meal period exception. PLAINTIFF and other AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

**B. <u>Rest Period Violations</u>**

19. Pursuant to the Industrial Welfare Commission Wage Orders and the California Labor Codes, an employer shall authorize ad permit all employees to take a rest periods, which so far as practical shall be in the middle of each work period. Generally, an employer must provide ten (10) minutes of paid rest for every four hours or major fraction thereof. If an employer fails to provide an

employee a rest period, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

20. From time-to-time during the PAGA PERIOD, as a result of their overburdened work requirements and inadequate staffing, PLAINTIFF and other AGGRIEVED EMPLOYEES were also required from time-to-time to work in excess of four (4) hours without being provided duty-free ten (10) minute rest periods. Further, these employees were denied their first duty-free rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time-to-time. When they were provided with rest breaks, PLAINTIFF and other AGGRIEVED EMPLOYEES were required to remain on the preemies, on duty, and on-call. PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules, Plaintiff and other AGGRIEVED EMPLOYEES were periodically denied their proper rest periods by DEFENDANT and DEFENDANT'S managers.

**C. <u>Labor Code Section 2802 Violations</u>**

21. DEFENDANTS as a matter of corporate policy, practice and procedure, intentionally, knowingly and systematically failed to reimburse and indemnify the PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses incurred by the PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of discharging their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers are required to indemnify employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

22. In the course of their employment, PLAINTIFF and other AGGRIEVED EMPLOYEES as a business expense, were required by DEFENDANTS to purchase their own tools as a result of and

in furtherance of their job duties as employees for DEFENDANTS but were not reimbursed or indemnified by DEFENDANTS for the cost associated with the purchase of their own tools for DEFENDANTS' benefit. Specifically, PLAINTIFF was required by DEFENDANTS to use his personal tools in order to perform his duties. As a result, in the course of their employment with DEFENDANTS the PLAINTIFF and other AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but were not limited to, costs related to the purchase of their own tools, all on behalf of and for the benefit of DEFENDANTS.

**D. <u>Wage Statement Violations</u>**

23. California Labor Code Section 226 requires an employer to furnish its employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of the employee's social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

24. From time to time during the PAGA PERIOD, when PLAINTIFF and other AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurate missed meal and rest period premiums, or were paid overtime in the same pay period where they earned a non-discretionary incentive award, DEFENDANTS also failed to provide PLAINTIFF and the other AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to show, among other things, all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest periods, and the name and address of the legal entity that is the employer of PLAINTIFF and the other AGGRIEVED EMPLOYEES.

25. Additionally, from time-to-time during the PAGA PERIOD, DEFENDANTS violated California Labor Code Section 226(a)(2) by failing to provide an accurate amount of total hours worked by Plaintiff and other AGGRIEVED EMPLOYEES. Specifically, DEFENDANTS included items,

including but not limited to "Sick Pay" to the total hours worked. However, sick pay is not considered total hours worked for the purposes of California Labor Code Section 226(a)(2).

26. As a result, DEFENDANTS issued PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage statements that violate Cal. Lab. Code § 226.

**E. <u>Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations</u>**

27. During the PAGA PERIOD, from time-to-time DEFENDANTS failed and continue to fail to accurately pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all hours worked. Specifically, DEFENDANT from time-to-time required PLAINTIFF and the other AGGRIEVED EMPLOYEES to perform off-the-clock work. Notwithstanding, from time-to-time DEFENDANTS failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES necessary wages for performing work at DEFENDANTS' direction, request and benefit, while off-the clock pre-shift, post-shift, on days off and during meal periods.

28. During the PAGA PERIOD, from time-to-time DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to perform pre-shift work, including but not limited to, arriving approximately 30 minutes before his shift was supposed to start to prepare his station for the start of his shift. In order to prepare his station, Plaintiff had to put on his apron and food handling gear, set the trash cans, set up the machines needed to process the meats including blades and saws, and cleaning his station all prior to the start of his shift.

29. During the PAGA PERIOD, from time-to-time DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to perform post-shift work. Defendant would schedule Plaintiff and other AGGRIEVED EMPLOYEES 7.5 hour shifts to avoid paying their employees overtime. However, when their shifts ended, PLAINTIFF and other AGGRIEVED EMPLOYEES would be asked to stay after clocking out and assist the remaining employees with their job duties.

30. DEFENDANTS directed and directly benefited from the uncompensated off-the-clock work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

31. DEFENDANTS controlled the work schedules, duties, protocols, applications, assignments and employment conditions of PLAINTIFF and the other AGGRIEVED EMPLOYEES.

32. DEFENDANTS were able to track the amount of time PLAINTIFF and the other AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document, track, or pay PLAINTIFF and the other AGGRIEVED EMPLOYEES all wages earned and owed for all the work they performed, including off-the-clock work.

33. PLAINTIFF and the other AGGRIEVED EMPLOYEES were non-exempt employees, subject to the requirements of the California Labor Code.

34. DEFENDANTS' policies and practices deprived PLAINTIFF and the other AGGRIEVED EMPLOYEES of all minimum, regular and overtime wages owed for the off-the-clock work activities and their required meal periods. Because PLAINTIFF and the other AGGRIEVED EMPLOYEES typically worked over 40 hours in a workweek, and more than eight (8) hours per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

35. DEFENDANTS knew or should have known that PLAINTIFF and the other AGGRIEVED EMPLOYEES off-the-clock work was compensable under the law.

36. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit for the time spent answering work related questions on days off, outside of work hours, pre-shift, post-shift and during meal periods. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and the AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable law is evidenced by DEFENDANTS' business records.

**F. <u>Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and Sick Pay</u>**

37. From time-to-time during the PAGA PERIOD, DEFENDANTS failed and continue to fail to accurately calculate and pay PLAINTIFF and the AGGRIEVED EMPLOYEES for their overtime hours worked, meal and rest period premiums, and sick pay. As a result, PLAINTIFF and the AGGRIEVED EMPLOYEES members forfeited wages due them for working overtime without compensation at the correct overtime rates, meal and rest period premiums, and sick pay rates. DEFENDANTS' uniform policy and practice to not pay the AGGRIEVED EMPLOYEES the correct

rate for all overtime worked, meal and rest period premiums, and sick pay in accordance with applicable law is evidenced by DEFENDANTS' business records.

38. State law provides that employees must be paid overtime at one-and-one-half times their "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES were compensated at an hourly rate plus incentive pay that was tied to specific elements of an employee's performance.

39. The second component of PLAINTIFF'S and other AGGRIEVED EMPLOYEES' compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFF and other AGGRIEVED EMPLOYEES incentive wages based on their performance for DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly basis with bonus and/or commission compensation when the employees met the various performance goals set by DEFENDANTS.

40. However, from-time-to-time, when calculating the regular rate of pay, in those pay periods where PLAINTIFF and other AGGRIEVED EMPLOYEES worked overtime, were paid meal and rest period premium payments, and/or paid sick pay, and earned non-discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked rather than just all non-overtime hours worked. Management and supervisors described the incentive/bonus program to potential and new employees as part of the compensation package. As a matter of law, the incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must be included in the "regular rate of pay." The failure to do so has resulted in a systematic underpayment of overtime compensation, meal and rest period premiums, and sick pay to PLAINTIFF and other AGGRIEVED EMPLOYEES by DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time for non-employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the non-exempt employee uses paid sick time, whether or not the employee actually works overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by failing to include the incentive compensation as part of the "regular rate of pay" for purposes of sick pay compensation was in violation of Cal. Lab. Code § 246.

41. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES at the correct rate of pay for all overtime worked, meal and rest period premiums, and sick pay. This uniform policy and practice of DEFENDANTS is intended to purposefully avoid the payment of the correct overtime compensation, meal and rest period premiums, and sick pay as required by California law which allowed DEFENDANTS to illegally profit and gain an unfair advantage over competitors who complied with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANTS, the PAGA PERIOD should be adjusted accordingly

**FIRST CAUSE OF ACTION**

**VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

**[Cal. Lab. Code §§ 2698 et seq.]**

**(Alleged by PLAINTIFF against all Defendants)**

42. PLAINTIFF realleges and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

43. PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who does so as the proxy or agent of the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law enforcement action designed to protect the public and not to benefit private parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general to recover civil penalties for Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

44. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to himself and all individuals

who are or previously were employed by DEFENDANT as non-exempt employees in California during the time period of November 16, 2020 until the present (the "AGGRIEVED EMPLOYEES").

45. On November 16, 2021, PLAINTIFF gave written notice by certified mail to the Labor and Workforce Development Agency (the "Agency") and the employer of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

46. The policies, acts and practices heretofore described were and are an unlawful business act or practice because Defendant (a) failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES minimum wages and overtime wages, (b) failed to provide PLAINTIFFS and other AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c) failed to provide accurate itemized wage statements, and (d) failed to reimburse for mandatory expenses, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201, 202, 203, 204, 210, 226.7, 510, 512, 558, 1102.5, 1194, 1197, 1197.1, 1198 1198.5 & 2802, and the applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

47. Some or all of the conduct and violations alleged herein occurred during the PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp*. (2018) 30 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc*. (2018) 23 Cal. App. 5th 745, 751 ["PAGA allows an "aggrieved employee"—a person affected by **at least one** Labor Code violation committed by an employer—**to pursue penalties for all the Labor Code violations committed by that employer**."], Emphasis added, reh'g denied (June 13, 2018).)

## PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANTS, jointly and severally, as follows:

1. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
   a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004; and
   b. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

Dated: November 16, 2021

Respectfully Submitted,
JCL LAW FIRM, APC

By: ______________________
Jean-Claude Lapuyade
Attorneys for PLAINTIFF

## DEMAND FOR JURY TRIAL

PLAINTIFF demands a jury trial on all issues triable to a jury.

Dated: November 16, 2021

Respectfully Submitted,
JCL LAW FIRM, APC

By: ______________________
Jean-Claude Lapuyade
Attorneys for PLAINTIFF

7021 0350 0000 8465 3370

U.S. Postal Service
# CERTIFIED MAIL® RECEIPT
*Domestic Mail Only*

For delivery information, visit our website at *www.usps.com®*.

OFFICIAL USE

Certified Mail Fee
$

Extra Services & Fees *(check box, add fee as appropriate)*
- ☐ Return Receipt (hardcopy) $
- ☐ Return Receipt (electronic) $
- ☐ Certified Mail Restricted Delivery $
- ☐ Adult Signature Required $
- ☐ Adult Signature Restricted Delivery $

Postage
$

**Total Postage and Fees**
$

Postmark
Here

galindo
11.16.21

*Sent To* PAQ, INC

*Street and Apt. No., or PO Box No.*

*City, State, ZIP+4®*

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instruction

# EXHIBIT 3

# EXHIBIT 4

# JCL LAW FIRM, APC

5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Tel: (619) 599-8292
Fax: (619) 599-8291


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## FIRM RESUME

Areas of Practice: Employee Class Actions, Wage and Hour Class Actions, Civil Litigation, and Unlawful Housing Practices.

### ATTORNEY BIOGRAPHIES

**Jean-Claude Lapuyade, Esq.**
California Bar Number 248676
Founding Partner

Biography:

Mr. Lapuyade is a San Diego based labor and employment attorney representing aggrieved California employees and the victims of unlawful housing practices throughout the State of California. Mr. Lapuyade's litigation practice focuses on representing California employees in wage and hour class actions for unpaid wages, missed meal and rest breaks, and misclassification, wrongful termination cases and tenants in unlawful housing class actions. Mr. Lapuyade prides himself on providing his clients with aggressive, attentive and result driven representation through the litigation process, trial and arbitration. Since 2007, Mr. Lapuyade successfully recovered in excess of $200 million in monetary awards for his clients.

Mr. Lapuyade served as co-editor of the Insurance Column for Consumer Attorneys of San Diego from 2011 to 2014. As editor, Mr. Lapuyade was responsible for publishing monthly articles in the Trial Bar News periodical analyzing complex insurance coverage issues. Mr. Lapuyade is a four-time recipient of the Super Lawyers Rising Star by Thomson Reuters. To be eligible for inclusion in Rising Stars, a candidate must be either 40 years old or younger or in practice for 10 years or less. While up to 5 percent of the lawyers in a state are named to Super Lawyers, no more than 2.5 percent are named to Rising Stars.

Bar Admissions:

- California
- U.S. District Court Southern District of California
- U.S. District Court Central District of California
- U.S. District Court Eastern District of California
- U.S. District Court Northern District of California

Professional Associations:

- California Employment Lawyers Association, 2007 to Present
- Consumer Attorneys of San Diego, 2007 to 2020
- American Bar Association, Section of Litigation, Member, 2007 to 2020
- American Bar Association, Labor & Employment Section, Member, 2007 to 2020
- American Bar Association, Tort, Trial & Insurance Section, Member, 2007 to 2020
- California Bar Association, Labor & Employment Section, Member, 2007 to Present
- California Bar Association, Litigation Section, Member, 2007 to Present

Education:

- **California Western School of Law**
  - J.D. - 2006
  - Honors: Deans Merit Scholarship, California Western School of Law 2005 - 2006
- **University of Arizona**
  - B.A. - 2001
  - Major: History

Honors:

- Super Lawyers Rising Star, Thomson Reuters, 2015 - 2018
- Distinguished Advocate Award for Outstanding Oral Advocacy, 2005 – 2006

**Sydney Castillo-Johnson**, **Esq**.
California Bar Number 343881
Associate Attorney

Biography:

Ms. Castillo-Johnson is a San Diego based labor and employment attorney representing California employees throughout the state of California. Ms. Castillo-Johnson's litigation practice focuses on representing current and former employees in wage and hour class actions for unpaid wages, missed meal and rest breaks, misclassification, and wrongful termination.

Ms. Castillo-Johnson volunteered her time at California Wester School of Law first as a student intern and later as a student manager with the Community Law Project which offers legal services to the low-income community of San Diego.

Education:

- **California Western School of Law**
    - J.D.- 2022
    - Honors:
        - Dean’s Honor List: Spring 2021, Fall 2021
        - Public Service Honor Society Fall 2021
        - 3L Academic Merit Scholarship
        - Dean’s Diversity, Service, and Leadership Scholarship
    - Activities: Community Law Project Student Manager
- **Azusa Pacific University**
    - B.A. – 2018
    - Major: Criminal Justice

**Monnett De La Torre, Esq.**
California Bar Number 272884
Senior Associate

Biography:

Ms. De La Torre is a San Diego and Ventura County based labor and employment attorney representing aggrieved California employees throughout the State of California. Ms. De La Torre’s litigation practice focuses on representing California employees in wage and hour class and representative actions for unpaid wages, missed meal and rest breaks, misclassification, penalties, and wrongful termination cases. Ms. De La Torre has extensive experience handling internal workplace investigations. Ms. De La Torre has handled matters before the Department of Fair Employment and Housing, Equal Employment Opportunity Commission and Department of Labor.

Ms. De La Torre is a two-time recipient of the Super Lawyers Rising Star by Thomas Reuters. To be eligible for inclusion in Rising Stars, a candidate must be either 40 years old or younger or in practice for 10 years or less. While up to five percent of the lawyers in a state are named to Super Lawyers, no more than 2.5 percent are named to Rising Stars.

Bar Admissions:

- California
- U.S. District Court Southern District of California

Professional Associations:

- California Employment Lawyers Association, 2022 to Present
- Consumer Attorneys of San Diego, 2010-2015
- American Bar Association, Labor & Employment Section, Member, 2015 to Present
- California Bar Association, Labor & Employment Section, Member, 2015 to Present
- San Diego La Raza Lawyers Association, 2010-2015
- Ventura County Bar Association, 2015-Present
- Women Lawyers of Ventura County, 2015-Present

Education:

- **New England School of Law**
    - J.D.- 2010

- Honors:
    - Dean's List Consecutive years
- **University of California, San Diego**
    - B.A.- 2006
    - Major: Economics
    - Minor: Latin American Studies

Honors:

- Super Lawyers Rising Star, Thomson Reuters, 2021 and 2022
- Pacific Cost Business Times, "Top 40 under 40" Award
- Daily Transcripts "Top Young Attorney: nominee, consecutive years

## REPORTED CASES

- *Blanchette et al., v. Superior Court (GHA Homes)*, 8 Cal.App.5th 521, 2017

- *Chmurny v. State*, 392 Md. 159, 2006

## EXAMPLES OF THE JCL LAW FIRM'S REPRESENTATIVE CLASS ACTION & REPRESENTATIVE CASES

- *Ware v. Shake Shack Enterprises, LLC,* Alameda Superior Court Case No. 21CV002063 (October 19, 2023) Hon. Brad Seligman approved a $1,330,000.00 class action and PAGA action settlement for violations of California wage and hour laws. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Trinh v. Precision Metal Products, Inc., et al.,* San Diego Superior Court Case No. 37-2022-00000965-CU-OE-CTL (October 16, 2023) Hon. Matthew C. Braner approved a $450,000.00 class action and PAGA action settlement for, *inter alia*, unpaid off the clock work. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Anderson v. Barton Myers Associates, Inc., et al.,* Los Angeles Superior Court Case No. 21STCV43314 (October 12, 2023) Hon. Elihu M. Berl approved a $900,000.00 class action and PAGA action settlement for meal and rest period violations. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *DeSanctis v. Douglas Products and Packaging Company, LLC,* Contra Costa Superior Court Case No. C21-01874 (October 11, 2023) Hon. Charles S. Treat approved a $372,500.00 class action and PAGA action settlement for, *inter alia,* failure to pay for all hours worked. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Jackson v. White Fir, LLC, et al.,* Sacramento Superior Court Case No. 34-2021-00301656 (October 6, 2023) Hon. Lauri A. Damrell approved a $750,000.00 class action and PAGA action settlement for violations of California wage and hour laws. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Kneisly v. SR Machining, Inc., et al.,* Riverside Superior Court Case No. CVRI2201491 (October 5, 2023) Hon. Harold W. Hopp approved a $220,000.00 class action and PAGA action settlement for meal and rest period violations. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Mendez v. Bondz, Inc., et al.*, San Joaquin Superior Court Case No. STK-CV-UOE-2020-0007486 (September 14, 2023) Hon. George J. Abdallah, Jr. approved a $180,000.00 class action and PAGA action settlement for, *inter alia,* failure to comply with piece-rate laws. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Baray v. Curation Foods, Inc., et al.,* Santa Barbara Superior Court Case No. 21CV02834 (August 29, 2023) Hon. James F. Rigali approved a $495,000.00 class action and PAGA action settlement for meal and rest period violations. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Rodriguez, et al. v. Ferma Greenbox, In*c., *et al.,* Alameda Superior Court Case No. RG21101104 (August 23, 2023) Hon. Evelio Grillo approved a $200,000.00 class action and PAGA action settlement for, *inter alia,* unpaid off-the-clock work. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *O'Quinn v. Laugh Factory, Inc.,* Los Angeles Superior Court Case No. 19STCV28155 (August 1, 2023) Hon. Carolyn B. Kuhl approved a $144,000.00 class action and PAGA action settlement for, *inter alia,* unlawful tip pooling. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Toler v. Total Testing Solutions, LLC,* Los Angeles Superior Court Case No. 21STCV38452 (July 27, 2023) Hon Elihu M. Berle approved a $160,000.00 class action and PAGA action settlement for meal and

rest period violations.  The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.

- *Rodriguez v. EAH, Inc.,* Santa Cruz Superior Court Case No. 21CV00884 (July 25, 2023) Hon. Marjorie Carter approved a $1,450,000.00 class action and PAGA action settlement for, *inter alia,* failure to compensate overtime and redeemed sick pay at the regular rate of pay.  The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Neutall v. Urban Alchemy,* San Francisco Superior Court Case No. CGC-20-588622 (July 13, 2023) Hon. Richard B. Ulmer approved a $980,000.00 class action settlement for violations of California wage and hour laws.  The Court appointed JCL Law Firm, APC as Class Counsel.
- *Rodriguez v. RM Parks Place, Inc.,* San Joaquin Superior Court Case No. STK-CV-UOE-2021-6050 (June 7, 2023) Hon. Erin Guy Castillo approved a $175,000.00 class action and PAGA action settlement for, *inter alia,* wage statement violations.  The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Chrestensen v. Northeastern Rural Health Clinics* Lassen, Superior Court Case No. 63703 (April 13, 2023) Hon. Leonard J. La Casse approved a $270,000.00 class action and PAGA action settlement for, *inter alia,* unpaid overtime wages.  The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Hernandez, et al. v. Parenting Network, Inc.,* Tulare Superior Court Case No. VCU287027 (March 14, 2023) Hon. Bret Hilman approved a $225,000.00 class action and PAGA action settlement for, *inter alia,* unpaid off-the-clock work.  The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Sarmiento v. Caduceus Healthcare Inc.,* San Diego Superior Court Case No. 37-2021-00002597 (March 10, 2023) Hon. Richard S. Whitney approved a $315,000.00 class action and PAGA action settlement for, *inter alia,* unpaid off-the-clock work.  The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Garces, et al. v. DriverDo, LLC,* Los Angeles Superior Court Case No. 19STCV32773 (January 24, 2023) Hon. Carolyn B. Kuhl approved a $700,000 class action and PAGA settlement for meal and rest period violations. The JCL Law Firm, APC, represented the plaintiff, the State of California, and the Aggrieved Employees.
- *De Jesus v. Guardian Angel Home Care, Inc.,* San Diego Superior Court Case No. 37-2020-00021049-CU-OE-CTL (July 29, 2022) Hon. Ronald F. Frazier approved a $300,000 class action and PAGA settlement for meal and rest period violations. The JCL Law Firm, APC, represented the plaintiff, the State of California, and the Aggrieved Employees.
- *Kaur v. Aces 2020 I, LLC, et al.,* Contra Costa Superior Court Case No. MSC20-02482 (December 22, 2022) Hon. Edward G. Weil approved a $585,000 class action and PAGA settlement for meal and rest period violations. The JCL Law Firm, APC, represented the plaintiff, the State of California, and the Aggrieved Employees.
- *Molina v. Hawaiian Airlines, Inc.,* Los Angeles Superior Court Case No. 20STCV28079 (November 23, 2022) Hon. Maren Nelson approved a $250,000 class action settlement for meal and rest period violations. The JCL Law Firm, APC, represented the Plaintiff.
- *Lang Jr. v. Pathways Community Services LLC,* San Diego Superior Court Case No. 37-2019-00049969-CU-OE-CTL (September 9, 2022) Hon. James A. Mangione approved a $160,000 class action and PAGA settlement for meal and rest period violations. The JCL Law Firm, APC, represented the plaintiff, the State of California, and the Aggrieved Employees.
- *Martinello v. Century Wilshire, Inc.*, Los Angeles Superior Court Case No. 20STCV32613 (March 1, 2022) Hon. Carolyn Kuhl approved a $550 billing rate and appointed Jean Claude Lapuyade, Esq. of the JCL Law Firm, APC, as Class Counsel.
- *Wilson v. Spreen Inc. (dba Spreen Honda),* San Bernardino Superior Court Case No. CIVSB2119857 (April 6, 2022) Hon. David Cohn approved a $300,000 PAGA action settlement for meal and rest period violations. The JCL Law Firm, APC, represented the plaintiff, the State of California, and the Aggrieved Employees.
- *Ledesma v. TVJ Sons I, Inc.; Porter and Howard, Inc.* Santa Barbara Superior Court Case No. 20CV03573 (November 10, 2021) Hon. Jed Beebe approved a $350,000 PAGA action settlement for meal and rest period violations.  The JCL Law Firm, APC represented the State of California and the Aggrieved Employees.
- *Jacobs v. Rush Media Company, LLC; XLT Management Services, Inc.*, Los Angeles Superior Court Case No. 20STCV32350 (May 2, 2022) Hon. Daniel J. Buckley appointed the JCL Law Firm, APC as Class Counsel and approved a $330,000 class action settlement for, *inter alia*, independent contractor misclassification.
- *Chavez v. HTL Conrad Domestic, LLC; HTL Conrad Domestic Employer, LLC*, San Diego Superior Court Case No. 37-2020-00016193-CU-OE-CTL (June 9, 2022) Hon. John S. Meyer approved a $850,000 PAGA action settlement for, *inter alia*, failure to compensate overtime at the regular rate of pay. The JCL Law Firm, APC acted as representative PAGA counsel for the State of California and the Aggrieved Employees.
- *Renteria v. Love's Country Stores of California*, San Bernardino Superior Court Case No. CIVDS20164481 (June 14, 2022) Hon. David Cohn approved a $2.2 million dollar class action and PAGA action settlement

for, *inter alia*, unpaid overtime and sick pay. The JCL Law Firm, APC acted as Class Counsel and as representative PAGA counsel for the State of California.

- *Lopez v. Adidas America, Inc.*, Ventura Superior Court Case No. 56-2021-005498444-CU-OE-VTA (April 4, 2022) Hon. Mark Borrell approved a $1.5 million dollar class action and PAGA action settlement for, *inter alia*, inaccurate overtime calculations, and appointed the JCL Law Firm, APC as Class Counsel.
- *Felix v. TVI, Inc., d.b.a. Savers*, Santa Clara Superior Court Case No. 21CV376407 (February 18, 2022) Hon. Sunil R. Kulkarni approved a $1.8 million dollar class action and PAGA action settlement for, *inter alia,* unpaid off-the-clock work. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Munoz v. AMTCR,* San Bernardino Superior Court Case No. CIV-DS2001914 (August 24, 2021) Hon. David Cohn approved a $1.8 million dollar class and PAGA settlement for, *inter alia*, inaccurate itemized wage statements. The JCL Law Firm, APC acted as class counsel for the settlement class and as representative PAGA counsel the State of California and the Aggrieved Employees.)
- *Nunes v. Home Depot U.S.A., Inc.,* San Joaquin Superior Court Case No. STK-CV-UOE-2020-0011011 (October 20, 2021 – Hon. Roger Ross approved a $1.5 million dollar class and PAGA settlement for, *inter alia*, miscalculated meal period premiums and appointed Jean-Claude Lapuyade, Esq, as Class Counsel.)
- *Pillsbury v. T&T Restaurants CA, Inc.,* Del Norte Superior Court Case No. CVUJ-20-1214 (December 14, 2021 – Hon. Darren McElfresh approved $550 billing rate and appointed Jean-Claude Lapuyade, Esq, as Class Counsel in a wage and hour class action settlement.)
- *Latin v. OneMain General Service Corporation*, Stanislaus County Superior Court Case No. CV-20-002498 (October 22, 2021) Hon. Stacy Speiller approved a PAGA action settlement for $700,000 wage statement violations. The JCL Law Firm, APC acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.
- *Elias Kaser v. Aviation Consultants, Inc.,* Orange County Superior Court Case No. 30-2021-01191204-CU-OE-CXC (September 22, 2021 – Hon. Peter J. Wilson approved $550 billing rate in a representative California Labor Code Private Attorney General Act settlement).
- *Rodriguez* v. *RSI Home Products, Inc.,* San Bernardino Superior Court Case No. CIVDS2023354 (July 30, 2021 – Hon. David Cohn approved a $1.45 million class and PAGA settlement for, *inter alia*, failure to comply with piece-rate laws, and appointed the JCL Law Firm, APC as Class Counsel)
- *Jer Vang v. Bridge Property Management,* Alameda County Superior Court, Case No RG19047434 (January 8, 2021 – Hon. Winifred Smith approved a class and PAGA settlement for, *inter alia*, unpaid off the clock work. The JCL Law Firm, APC acted as class counsel for the settlement class and as representative PAGA counsel the State of California and the Aggrieved Employees.)
- *Johnson v. Volt Management Corp., Inc. et al.,* Los Angeles County Superior Court, Case No. 19STCV16466 (December 11, 2020 – Hon. Amy Hogue approved a PAGA Settlement negotiated on behalf of the State of California and the aggrieved employees by the JCL Law Firm, APC.)
- *Salazar v. Frontier Auto Sales Inc., dba Frontier Toyota*, Los Angeles Superior Court, Case No. 19STCV20382 (November 24, 2020 – Hon. John P. Doyle appointed the JCL Law Firm, APC as class counsel and approved a class and PAGA settlement for*, inter alia,* missed meal and rest periods.)
- *Villalobos v. Alterra Group, LLC et al.,* Los Angeles County Superior Court, Case No. 19STCV19448 (November 11, 2020 – Hon. Richard Fruin approved a PAGA Settlement for, *inter alia,* unreimbursed business expenses. The JCL Law Firm, APC acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.)
- *Stevens et al., v. Bank of England,* San Diego County Superior Court Case No. 37-2019-00018662-CU-OE-CTL (October 16, 2020 – Hon. John Meyer appointed JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for, *inter alia,* off-the-clock work.)
- *Frazier v. ASA Carlton, Inc.,* San Diego Superior Court Case No. 37-2019-00036147 (October 9, 2020 Hon. Kenneth Medel appointed the JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for off-the-clock work.)
- *Krake et al., v. Central Valley Diner, Inc.,* Placer County Superior Court Case No. SCV0041645 (September 4, 2020 – Hon. Michael Jones appointed JCL Law Firm as class counsel and granted final approval of wage and hour class action for meal period violations.)
- *Conner v. Ascendant Marketing, LLC et al.,* San Diego Superior Court Case No. 37-2019-00026864-CU-OE-CTL (July 24, 2020 Hon. Joel Wohlfeil granted approval of PAGA Settlement for, among other things, off-the-clock work. JCL Law Firm, APC acted as lead counsel.)
- *Guerrero v. Estancia Operations, LLC.,* San Diego Superior Court Case No. 37-2019-00028963 (August 25, 2020 – Hon. Katherine Bacal approved PAGA Settlement for, *inter alia,* missed meal and rest periods. JCL Law Firm, APC, acted as lead counsel.)
- *Moreno v. Dash Lube, et al.,* United States District Court, Southern District of California, Case No. 18cv1922 DMS (AHG) (December 13, 2019 – Granted class certification of Labor Code Section 226 claim and appointed JCL Law Firm, APC, as Class Counsel.)

- *Perkins et al., v. Tahiti Enterprises, Inc., et al.,* Orange County Superior Court Case No. 30-2016-00863095 (October 22, 2019 – Hon. Peter Wilson appointed JCL Law Firm, APC, as Class Counsel and granted final approval for an unlawful housing class action settlement arising out of Civil Code Section 1940.1.)
- *Hill v. Stemak Holdings, Ltd.,* San Diego Superior Court Case No., 37-2018-00000747 (January 28, 2020 – Hon. Kenneth Medel appointed JCL Law Firm, APC as class counsel and granted final approval of wage and hour class action for unpaid overtime.)
- *Shachno et al., v. KT Hotels, LLC, et al.* San Diego Superior Court Case No Case No. 37-2018-00043601 (May 31, 2019 – Hon, Gregory Pollack appointed JCL Law Firm, APC, as Class Counsel and granted preliminary approval for the wage and hour class action settlement involving nearly 900 current and former employees. Final approval scheduled for October 4, 2019)
- *Almanza v. The Express Group, Inc.*, San Bernardino Superior Court Case No. CIVDS1722542 (April 19, 2019 – Hon. David Cohn appointed the JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement for *inter alia*, missed meal and rest periods and independent contractor misclassification.)
- *Moschetto v. Pillow Global, Inc. San Diego Superior Court,* Case No. 37-2017-00024031-CU-OE-CTL (April 5, 2019 – Hon. John S. Meyer appointed JCL LAW Firm, APC, as Class Counsel and granted final approval for a wage and hour wage class action settlement involving misclassified house cleaners.)
- *Burke v. Friendship Hotel, LLC,* San Diego County Superior Court Case No. 37-2017-00022517-CU-OE-CTL (March 10, 2019 – final approval granted on for an unlawful housing class action arising under Civil Code Section 1940.2)
- *Terrado et al., v. Accredited Debt Relief, LLC*, San Diego County Superior Court Case No. 37-2018-00014181-CU-OE-CTL (February 8, 2019 – Hon. Gregory W. Pollock appointed JCL Law Firm, APC as Class Counsel and granted final approval for a wage and hour class action settlement for meal and rest period violations);
- *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case No. CIVDS1512625, (July 27, 2018 – Hon. Thomas S. Garza appointed JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement involving claims for on duty meal and rest periods.);
- *Summerlin et al. v. Maplebear, Inc. dba Instacart*, Los Angeles Superior Court Case No. BC603030 (2018 - certified and settled wage and hour class action.)
- *Ortega v. Prime Healthcare*, San Diego Superior Court Case No. 37-2014-00011240-CU-OE-CTL (2018 – Approved PAGA only settlement for on duty meal and rest periods)
- *Engstrom v. Bender-Rosenthal*, Inc. San Diego Superior Court Case No. 37-2016-00012373-CU-OE-CTL (2017 - Certified and settled class action for employee misclassification);
- *Crawford v. Outlook Amusements,* Inc., Los Angeles Superior Court Case No. BC617160 (2017 - Certified and settled wage and hour class action.);
- *Hernandez v. Sunglass Hut Trading, LLC*, San Bernardino Superior Court Case No. CIVDS1505181 (2016 - Certified and settled wage and hour class action);
- *Burns v. Shalom, LLC*, San Diego Superior Court, Case No., 37-2013-00058356-CU-BT-CTL (2015 - certified and settled class action for unlawful housing practices arising out of Civil Code Section 1940.1);