

1 Kane Moon (SBN 249834)
E-mail: kmoon@moonlawgroup.com
2 S. Phillip Song (SBN 326572)
E-mail: psong@moonlawgroup.com
3 Morgan Simpson (SBN 337325)
E-mail: msimpson@moonlawgroup.com
4 **MOON LAW GROUP, PC**
725 S. Figueroa St., Suite 3100
5 Los Angeles, California 90017
Telephone: (213) 232-3128
6 Facsimile: (213) 232-3125

7 *Attorneys for Plaintiff* Edward Ontiveros

FILED
Superior Court of California
County of Los Angeles
05/27/2026

David W. Slayton, Executive Officer / Clerk of Court
By: N. Navarro Deputy

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES**

11 EDWARD ONTIVEROS, individually, and on
12 behalf of all others similarly situated,

13 Plaintiff,

14 vs.

15 FRESHPOINT SAN FRANCISCO, INC.; and
16 DOES 1 through 10, inclusive,

17 Defendants

Case No.: 24STCV15791

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
AND REPRESENTATIVE ACTION
SETTLEMENT**

*[Filed with Plaintiff's Notice of Motion and
Memorandum of Points and Authorities, the
Declaration of Kane Moon, the Declaration of
Plaintiff, the Declaration of Sean Hartranft]*

Action Filed: June 24, 2024
Trial Date: Not Set

1 **PROPOSED PRELIMINARY APPROVAL ORDER**

2 The Court has before it Plaintiff’s Motion for Preliminary Approval of Class Action and
3 PAGA Settlement. Having reviewed the Motion and Memorandum of Points and Authorities, the
4 supporting Declarations of Kane Moon, Plaintiff Edward Ontiveros (“Plaintiff”), and Sean
5 Hartranft on behalf of APEX Class action Administration Solutions, and GOOD CAUSE appearing,

6 **IT IS HEREBY ORDERED AND DECREED AS FOLLOWS:**

7 1. The Court grants preliminary approval of the proposed Settlement and the Class
8 based upon the terms set forth in the Joint Stipulation of Class and Representative Action Settlement
9 Agreement (the “Settlement”) attached as Exhibit 1 to the Declaration of Kane Moon in Support
10 of Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement. The Court
11 finds on a preliminary basis that the Settlement appears to be fair, adequate, and reasonable, and
12 therefore, meets the requirements for preliminary approval. The Court also preliminarily finds that
13 the terms of the Settlement appear to be within the range of possible approval, pursuant to
14 California Code of Civil Procedure section 382 and applicable law.

15 2. The Settlement falls within the range of reasonableness of a settlement which could
16 ultimately be given final approval by this Court, and appears to be presumptively valid, subject
17 only to any objections that may be raised at the Final Approval Hearing and final approval by this
18 Court. The Court notes that Defendant FreshPoint San Francisco, Inc. (“Defendant”) (together
19 with Plaintiff, the “Parties”) agrees to create a common, non-reversionary gross fund of at least
20 \$200,000.00 (the “Gross Settlement Amount”), subject to an escalator clause, and in addition to
21 Defendant’s employer’s payroll taxes owed on the wage portions of the Individual Class
22 Payments, to cover (a) Individual Class Payments to Participating Class Members; (b) a Class
23 Counsel Fees Payment not to exceed 35% of the Gross Settlement Amount; (c) a Class Counsel
24 Expenses Payment for reimbursement of actual litigation costs not to exceed \$44,000.00; (d) an
25 Administration Expenses Payment not to exceed \$6,950.00; (e) PAGA Penalties of \$20,000.00 for
26 settlement of claims for civil penalties under the Private Attorneys General Act, Labor Code
27 Sections 2698, *et seq.* (“PAGA”), and distributed as 35% (\$7,000.00) to the Aggrieved Employees
28 and 65% (\$13,000.00) to the California Labor and Workforce Development Agency (the

1 “LWDA”); and (f) a Class Representative Service Payment to Plaintiff of not more than
2 \$7,500.00.¹

3 3. The Court finds on a preliminary basis that: (1) the settlement amount is fair and
4 reasonable to the Class Members when balanced against the probable outcome of further litigation
5 relating to class certification, liability and damages issues, and potential appeals; (2) significant
6 class-wide discovery, investigation, research, and litigation have been conducted such that counsel
7 for the respective Parties at this time are able to reasonably evaluate their respective positions; (3)
8 settlement at this time will avoid substantial costs, delay, and risks that would be presented by the
9 further prosecution of the litigation; and (4) the proposed Settlement has been reached as the result
10 of serious, informed, adversarial, and arm’s-length negotiations between the Parties. Accordingly,
11 the Court preliminarily finds that the Settlement was entered into in good faith and meets the
12 requirements for preliminary approval.

13 4. A final approval hearing on the question of whether the proposed Settlement, the
14 Class Counsel Fees Payment, the Class Counsel Expenses Payment, the Administration Expenses
15 Payment, the PAGA Penalties, and the Class Representative Service Payment should be finally
16 approved as fair, reasonable, and adequate as to the members of the Class is hereby set in
17 accordance with the Implementation Schedule set forth below. The final approval hearing shall
18 take place at least 120 days after this order granting preliminary approval.

19 5. The Court provisionally certifies, for settlement purposes only, the following class
20 (the “Class”): all hourly, non-exempt employees who are currently working or have worked for
21 Defendant in the State of California during the Class Period. The “Class Period” means June 24,
22 2020 to February 7, 2026. Excluded from the Class will be any Class Member who opts out of the
23 Settlement by sending the Administrator a valid and timely Request for Exclusion, pursuant to the
24 instructions provided in the Class Notice.

25
26
27 ¹ Pursuant to ¶ 4.0 of the Settlement, Defendant shall fully fund the Gross Settlement Amount of
28 \$200,000.00 and the amounts necessary to fully pay Defendant’s share of payroll taxes by transmitting the
funds to the Administrator no later than thirty (30) days after the Effective Date of the Settlement.
(Settlement, ¶ 4.0.)

1 6. The Court identifies, for settlement purposes only, the following individuals (the
2 “Aggrieved Employees”): all hourly, non-exempt employees who are currently working or have
3 worked for Defendant in the State of California during the PAGA Period. The “PAGA Period”
4 means June 22, 2023 to February 7, 2026.

5 7. The Court finds, for settlement purposes only, that the Class meets the
6 requirements for certification under California Code of Civil Procedure section 382 in that: (1)
7 the Class is so numerous that joinder is impractical; (2) there are questions of law and fact that are
8 common, or of general interest, to all Class Members, which predominate over individual issues;
9 (3) Plaintiff’s claims are typical of the claims of the Class Members; (4) Plaintiff and Class
10 Counsel will fairly and adequately protect the interests of the Class Members; and (5) a class
11 action is superior to other available methods for the fair and efficient adjudication of the
12 controversy.

13 8. **Releases of Claims.** Effective on the date Defendant fully funds the entire Gross
14 Settlement Amount and all employer payroll taxes owed on the Wage Portions of the Individual Class
15 Payments, Plaintiff, Participating Class Members, the State of California (including the LWDA), and
16 Aggrieved Employees will release claims against all Released Parties as follows: (Settlement, ¶ 5.)

17 a. Released Parties. “Released Parties” means: Defendant and its present and former parent
18 companies, subsidiaries, divisions, related or affiliated entities, and its shareholders,
19 members, officers, directors, employees, agents, attorneys, insurers, successors and
20 assigns, counsel in the Action, and any other individual or entity that could be liable for
21 any of the claims released as described in Paragraph 5.1 and Paragraph 5.2 of the
22 Settlement. (*Id.* at ¶ 1.40.)

23 b. Plaintiff’s Release. Plaintiff shall release all claims related to his employment, including
24 all claims that were, or reasonably could have been, alleged in the Action or Plaintiff’s
25 PAGA Notice, and be bound by a Civil Code Section 1542 release and waiver of all
26 claims known and unknown, without exception, except as may be prohibited by law. (*Id.*
27 at ¶ 5.0) This specifically excludes claims for unemployment insurance, disability, social
28 security, and workers’ compensation (except for claims pursuant to Labor Code Sections

1 132a and 4553). (*Id.*) Plaintiff expressly waives and relinquishes the provisions, rights,
2 and benefits, if any, of the provisions of California Civil Code section 1542, which
3 provides: “A general release does not extend to claims that the creditor or releasing party
4 does not know or suspect to exist in his or her favor at the time of executing the release,
5 and that if known by him or her would have materially affected his or her settlement with
6 the debtor or released party.” (*Id.*) Plaintiff acknowledges that he has read and understands
7 Section 1542 and knowingly and voluntarily waives the rights and benefits afforded by
8 that section with respect to the Claims released herein. (*Id.*) Plaintiff agrees that the
9 Settlement is entered into knowingly and voluntarily. (*Id.*) Plaintiff represents and warrants
10 that he has full authority to enter into this Agreement and that she has not assigned,
11 transferred, or conveyed any interest in any Claims to any spouse or to any other third
12 party. (*Id.*)

- 13 c. Release by Participating Class Members: All Class Members, including Plaintiff, on
14 behalf of themselves and their respective former and present representatives, agents,
15 attorneys, administrator, successors, and assigns, who do not timely opt out of the
16 Settlement, release the Released Parties from any and all claims that were alleged in the
17 First Amended Complaint and any and all claims that reasonably could have been alleged
18 based on the facts and allegations alleged in the First Amended Complaint, including but
19 not limited to claims for unpaid wages, damages, penalties, attorneys’ fees, costs, and/or
20 any other relief arising out of alleged (1) failure to pay all wages, including overtime and
21 minimum wages, (2) failure to provide meal periods; (3) failure to authorize and permit
22 rest breaks; (4) failure to timely pay all wages upon termination; (5) failure to timely pay
23 all wages during employment; (6) failure to provide accurate wage statements; (7) failure
24 to reimburse business expenses; and (8) unfair competition, that arose during the Class
25 Period (collectively, the “Released Class Claims”). (*Id.* at ¶ 5.1.) The definition of
26 “Released Class Claims” for the Class Members shall expressly exclude all claims for
27 vested benefits, wrongful termination, unemployment insurance, disability, social
28 security, workers’ compensation, all claims while classified as exempt, or all claims

1 based on facts occurring outside of the Class Period. (*Id.* at ¶ 5.1.1.)

2 d. PAGA Released Claims: All Aggrieved Employees and the State of California
3 (including the LWDA) are deemed to release, on behalf of themselves and their
4 respective former and present representatives, agents, attorneys, administrators,
5 successors and assigns, the Released Parties from all causes of action and claims for civil
6 penalties or any other relief under the California Labor Code Private Attorneys General
7 Act of 2004, which include any and all claims that were alleged in the First Amended
8 Complaint or Plaintiff’s underlying PAGA notice, and any and all claims that reasonably
9 could have been alleged based on the facts and allegations alleged in the First Amended
10 Complaint and Plaintiff’s PAGA notice, including but not limited to PAGA claims for
11 penalties, attorneys’ fees, costs, and/or any other relief arising out of alleged (1) failure
12 to pay all wages, including overtime and minimum wages, (2) failure to provide meal
13 periods; (3) failure to authorize and permit rest breaks; (4) failure to timely pay all wages
14 upon termination; (5) failure to timely pay all wages during employment; (6) failure to
15 provide accurate wage statements; (7) failure to reimburse business expenses; and (8)
16 unfair competition, that arose during the PAGA Period (collectively, the “Released
17 PAGA Claims”). (*Id.* at ¶ 5.2.)

18 1) In light of the binding nature of a PAGA judgment on non-party
19 employees pursuant to *Arias v. Sup. Ct. (Angelo Dairy)* (2009) 46 Cal.4th 969
20 and *Cardenas v. McLane Foodservice, Inc.* (2011) 796 F.Supp.2d 1246,
21 Aggrieved Employees who exclude themselves from the class action component
22 of the Settlement cannot opt out of the PAGA portion of the settlement and shall
23 nonetheless receive a payment for the amount of each such individual’s estimated
24 share of the Aggrieved Employees’ portion of the PAGA Payment and shall have
25 released PAGA claims.

26 9. The Court, for purposes of this Preliminary Approval Order, refers to all terms and
27 definitions as set forth in the Settlement.

28 10. The Court appoints, for settlement purposes only, Plaintiff as the Class

1 Representatives. The Court approves, on a preliminary basis, a Class Representative Service
2 Payment from the Gross Settlement Amount of up to \$7,500.00 to Plaintiff, in addition to the
3 amount Plaintiff is eligible to receive as a Class Member, for his services in support of the Action
4 and a General Release. To the extent the final amount awarded is less than the amount requested,
5 the remainder will be allocated to the Net Settlement Amount for distribution to Participating
6 Class Members.

7 11. The Court appoints, for settlement purposes only, Plaintiff’s Counsel Moon Law
8 Group, PC as Class Counsel. The Court approves, on a preliminary basis, Class Counsel’s ability
9 to request attorneys’ fees of up to 35% of the Gross Settlement Amount, as well as reimbursement
10 for actual costs not to exceed \$44,000.00. To the extent actual costs are less and/or the final
11 amounts awarded for fees and/or costs are less than the amounts requested, the remainder will be
12 allocated to the Net Settlement Amount for distribution to Participating Class Members.

13 12. The Court appoints APEX Class Action Administration Solutions as the
14 Administrator with payment from the Gross Settlement Amount for reasonable administration
15 costs not to exceed \$6,950.00, except upon a showing of good cause and as approved by the Court.
16 To the extent administration costs are less, the remainder will be allocated to the Net Settlement
17 Amount for distribution to Participating Class Members.

18 13. The Administrator shall perform services and duties as provided for in the
19 Settlement, including, but not limited to, mailing the Class Notice via first-class U.S. Mail. Class
20 Members shall not be required to submit a claim form in order to receive individual settlement
21 payments.

22 14. The Court approves, as to form and content, the *Notice of Class and Representative*
23 *Action Settlement and Final Approval Hearing* (the “Class Notice”) attached to the Settlement as
24 **Exhibit A** and incorporated by reference. The Court finds, on a preliminary basis, that the plan
25 for distribution of the Class Notice satisfies due process, provides the best notice practicable under
26 the circumstances, and constitutes due and sufficient notice to all persons entitled thereto.

27 15. The obligations set forth in the Settlement are deemed part of this Preliminary
28 Approval Order, and the Parties and Administrator are ordered to carry out the Settlement

1 Agreement according to its terms and provisions.

2 16. The Court orders the following Implementation Schedule:

3 Defendants to provide the Administrator 4 with the Class Data	Within 21 calendar days after entry of preliminary approval
5 Administrator to mail the Class Notice	6 Within 14 calendar days after receiving the Class Data
7 Response and Opt-Out Deadline	8 Within 45 calendar days after mailing (plus an additional 14 calendar days for any re-mailed Class Notices)
9 Final Approval Motion Filing Deadline	10 At least 16 court days before the Final Approval Hearing
11 Final Approval Hearing	12 October 9, 2026 at 9 a.m.

13 17. The Court reserves the right to continue the date of the Final Approval Hearing without
14 further notice to Class Members.

15 18. The Court further orders that, pending further order of this Court, all proceedings in this
16 litigation, except those contemplated herein and in the Settlement Agreement, are stayed.

17 19. The Settlement is preliminarily approved but is not an admission by Defendant of the
18 validity of any claims in this class action, or of any wrongdoing by Defendant or of any violation of
19 law. Neither the Settlement nor any related document shall be offered or received in evidence in any
20 civil, criminal, or administrative action or proceeding other than as may be necessary to consummate
21 or enforce the Settlement.

22 **IT IS SO ORDERED.**

23 DATED: 05/27/2026



24 *Laura Seigle*
The Honorable Laura A. Seigle

Judge of the Superior Court, Los Angeles County

Laura A. Seigle / Judge