

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (“Settlement Agreement”) is made and entered into by and between the City of St. Helena (“City”), Planning and Building Director Maya DeRosa, Mayor Paul Dohring, and City Attorney Ethan Walsh (collectively with the City, “Defendants”) and Pacaso Inc. (“Pacaso”), PAC 6 CA 2021 LLC, PAC 5 CA 2021 LLC, PAC 2 CA 2021 LLC, NAPA 120 LLC, Simon Bull and the Bull Family Trust, Tony Athans, Mary Athans and the Antony John Athans Revocable Trust & Mary Liapis Athans Revocable Trust, Taylor Lopez, and Chelsea Lopez (collectively with Pacaso, “Plaintiffs”) (collectively with Defendants, “Parties”). The Parties hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Settlement Agreement, the Action (as defined below) and all Released Claims (as defined below) shall be finally and fully settled, compromised, and released, on the following terms and conditions.

RECITALS

WHEREAS, on April 6, 2021, Pacaso and PAC 6 CA 2021 LLC filed a complaint in the United States District Court for the Northern District of California (“Complaint”) initiating the action captioned *Pacaso Inc., et al. v. The City of St. Helena*, No. 3:21-cv-02493-WHO (N.D. Cal.) (“Action”);

WHEREAS, the Complaint named Planning & Building Director Maya DeRosa, Mayor Geoff Ellsworth and City Attorney Ethan Walsh as Defendants solely in their official capacities as representatives of the City;

WHEREAS, the Complaint alleged claims that challenged now-deleted Section 17.112.130 of the St. Helena Municipal Code (“Section 17.112.130”), which regulated timeshares within the City, and sought to enjoin the City’s enforcement of Section 17.112.130 against Pacaso;

WHEREAS, the City maintained that Pacaso is a timeshare business that was subject to regulation under Section 17.112.130;

WHEREAS, on April 12, 2022, the City adopted a new timeshare ordinance that is codified at Chapter 17.138 of the St. Helena Municipal Code (“Chapter 17.138”), and at the same time deleted Section 17.112.130;

WHEREAS, on July 21, 2022, Plaintiffs filed a First Amended Complaint (“FAC”) challenging Chapter 17.138 and Section 17.112.130, seeking to enjoin the City’s enforcement of Chapter 17.138 against Plaintiffs, and seeking a declaration that Plaintiffs either were exempt from Section 17.112.130 or that Section 17.112.130 never applied to Plaintiffs in the first instance;

WHEREAS, the FAC also named Planning & Building Director Maya DeRosa, Mayor Geoff Ellsworth and City Attorney Ethan Walsh as Defendants solely in their official capacities as representatives of the City

WHEREAS, on October 18, 2022, Defendants filed an answer to the FAC;

WHEREAS, on October 24, 2023, the City adopted a comprehensive update to the City's Zoning Code, which re-codified Chapter 17.138 as Section 17.22.260 of the St. Helena Municipal Code ("Section 17.22.260"), without making any textual changes to the language of Chapter 17.138;

WHEREAS, Paul Dohring replaced Geoff Ellsworth as Mayor of the City in or around December 2022;

WHEREAS, litigation against a state official in his or her official capacity is treated as a suit against the State, in which the "real party in interest . . . is the governmental entity and not the named official;" therefore, when the named official leaves office, his or her "successor automatically assumes [his or her] role in the litigation." *Hafer v. Melo*, 502 U.S. 21, 25 (1991); *see also Hartmann v. CDCR*, 707 F.3d 1114, 1127 (9th Cir. 2013); Fed. R. Civ. Pro. 25(d) (An "officer's successor is automatically substituted as a party.");

WHEREAS, Defendants have denied and continue to deny all material allegations and any and all wrongdoing alleged in the FAC, and maintain that fractional ownership homes are lawfully regulated by Section 17.22.260 to preserve the character of residential neighborhoods, and were lawfully regulated under Chapter 17.138 and Section 17.112.130;

WHEREAS, Plaintiffs dispute that Pacaso homes constitute timeshare projects or operate as timeshare use, or that Pacaso homes otherwise fall within the scope of Section 17.22.260, Chapter 17.138 and/or Section 17.112.130, and maintain that Pacaso homeowners co-own their homes in a manner that has no resemblance to commercial, quasi-commercial, or transient uses;

WHEREAS, the Parties desire to resolve all claims that are asserted or could have been asserted in the Action relating to the allegations made against Defendants;

WHEREAS, the Parties and their respective counsel have participated in extensive negotiations regarding a potential settlement of the Action, including in a court-ordered mediation before the Honorable William Cahill (Ret.);

WHEREAS, the Parties have reached an agreement to settle the Action on the terms and conditions embodied in this Settlement Agreement;

WHEREAS, this Settlement Agreement resolves the Action in its entirety and forecloses future litigation related to the allegations at issue in the FAC, without any admission of liability or wrongdoing of any kind whatsoever, and the Parties intend this Settlement Agreement to bind the Parties.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings contained herein, it is stipulated and agreed, by and among the Parties, as follows:

1. Definitions

As used in this Settlement Agreement, and in addition to the definitions set forth in the preamble and recitals above, capitalized terms shall have the following definitions and meanings or such definitions and meanings as are accorded to them elsewhere in this Settlement Agreement.

1.1 “Court” shall mean the United States District Court for the Northern District of California.

1.2 “Day” or “Days” shall refer to calendar days. If a deadline counted by calendar days falls on a Saturday, Sunday, or holiday, the respective deadline will fall on the next business day.

1.3 “Effective Date” shall mean the first Day after which all signatories have signed this Settlement Agreement.

1.4 “Existing Pacaso Homes” shall mean the following single-family homes: (i) 1242 Madrona Avenue, St. Helena, California 94574; (ii) 1629 Hillview Place, St. Helena, California 94574; (iii) 1005 Valley View, St. Helena, California 94574; and (iv) 1509 Riesling Way, St. Helena, California 94574.

1.5 “Released Claims” shall mean any and all claims, complaints, demands, damages, debts, liabilities, actions, proceedings, remedies, causes of actions, or suits (collectively, “Claims”), known or unknown, of whatever kind or nature, including but not limited to whether in law or in equity, under contract, tort or any other subject area, or under any statute, rule, regulation, order, or law, asserted or not asserted, arising out of or related to the allegations in the Action, including but not limited to the claims arising out of or related to the allegations in the Action that have been asserted or could have been asserted in the Action.

1.6 “Released Defendants” shall mean (a) the City and its predecessors and successors, including any lawfully appointed representative of the City, including, but not limited to, any past, present or future members of City Council, any past, present or future Mayor of the City, any past, present or future Planning and Building Director, and any past, present or future City Attorney; (b) Maya DeRosa; (c) Paul Dohring; and (d) Ethan Walsh.

1.7 “Released Plaintiffs” shall mean (a) each Plaintiff; (b) the past, present, and future, direct and indirect, parents, subsidiaries, and affiliates of any Plaintiff; and (c) the past, present, and future principals, trustees, partners, privies, licensors, licensees, associates, employers, consultants, independent contractors, members, accountants, underwriters, lenders, auditors, officers, managing directors, directors, employees, agents, attorneys, shareholders, financial and other advisors, affiliates, insurance carriers, predecessors, successors, assigns, successors in interest, representatives, heirs, executors, estates, and administrators of any Plaintiff.

1.8 “Releasing Defendants” shall refer jointly and severally, individually and collectively to (a) the City and its predecessors and successors, including any lawfully appointed representative of the City, including, but not limited to, any past, present or future members of City Council, any past, present or future Mayor of the City, any past, present or future Planning and Building Director, and any past, present or future City Attorney; (b) Maya DeRosa; (c) Paul Dohring; and (d) Ethan Walsh.

1.9 “Releasing Plaintiffs” shall refer jointly and severally, individually and collectively to (a) each Plaintiff; (b) the past, present, and future, direct and indirect, parents, subsidiaries, and affiliates of any Plaintiff; and (c) the past, present, and future principals, trustees, partners, privies, licensors, licensees, associates, employers, consultants, independent contractors,

members, accountants, underwriters, lenders, auditors, officers, managing directors, directors, employees, agents, attorneys, shareholders, financial and other advisors, affiliates, insurance carriers, predecessors, successors, assigns, successors in interest, representatives, heirs, executors, estates, and administrators of any Plaintiff.

1.10 “Releasing Parties” shall mean the Releasing Defendants and the Releasing Plaintiffs.

2. Settlement Consideration

In consideration for the complete and final settlement of the Action, the releases, and other promises and covenants set forth in this Settlement Agreement, and subject to the other terms and conditions herein, the Parties agree as follows:

2.1 With respect to Section 17.22.260, Chapter 17.138 and Section 17.112.130, the Existing Pacaso Homes shall be deemed lawful, nonconforming uses pursuant to St. Helena Municipal Code Section 17.09.030 (“Section 17.09.030”). For the avoidance of doubt, (i) Defendants shall not undertake any enforcement action against the Existing Pacaso Homes or their past, current, or future owners pursuant to Section 17.22.260, Chapter 17.138 or Section 17.112.130, or any amendments thereto, or pursuant to any other past, present or future provision of the St. Helena Municipal Code that purports to regulate timeshare uses so long as an Existing Pacaso Home remains a nonconforming use pursuant to Section 17.09.030, and (ii) Plaintiffs and other current owners of property interests in the Existing Pacaso Homes, and their successors (including any subsequent owners of their property interest(s) in the Existing Pacaso Homes), can continue to market, use, and sell their partial interests in the Existing Pacaso Homes. For the further avoidance of doubt, (i) any sale by a Plaintiff or other current owner of a property interest in an Existing Pacaso Home, or their successors, of a partial interest in the Existing Pacaso Home that increases or decreases the number of owners of the eight partial interests in the Existing Pacaso Home shall not be considered a change or extension of use under Section 17.09.030(A) or (B), provided that the number of partial interests in each of the Existing Homes shall not exceed eight; and (ii) any permitted remodel or other modification to an Existing Pacaso Home that increases the square footage of or otherwise expands the Existing Pacaso Home shall not affect the Existing Pacaso Home’s status as a lawful, nonconforming use under Section 17.09.030, provided that the proposed remodel or other modification complies with all requirements of the St. Helena Municipal Code.

2.2 Pacaso (including any parent, subsidiary or affiliate) shall not market, use, or sell any single family home in the City that is fractionally-owned, or intended to be fractionally owned, or any interest in an entity that owns or holds title to a single family home in the City that is fractionally-owned, or intended to be fractionally owned, for as long as Section 17.22.260, as it may be renumbered or recodified from time to time, remains in effect. For the avoidance of doubt, and consistent with Section 2.1, this Section 2.2 shall not apply to the marketing, use, or sale of the Existing Pacaso Homes.

2.3 If at any time after the Effective Date there are material changes to Section 17.22.260, or to any other provision of the St. Helena Municipal Code, that allow for the marketing, use, or sale of fractionally-owned single family homes in the City or that otherwise confirm that

Pacaso may market, use, or sell fractionally-owned single family homes in the City, Section 2.2 shall be considered null and void and of no force or effect.

2.4 During the eighteen (18) months following the Effective Date, the City and Pacaso shall engage in additional discussions, which shall be initiated by Pacaso, regarding (i) the marketing, use, and sale by Pacaso of homes to be co-owned, located in the City; (ii) the allowable number of homes in the City that are marketed, used, or sold by Pacaso; (iii) possible future revenue streams for the City relating to Pacaso's marketing, use, or sale of additional homes in the City. Such discussions shall be held in accordance with all applicable requirements of law, including pursuant to the Brown Act, California Government Code section 54950 *et seq.*

2.5 If at any time after the Effective Date another entity or individual is allowed by the City to engage in activity that is prohibited by Section 17.22.260(including any amendments thereto) on terms that are more favorable than those set forth in this Settlement Agreement, this Settlement Agreement shall be amended to incorporate those more favorable terms.

2.6 This Settlement Agreement, and the obligations imposed on the Parties hereby, are limited to residences located in the City.

3. Mutual Release Of Known And Unknown Claims

3.1 **Release of Defendants by Plaintiffs.** Upon the Effective Date, the Releasing Plaintiffs shall be deemed to waive, release, and forever discharge the Released Defendants from all Released Claims. No Released Defendant will be subject to any liability or expense of any kind to any Releasing Plaintiff with respect to any Released Claim. This Settlement Agreement shall be the sole and exclusive remedy for any and all Released Claims. Each Releasing Plaintiff shall be barred from initiating, asserting, or prosecuting any Released Claims against the Released Defendants.

3.2 **Release of Plaintiffs by Defendants.** Upon the Effective Date, the Releasing Defendants shall be deemed to waive, release, and forever discharge the Released Plaintiffs from all Released Claims. No Released Plaintiff will be subject to any liability or expense of any kind to any Releasing Defendant with respect to any Released Claim. This Settlement Agreement shall be the sole and exclusive remedy for any and all Released Claims. Each Releasing Defendant shall be barred from initiating, asserting, or prosecuting any Released Claims against the Released Plaintiffs.

3.3 **Waiver Of California Civil Code Section 1542.** With respect to any and all Released Claims, the Releasing Parties stipulate and agree that, upon the Effective Date, the Releasing Parties shall expressly be deemed to have, and shall have to the fullest extent allowed by law, waived the provisions, rights, and benefits of Section 1542 of the California Civil Code and any statute or principle of common law similar to Section 1542 of the California Civil Code, which provides 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.

The Releasing Parties may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims, but the Releasing Parties, upon the Effective Date, shall be deemed to have fully, finally, and forever settled and released to the fullest extent allowed by law any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, which then exist, or heretofore have existed.

3.4 Upon the Effective Date, the Releasing Parties acknowledge that they will be deemed to have, and will have, waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to Section 1542 of the California Civil Code, except those Claims that are not releasable under the law or any claims or defenses arising from enforcement of this Settlement Agreement.

4. Dismissal With Prejudice

Upon the Effective Date, Defendants shall have the right to have the Action dismissed with prejudice and to file the Joint Stipulation of Dismissal With Prejudice, attached hereto as **Exhibit 1**.

5. Continuing Jurisdiction

The Parties agree that the Court will retain jurisdiction over the Action for purposes of enforcing and ensuring compliance with this Settlement Agreement. The Parties intend for this procedure to comply with the requirements for enforcement of settlement agreements in federal court as set forth in *Kokkonen v. Guardian Life Insurance Co. of America*, 511 U.S. 375 (1994).

6. Restrictions On Use Of This Settlement Agreement

6.1 This Settlement Agreement is for settlement purposes only and is entered into as a compromise to avoid the inherent risks and expenses posed by continued litigation of the claims in the Action. Neither the fact nor content of this Settlement Agreement, nor any action based on it, will constitute, be construed as, or be admissible in evidence as an admission of the validity of any claim or defense, of any fact alleged in the Action or in any other pending or subsequently filed action, or of any wrongdoing, fault, violation of law, or liability or non-liability, wrongdoing, fault, or violation of law or fact alleged in the Action.

6.2 Any Party may file this Settlement Agreement in any action that may be brought against it solely in order to support any defense or counterclaim, including those based on principles of res judicata, collateral estoppel, release, good-faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

6.3 This Section 6 shall survive the expiration or voiding of the Settlement Agreement.

7. Attorneys' Fees And Costs

The Parties agrees to bear their own attorneys' fees and costs associated with or having anything to do with the negotiation and execution of this Settlement Agreement, the Action, or any of the allegations underlying the Action.

8. Miscellaneous

8.1 Fair, Adequate, And Reasonable Settlement. Each of the Parties believes this settlement is fair, adequate, and reasonable, and arrived at this Settlement Agreement in arm's-length negotiations, taking into account all relevant factors, present and potential.

8.3 Voluntary Agreement. This Settlement Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of the Parties, or of any other person, firm or entity.

8.4 Binding On Successors. This Settlement Agreement shall inure to the benefit of and be binding upon each of the Parties and their respective agents, partners, joint venturers, officers, directors, trustees, attorneys, representatives, assigns, subsidiaries, parent companies, and predecessors or successors.

8.5 No Sale Of Claims. The Parties each represent and warrant that they have not sold, assigned, transferred, conveyed, subrogated, or otherwise disposed of any claim or demand covered by this Settlement Agreement.

8.6 Parties Represented By Counsel. The Parties hereby acknowledge that they have been represented in negotiations for and in the preparation of this Settlement Agreement by independent counsel of their own choosing, that they have read this Settlement Agreement and have had it fully explained to them by such counsel, and that they are fully aware of the contents of this Settlement Agreement and of its legal effect.

8.7 Construction And Interpretation. Neither the Parties nor their respective counsel shall be deemed the drafter of this Settlement Agreement for purposes of interpreting any provision hereof in any judicial or other proceeding that may arise between or among them.

8.8 Modifications And Amendments. No amendment, change, or modification of this Settlement Agreement or any part thereof shall be valid unless in writing and signed by the Parties.

8.9 Third-Party Beneficiaries. The Parties do not intend this Settlement Agreement to benefit any other third parties or persons not a party to this Settlement Agreement, except as this Settlement Agreement expressly provides.

8.10 No Representations Of Fact. In entering into and executing this Settlement Agreement, the Parties warrant that they are acting upon their respective independent judgments and upon the advice of their respective counsel, and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other person or entity, other than the warranties and representations expressly made in this Settlement Agreement.

8.11 **Governing Law.** This Settlement Agreement is entered into in accordance with the laws of the State of California and shall be governed by and interpreted in accordance with the laws of the State of California, without regard to its conflict of law principles.

8.12 **Enforcement.** Upon a breach by any Party, the aggrieved Party may institute proceedings to compel injunctive relief or specific performance by the other Party in breach of its obligations.

8.13 **Waiver.** A non-breaching Party may waive the breach of any provision of this Settlement Agreement only by executing a writing. Waiver of any breach shall not be deemed to be a waiver of any other breach of the same or any other provisions of this Settlement Agreement.

8.14 **Further Assurances.** Each of the Parties shall execute and deliver any and all additional papers, documents, and other assurances and shall do any and all acts or things reasonably necessary in connection with the performance of its or his or her obligations hereunder to carry out the express intent of the Parties.

8.15 **Incorporation Of Recitals.** The foregoing recitals are incorporated herein by reference and hereby made a part of this Settlement Agreement.

8.16 **Counterparts.** This Settlement Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. The several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies of executed copies of this Settlement Agreement may be treated as originals.

8.17 **Entire Agreement.** This Settlement Agreement, including all attached exhibits, shall constitute the entire agreement among the Parties with regard to subject matter of this Settlement Agreement and shall supersede all previous agreements and understandings between the Parties. Each of the Parties acknowledges that no other party, nor any agent, representative, or attorney of any other party, has made any promise, agreement, covenant, representation, or warranty whatsoever, express or implied, concerning the subject matter of this Settlement Agreement that is not contained in this Settlement Agreement.

8.18 **Rules Of Construction.** The headings set forth herein have been inserted solely for purposes of convenience and shall not be deemed to modify, explain, expand, or restrict any of the provisions of this Settlement Agreement in any manner whatsoever. Words in the singular number in this Settlement Agreement shall be interpreted to include the plural, and vice versa, unless the context requires otherwise. The terms “hereof,” “herein,” “hereby,” and “herewith,” and words of similar import shall, unless otherwise stated, be construed to refer to this Settlement Agreement as a whole. Section references are to the sections to this Settlement Agreement unless otherwise specified. The words “include” or “including,” when used in this Settlement Agreement, shall mean “including, without limitation.” The word “or” shall not be exclusive.

8.19 **Survival.** All representations and warranties set forth in this Settlement Agreement shall be deemed continuing and shall survive the Effective Date, or termination or expiration of this Settlement Agreement.

8.20 **Signatory Authority.** The respective signatories to this Settlement Agreement each represent and warrant that they are fully authorized to enter into this Settlement Agreement on behalf of the respective Parties.

8.21 **Severability.** If any provision of this Settlement Agreement is later declared void, the remaining provisions of the Settlement Agreement are severable and remain binding on the Parties.

IN WITNESS OF THIS SETTLEMENT AGREEMENT, the undersigned, being duly authorized, have caused this Settlement Agreement to be executed on the dates shown below.

Date: January 23, 2024

DocuSigned by:
Paul Jamison Dohring
By: _____
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Paul Jamison Dohring
In his official capacity as Mayor
For the City of St. Helena

Date: January 23, 2024


DocuSigned by:
David Willbrand
By: _____
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David Willbrand
Chief Legal Officer
For Pacaso Inc.

Date: January 23, 2024


DocuSigned by:
[Signature]
By: _____
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Joseph Maehler
Authorized Signatory
For PAC 6 CA 2021 LLC

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Date: January 23, 2024

By: 
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Joseph Maehler
Authorized Signatory
For PAC 5 CA 2021 LLC

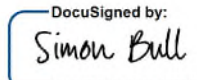
Date: January 23, 2024

By: 
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Joseph Maehler
Authorized Signatory
For PAC 2 CA 2021 LLC

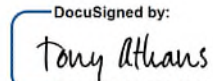
Date: January 23, 2024

By: 
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Joseph Maehler
Authorized Signatory
For NAPA 120 LLC

Date: January 23, 2024

By: 
2DRDBCE9CBFC415...
Simon Bull individually and as Trustee
For Simon Bull and the Bull Family
Trust

Date: January 23, 2024

By: 
DDA48D3DCFC94CC...
Tony Athans

Date: January 23, 2024

By: 
AE157BD4AEEF4EF...
Mary Athans

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Date: January 23, 2024

DocuSigned by:
By: Mary Athans
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Name: Mary Athans
Trustee
For Tony Athans, Mary Athans, and the
Antony John Athans Revocable Trust &
Mary Liapis Athans Revocable Trust

Date: January 23, 2024

DocuSigned by:
By: Taylor Lopez
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Taylor Lopez

Date: January 23, 2024

DocuSigned by:
By: Chelsea Lopez
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Chelsea Lopez

Date: January 23, 2024

DocuSigned by:
By: Maya DeRosa
390023AE8E144CB...
Maya DeRosa
In her official capacity as Planning &
Building Director

Date: January 23, 2024

DocuSigned by:
By: Paul Jamison Dohring
78AC81C788EB4FF...
Paul Jamison Dohring
In his official capacity as Mayor

[signatures continue on following page]

Date: January 23, 2024

DocuSigned by:
Ethan Walsh
73BE450B851A43B
By: _____
Ethan Walsh
In his official capacity as City Attorney

Approved As To Form And Content:

BEST BEST & KRIEGER LLP

Date: January 23, 2024

By: D-M

Damián M. Moos
Counsel for Defendants

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

Date: January 23, 2024

By: Lance Etcheverry

Lance A. Etcheverry
Counsel for Plaintiffs Pacaso Inc., PAC 6 CA 2021 LLC, PAC 5 CA 2021 LLC, PAC 2 CA 2021 LLC, and NAPA 120 LLC

SKAGGS FAUCETTE LLP

Date: January 23, 2024

DocuSigned by:
Jason Skaggs
77963EE858A143B
By: _____
Jason M. Skaggs
Counsel for Plaintiffs Simon Bull and the Bull Family Trust, Tony Athans, Mary Athans, and the Antony John Athans Revocable Trust & Mary Liapis Athans Revocable Trust, Taylor Lopez, and Chelsea Lopez