

# MODEL PRIVATE ATTORNEYS GENERAL ACT ("PAGA") SETTLEMENT AGREEMENT

## Sacramento County Superior Court Complex Litigation Department

The Court has provided specific direction on the information and argument the Court requires to grant a motion for approval of a PAGA settlement. The Parties shall carefully review the [Checklist for Approval of Class Action Settlements](#) and fully comply with each applicable item and Local Rule 2.99.05 to ensure a prompt ruling from the Court. The Court may update the checklist periodically, and the Parties are expected to be familiar with the most recent version. *The Court strongly encourages parties to review the Court's Complex Civil Case Department [website](#) regularly to stay abreast of the most recent complex civil case procedures.*

For the ease of the Parties and to assure compliance with the requirements of the Court's most recent checklist, the Court provides the following model PAGA settlement agreement.

Use of this model agreement is strongly encouraged but not required. The model agreement includes blanks and bracketed language to provide options and opportunities for customization. When the Parties use the model agreement, moving counsel shall provide a redline version showing any modifications to the model agreement.

The Parties should avoid merely cutting and pasting from other settlement agreements, even previous settlement agreements based on this model agreement. Typographical errors due to quick copy and pasting is more likely to cause approval delay as the Court must spend additional time comparing and verifying key terms.

Finally, the Court is aware that other Superior Courts also provide settlement model agreements. While helpful, those model agreements may not reflect the requirements and/or preferences of the Sacramento Superior Court.

## [MODEL] PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff \_\_\_\_\_ (“Plaintiff”) and defendant \_\_\_\_\_ (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

### 1. **DEFINITIONS.**

1.1 “Action” means the Plaintiff’s PAGA lawsuit alleging wage and hour violations against Defendant captioned \_\_\_\_\_ initiated on \_\_\_\_\_ and pending in Superior Court of the State of California, County of Sacramento.

1.2 “Administrator” means \_\_\_\_\_, the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3 “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.

1.4 “Aggrieved Employee” means [e.g., a person employed by Defendant in California and classified as a \_\_\_\_\_ who worked for Defendant during the PAGA Period].

1.5 “Aggrieved Employee Data” means Aggrieved Employee identifying information in XYZ’s possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number and number of PAGA Pay Periods.

1.6 “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces and direct contact by the Administrator with Aggrieved Employees.

1.7 “Court” means the Superior Court of California, County of Sacramento.

1.8 “PAGA Counsel” means \_\_\_\_\_, the attorney representing the Plaintiff in the Action.

1.9 “Defendant” means named Defendant \_\_\_\_\_.

1.10 “Defense Counsel” means \_\_\_\_\_.

1.11 “Effective Date” means the date by when both of the following have occurred:  
(a) the Court enters a Judgment on its Order Granting Final Approval of the PAGA

Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the day the Court enters Judgment.

**1.12** “Final Approval” means the Court’s order granting final approval of the PAGA Settlement.

**1.13** “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the PAGA Settlement.

**1.14** “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the PAGA Settlement.

**1.15** “Gross Settlement Amount” means \$ \_\_\_\_\_ which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 5.1.1 below. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees, PAGA Counsel Litigation Expenses, and the Administrator’s Expenses.

**1.16** “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of Aggrieved Employees’ share of the PAGA Penalties calculated according to the number of Pay Periods worked during the PAGA Period.

**1.17** “Judgment” means the judgment entered by the Court based upon the Final Approval.

**1.18** “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under PAGA.

**1.19** “LWDA PAGA Payment” means the share of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subdivision (m).

**1.20** “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.

**1.21** “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.

**1.22** “PAGA Period” means the period from \_\_\_\_\_ to \_\_\_\_\_.

**1.23** “PAGA” means the Private Attorneys General Act (Lab. Code, § 2698 *et seq.*).

**1.24** “PAGA Notice” means Plaintiff’s \_\_\_\_\_ letter to Defendant and the LWDA [and Plaintiff’s \_\_\_\_\_ letter to Defendant and the LWDA] providing notice pursuant to Labor Code section 2699.3, subdivision (a).

**1.25** “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated [25% or 35%] to the Aggrieved Employees (\_\_\_\_\_) and the [75% or 65%] to LWDA (\_\_\_\_\_) in settlement of PAGA claims.

**1.26** “PAGA Counsel Fees Payment” and “PAGA Counsel Litigation Expenses Payment” mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

**1.27** “Plaintiff” means \_\_\_\_\_, the named plaintiff in the Action.

**1.28** “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.

**1.29** “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.

**1.30** “Released PAGA Claims” means the claims being released as described in Paragraph 3.2 below.

**1.31** “Released Parties” means Defendant and each of its former and present directors, officers, shareholders, owners, [members], attorneys, insurers, predecessors, successors, assigns [subsidiaries] [affiliates].

**1.32** “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

## **2. RECITALS**

**2.1** On \_\_\_\_\_, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for \_\_\_\_\_. [The Complaint is the operative complaint in the Action (the “Operative Complaint.”)] [On \_\_\_\_\_, Plaintiff filed a [e.g., First Amended Complaint] alleging causes of action against Defendant for \_\_\_\_\_. The [e.g., First Amended] Complaint is the operative complaint in the Action (the “Operative Complaint”).] Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged.

**2.2** Pursuant to Labor Code section 2699.3, subdivision (a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.

2.3 On \_\_\_\_\_, the Parties participated in an all-day mediation presided over by \_\_\_\_\_ which led to this Agreement to settle the Action. [or describe alternative means of negotiation].

2.4 Prior to negotiating the Settlement, Plaintiff obtained, through [formal and/or informal] discovery, sufficient information including, [provide examples of the information and materials obtained]. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56.

2.5 The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement. [Alternatively, provide a summary of any other pending matters that will be affected by the Settlement.]

### 3. **RELEASES OF CLAIMS.**

Effective on the date when Defendant fully funds the entire Gross Settlement Amount, Plaintiff, Aggrieved Employees, and PAGA Counsel will release claims against all Released Parties as follows:

**3.1 Plaintiff's Release.** Plaintiff and his, her, or their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors and assigns generally, release and discharge Released Parties from all claims, transactions or occurrences [that occurred during the PAGA Period], including, but not limited to:

- (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and
- (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice ("Plaintiff's Release.")

Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the PAGA Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

**3.1.1 Plaintiff's Waiver of Rights Under Civil Code Section 1542.** For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the Civil Code, which reads:

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.

**3.2 Release by Aggrieved Employees (PAGA Release):** All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts contained in the Operative Complaint and/or the PAGA Notice [including, e.g., any and all claims involving any alleged failure to pay minimum wage; etc.].

**3.3 Release by PAGA Counsel:** PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

#### 4. MONETARY TERMS.

**4.1 Gross Settlement Amount.** Except as otherwise provided by Paragraph 5.1.1 below, Defendant promises to pay \$ \_\_\_\_\_ and no more as the Gross Settlement Amount. Defendant has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 5.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

**4.2 Payments from the Gross Settlement Amount.** The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval Order:

**4.2.1 To Plaintiff:** PAGA Representative Service Payment of not more than \$ \_\_\_\_\_ (in addition to any Individual PAGA Payment the named Plaintiff is entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiff's request for a PAGA Representative Service Payment that does not exceed this amount. As part of the motion for PAGA Counsel Fees Payment and Litigation Expenses Payment, Plaintiff will seek Court approval for any PAGA Representative Service Payments no later than [16 court] days prior to the Approval Hearing. If the Court approves a PAGA Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the PAGA Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the PAGA Representative Service Payment.

**4.2.2 To PAGA Counsel:** A PAGA Counsel Fees Payment of not more than 33.33%, which is currently estimated to be \$ \_\_\_\_\_, and a PAGA Counsel Litigation Expenses Payment of not more than \$ \_\_\_\_\_. Defendant will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or PAGA Counsel will file a motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment no later than [16 court] days prior to the Final Approval Hearing. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel

Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

**4.2.3 To the Administrator:** An Administrator Expenses Payment not to exceed \$ \_\_\_\_\_, except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$ \_\_\_\_\_, the Administrator will retain the remainder in the Net Settlement Amount.

**4.2.5 To the LWDA and Aggrieved Employees:** PAGA Penalties in the amount of \$ \_\_\_\_\_ to be paid from the Gross Settlement Amount, with [75% or 65%] (\$ \_\_\_\_\_) allocated to the LWDA PAGA Payment and [25% or 35%] (\$ \_\_\_\_\_) allocated to the Individual PAGA Payments.

**4.2.5.1** The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' share of PAGA Penalties (\$ \_\_\_\_\_) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

**4.2.5.2** If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

## **5. SETTLEMENT FUNDING AND PAYMENTS.**

**5.1 Aggrieved Employee Pay Periods.** Based on a review of its records to date, Defendant estimates there are \_\_\_\_\_ Aggrieved Employees who worked a total \_\_\_\_\_ of PAGA Pay Periods.

**5.1.1** If the total number of Pay Periods as of the end of the PAGA Period exceeds the above figure by greater than 10% (exceeds [Pay Periods estimate plus 10%]), then Defendant shall have the option to either: (1) have the Gross Settlement Amount increase pro rata based on the number of additional Pay Periods above 10% (i.e., if the number of Pay Periods is 11% greater than \_\_\_\_\_ Pay Periods, then the Gross Settlement Amount shall increase by 1%); or (2) have the end date of the PAGA Period become the date one day prior to the date on which the total number of

pay periods exceeds [Pay Periods estimate plus 10%]. Defendant must notify PAGA Counsel and the Administrator of its election within 7 days after receiving the final Aggrieved Employee Data from the Administrator.

**5.2 Aggrieved Employee Data.** Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Aggrieved Employees Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employees' privacy rights, the Administrator must maintain the Aggrieved Employees Data in confidence, use the Aggrieved Employees Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employees Data to Administrator employees who need access to the Aggrieved Employees Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employees Data omitted Aggrieved Employees identifying information and to provide corrected or updated Aggrieved Employees Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Aggrieved Employees Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employees Data.

**5.3 Funding of Gross Settlement Amount.** Defendant shall fully fund the Gross Settlement Amount to the Administrator no later than \_\_\_\_ days after the Effective Date. [Alternatively, explain any phased payment structure.]

**5.4 Payments from the Gross Settlement Amount.** Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fees Payment, and the PAGA Counsel Litigation Expenses Payment, and the PAGA Representative Service Payment. Disbursement of the PAGA Counsel Fees Payment, and the PAGA Counsel Litigation Expenses Payment and the PAGA Representative Service Payment shall not precede disbursement of Individual PAGA Payments.

**5.4.1** The Administrator will issue checks for the Individual PAGA Payments, along with a cover letter ("Cover Letter") agreed to by the Parties and approved by the Court in substantially the form attached hereto as "Exhibit A", and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database. [Alternatively and/or in addition, describe any alternative payment methods (e.g. electronic payment methods).]

**5.4.2** The Administrator must conduct an Aggrieved Employees Address Search for all other Aggrieved Employees whose checks are returned undelivered without United States Postal Service ("USPS") forwarding address. Within 7 days of receiving a returned check

the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employees Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employees whose original check was lost or misplaced, requested by the Aggrieved Employees prior to the void date.

**5.4.3** For any Aggrieved Employees whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks [to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employees thereby leaving no "unpaid residue" subject to the requirements of Code of Civil Procedure section 384, subdivision (b). OR to a Court-approved nonprofit organization or foundation consistent with Code of Civil Procedure section 384, subdivision (b) ("Cy Pres Recipient") [insert name of the Cy Pres recipient]. The Parties, PAGA Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient.]

**5.4.4** The payment of Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

## **6. MOTION FOR SETTLEMENT APPROVAL.**

The Parties agree to jointly prepare and file a motion for PAGA settlement approval ("Motion for Settlement Approval") that complies with the Court's current checklist for settlement approvals.

**6.1 Plaintiff's Responsibilities.** Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code section 2699, subdivision (f)(2)) including (i) a draft of the notice, and memorandum in support, of the Motion for Settlement Approval that includes an analysis of the Settlement; (ii) a draft proposed Order Granting Approval of PAGA Settlement; (iii) a draft proposed PAGA Cover Letter; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employees Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees [and/or the proposed Cy Pres]; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees, [and/or] the Administrator [and/or the proposed Cy Pres]; (vi) a signed declaration from PAGA Counsel firm attesting to its competency to represent the Aggrieved Employees; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Lab. Code, § 2699.3, subd. (a))), Operative Complaint (Lab. Code, § 2699, subd. (l)(1)), this Agreement (Lab. Code, § 2699, subd. (l)(2)); (vii) a redlined version of the parties' Agreement showing all modifications made to

the Model Agreement ready for filing with the Court; and (viii) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees, [and] the Administrator [and/or the Cy Pres Recipient]. In their Declarations, Plaintiff and PAGA Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

**6.2 Responsibilities of Counsel.** PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Settlement Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Settlement Approval; and for appearing in Court to advocate in favor of the Motion for Settlement Approval. PAGA Counsel is responsible for delivering the Court's Approval to the Administrator. PAGA Counsel's supporting declaration must attest to compliance with Sacramento Superior Court Local Rule 2.99.05 and review of the Court's settlement checklist.

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

## 7. SETTLEMENT ADMINISTRATION.

**7.1 Selection of Administrator.** The Parties have jointly selected \_\_\_\_\_ to serve as the PAGA Administrator and verified that, as a condition of appointment, \_\_\_\_\_ agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

**7.2 Employer Identification Number.** The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

**7.3 Qualified Settlement Fund.** The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

**7.4 Administrator Duties.** The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

## 8. CONTINUING JURISDICTION AND WAIVER OF RIGHT TO APPEAL

**8.1 Continuing Jurisdiction of the Court.** The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

**8.2 Waiver of Right to Appeal.** Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment set forth in this Settlement, the Parties and their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs, or appeals. If any third party or objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the allocation or amount of the Net PAGA Settlement Amount.

## 9. ADDITIONAL PROVISIONS.

**9.1 No Admission of Liability or Representative Manageability for Other Purposes.** This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If for any reason the Court does not approve this Settlement, Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

**9.2 Confidentiality Prior to Preliminary Approval.** Plaintiff, PAGA Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency or other entity except: (1) to the Parties' attorneys, accountants or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, PAGA Counsel, Defendant and Defense Counsel

separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that “the matter was resolved,” or words to that effect. This paragraph does not restrict PAGA Counsel’s communications with Aggrieved Employees in accordance with PAGA Counsel’s ethical obligations owed to Aggrieved Employees.

**9.3 Integrated Agreement.** Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants or inducements made to or by any Party.

**9.4 Attorney Authorization.** PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, 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 reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

**9.5 Cooperation.** The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

**9.6 No Prior Assignments.** The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right released and discharged by the Party in this Settlement.

**9.7 No Tax Advice.** Neither Plaintiff, PAGA Counsel, Defendant nor Defense Counsel are providing any 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.

**9.8 Modification of Agreement.** This Agreement, and all parts of it, may be amended, modified, changed or waived only by an express written instrument signed by all Parties or their representatives and approved by the Court.

**9.9 Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

**9.10 Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the State of California, without regard to conflict of law principles.

**9.11 Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

**9.12 Confidentiality.** To the extent permitted by law, all agreements made and orders entered during the Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

**9.13 Use and Return of Aggrieved Employee Data.** Information provided to PAGA Counsel pursuant to Evidence Code section 1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute or California Rules of Court rule. Not later than 60 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to PAGA Counsel for the return, rather than the destruction, of Aggrieved Employee Data.

**9.14 Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

**9.15 Calendar Days.** Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

**9.16 Notice.** All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

To Defendant:

**9.17 Execution in Counterparts.** This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), 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 if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

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

PLAINTIFF:

Date: \_\_\_\_\_

\_\_\_\_\_  
[Plaintiff's Name]

Defendant:

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:

[PAGA Counsel Firm]

Date: \_\_\_\_\_

\_\_\_\_\_  
[PAGA Counsel Name(s)]  
Attorney(s) for Plaintiff

[Defense Counsel Firm]

Date: \_\_\_\_\_

\_\_\_\_\_  
[Defense Counsel Name(s)]  
Attorney(s) for Defendant

**Exhibit A**

**This settlement does not release any individual, non-PAGA claims that you might have against Defendant.**

To: [Aggrieved Employee Name]  
[Street Address]  
[City, State Zip]

Re: Settlement Payment from [case name], Sacramento County Superior Court Case No. [case number]

Dear [Aggrieved Employee Name]:

Please find enclosed a check in the amount of [amount of payment] (“Individual PAGA Payment”). This check is your payment from the settlement in the lawsuit entitled [case name], Sacramento County Superior Court Case No. [case number] (“Action”).

The Action was filed on [date] by [Plaintiff] (“Plaintiff”) against [his or her] [former] employer [Defendant] (“Defendant”). Plaintiff, on behalf of the State of California, with respect to [himself or herself] and other alleged aggrieved employees, sought recovery of civil penalties pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”). Defendant denies all of Plaintiff’s allegations and denies any wrongdoing of any kind associated with Plaintiff’s allegations. The Court did not determine whether any violations did or did not occur. Rather, a settlement was reached between Plaintiff and Defendant to resolve Plaintiff’s claims without spending further time, money, and energy on lengthy litigation.

On [approval date], the settlement was approved by the Court. You are receiving a portion of the settlement because you have been identified as a current or former hourly-paid and/or non-exempt employee who worked for Defendant in the State of California during the [PAGA period] (the “PAGA Period”). Your Individual PAGA Payment is based on the total number of pay periods that you worked for Defendant in California during the PAGA Period. It is considered to be 100% penalties, which will be reported on an IRS Form 1099 (if applicable). You are responsible for paying any and all taxes that may be due as a result of any payment issued to you under the settlement and should consult a tax advisor regarding the tax consequences of such payment.

Under the settlement, as of [the Effective Date and date Defendant fully funds the Gross Settlement Amount], the Released Parties were released from the Released PAGA Claims. “Released Parties” means Defendant and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates. “Released PAGA Claims” means “All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts contained in the Operative Complaint and/or the PAGA

Notice [including, e.g., (a) any and all claims involving any alleged failure to pay minimum wage; etc.]”

The enclosed check is valid for 180 calendar days from the original date of issuance and mailing, and if it is not cashed, deposited, or otherwise negotiated within the 180-day timeframe, it will be canceled, and the funds will be transmitted to [the Unclaimed Property Fund OR Cy Pres Beneficiary].

Do not call or write the Court, Office of the Clerk of the Court, Defendant, or Defendant’s counsel to ask questions about the settlement or to ask tax-related questions. If you have any such questions, you may contact [Administrator] at [toll-free phone number].