

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Eric K. Yaeckel (274608) Sullivan & Yaeckel Law Group, APC 2330 3rd Ave. San Diego, CA 92101 TELEPHONE NO.: 619-702-6760 FAX NO. (Optional): 619-702-6761 E-MAIL ADDRESS (Optional): yaeckel@sullivanlawgroupapc.com ATTORNEY FOR (Name): Plaintiff Simone N. Rogers	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 11/10/2021 at 11:42:00 AM Clerk of the Superior Court By E- Filing, Deputy Clerk					
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego 92101 BRANCH NAME: Central - Hall of Justice						
PLAINTIFF/PETITIONER: Simone N. Rogers DEFENDANT/RESPONDENT: Conam Management Corp.						
<table border="0"> <tr> <td colspan="2" style="text-align: center;">NOTICE OF ENTRY OF JUDGMENT OR ORDER</td> <td rowspan="3" style="vertical-align: top;"> CASE NUMBER: 37-2020-00013563-CU-OE-CTL </td> </tr> <tr> <td style="vertical-align: top;"> (Check one): ☒ UNLIMITED CASE (Amount demanded exceeded \$25,000) </td> <td style="vertical-align: top;"> ☐ LIMITED CASE (Amount demanded was \$25,000 or less) </td> </tr> </table>		NOTICE OF ENTRY OF JUDGMENT OR ORDER		CASE NUMBER: 37-2020-00013563-CU-OE-CTL	(Check one): ☒ UNLIMITED CASE (Amount demanded exceeded \$25,000)	☐ LIMITED CASE (Amount demanded was \$25,000 or less)
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(Check one): ☒ UNLIMITED CASE (Amount demanded exceeded \$25,000)	☐ LIMITED CASE (Amount demanded was \$25,000 or less)					

TO ALL PARTIES :

1. A judgment, decree, or order was entered in this action on (date): November 9, 2021
2. A copy of the judgment, decree, or order is attached to this notice.

Date: November 10, 2021

Eric K. Yaeckel

(TYPE OR PRINT NAME) ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY

 (SIGNATURE)

PLAINTIFF/PETITIONER: Simone N. Rogers
 DEFENDANT/RESPONDENT: Conam Management Corp.

CASE NUMBER:
 37-2020-00013563-CU-OE-CTL

**PROOF OF SERVICE BY FIRST-CLASS MAIL
 NOTICE OF ENTRY OF JUDGMENT OR ORDER**

(NOTE: You cannot serve the Notice of Entry of Judgment or Order if you are a party in the action. The person who served the notice must complete this proof of service.)

1. I am at least 18 years old and **not a party to this action**. I am a resident of or employed in the county where the mailing took place, and my residence or business address is *(specify)*:
 2330 3rd Ave.
 San Diego, CA 92101

2. I served a copy of the *Notice of Entry of Judgment or Order* by enclosing it in a sealed envelope with postage fully prepaid and *(check one)*:

- a. ☐ deposited the sealed envelope with the United States Postal Service.
 b. ☒ placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The *Notice of Entry of Judgment or Order* was mailed:

- a. on *(date)*: November 10, 2021
 b. from *(city and state)*: San Diego, CA 92101

4. The envelope was addressed and mailed as follows:

- | | |
|--|--|
| <p>a. Name of person served:
 Adam KohSweeney
 Street address: Two Embarcadero Center, 28th Floor
 City: San Francisco
 State and zip code: CA 94111</p> | <p>c. Name of person served:
 Majed Dakak
 Street address: 1230 Rosecrans Ave., Suite 400
 City: Manhattan Beach
 State and zip code: CA 90266</p> |
| <p>b. Name of person served:
 Dennis Hyun
 Street address: 515 S. Figueroa St., Suite 1250
 City: Los Angeles
 State and zip code: CA 90071</p> | <p>d. Name of person served:

 Street address:
 City:
 State and zip code:</p> |

☐ Names and addresses of additional persons served are attached. *(You may use form POS-030(P).)*

5. Number of pages attached: _____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: November 10, 2021

Christian Y. Struckmeyer

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)

FILED
Clerk of the Superior Court

NOV - 9 2021

By: R. Cersosimo, Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

SIMONE N. ROGERS, in a Representative
capacity only, and on behalf of other
members of the general public similarly
situated,

Plaintiff

v.

CONAM MANAGEMENT CORP., a
California Limited Liability Company; and
DOES 1-10, inclusive

Defendant

CASE NO. 37-2020-00013563-CU-OE-CTL

(Representative Action only)

**~~PROPOSED~~ ORDER APPROVING PAGA
SETTLEMENT & ENTRY OF JUDGMENT**

Date: October 20, 2021

Time: 10:30 a.m.

Judge: Hon. Richard S. Whitney

Dept.: C-68

1 TO ALL PARTIES HEREIN AND THEIR ATTORNEYS OF RECORD:

2 WHEREAS, this is an Action pending before this Court as an alleged representative action
3 under the Private Attorneys General Act of 2004 ("PAGA"); and

4 WHEREAS, the Court has read and considered Plaintiff's Motion Seeking Approval of PAGA,
5 including all moving papers, all opposition and objection papers, the supplemental Briefing, and oral
6 arguments.

7 The Court is prepared to grant the Settlement in accordance with the Parties' Joint Stipulation
8 of Settlement and Release under the California Labor Code Private Attorneys General Act, California
9 Labor Code § 2698 *et seq.* ("Settlement Agreement"), a copy of which is attached hereto as **Exhibit**
10 **1**. The Court understands that the Settlement Agreement sets forth the terms and conditions for a
11 proposed settlement and dismissal of the Action with prejudice. Based on a review of the submissions
12 by the Parties and good cause appearing therefor,

13 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

- 14 1) All terms used in the Settlement Agreement shall have the same meaning as defined
15 therein.
- 16 2) The terms of the settlement are fair, adequate, and reasonable, and therefore, are
17 approved by the Court.
- 18 3) Compensation to the Labor Workforce Development Agency ("LWDA") and the
19 Aggrieved Employees shall be effected pursuant to the terms of the Settlement
20 Agreement.
- 21 4) The Court hereby approves of the payment of Attorneys' Fees and Costs to Plaintiff's
22 Counsel to be effected pursuant to the terms of the Settlement Agreement.
- 23 5) The Court hereby approves of the payment to the Settlement Administrator, CAC
24 Services Group, LLC, for its performance of its settlement administration services to
25 be effected pursuant to the terms of the Settlement Agreement.
- 26 6) Upon entry of this Order, all claims in the Action shall be and are hereby dismissed
27 with prejudice. Moreover, the LWDA and each and every Aggrieved Employee,
28

1 including Plaintiff, shall be deemed and hereby are deemed to have conclusively
2 released and forever discharged the Defendant from the PAGA Released Claims, as
3 defined in the Settlement Agreement, and are hereby permanently barred and enjoined
4 from the institution or prosecution of any and all Released Claims against the
5 Defendant.

6 7) Neither the settlement, nor any terms set forth in the Settlement Agreement, are an
7 admission of liability or any wrongdoing by the Settling Defendant, nor is the Court's
8 Order a finding of the validity of any claims in the Action or of any wrongdoing by the
9 Settling Defendant.

10 8) This Order is intended to be a final disposition of the Action in its entirety.

11 9) The Court will retain jurisdiction over the Parties to enforce the settlement until
12 performance in full of the terms of the settlement pursuant to Code of Civil Procedure
13 section 664.6.

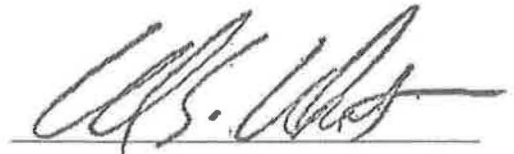
14 **JUDGMENT**

15 10) The Court hereby enters final judgment in this Action in accordance with terms of the
16 Settlement Agreement and the Order Granting Plaintiff's Ex Parte Application Seeking
17 Approval of PAGA Settlement ("Final Order"). All terms used herein shall have the
18 same meaning as defined in the Settlement Agreement.

19 11) Upon the Settlement Effective Date, as defined in the Settlement Agreement, Plaintiff
20 and all Aggrieved Employees, shall have by operation of the Final Order and this
21 Judgment, fully, finally and forever release, relinquished, and discharged the Defendant
22 from the Released Claims as those terms are respectively defined in the Settlement
23 Agreement, and are hereby forever barred and enjoined from prosecuting such Released
24 Claims against the Defendant.

25 **IT IS SO ORDERED.**

26 Dated: **NOV - 9 2021**



HONORABLE RICHARD S. WHITNEY
JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

1 Adam P. KohSweeney (S.B. #229983)
2 Kristin M. MacDonnell (S.B. #307124)
3 O'MELVENY & MYERS LLP
4 Two Embarcadero Center 28th Floor
5 San Francisco, CA 94111
6 Telephone: 415-984-8700
7 Facsimile: 415-984-8701

8 Eric K. Yaeckel (S.B. #274608)
9 SULLIVAN & YAECKEL LAW GROUP, APC
10 2330 3rd Ave.
11 San Diego, CA 92101
12 Phone: 619-702-6760
13 Fax: 619-702-6761

14
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF SAN DIEGO**
17

18 SIMONE N. ROGERS, in a representative
19 capacity only, and on behalf of other members
20 of the general public similarly situated,

21 Plaintiff,

22 v.

23 CONAM MANAGEMENT CORP., a
24 California corporation; and DOES 1 through
25 10, inclusive,

26 Defendant.
27
28

Case No. 37-2020-00013563-CU-OE-CTL

**JOINT STIPULATION OF
SETTLEMENT AND RELEASE
UNDER THE CALIFORNIA LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT, CALIFORNIA
LABOR CODE § 2698 *ET SEQ.***

**I.
PREAMBLE**

1. This Joint Stipulation of Settlement and Release (“Agreement” or “Settlement”) under the California Labor Private Attorneys General Act, California Labor Code § 2698 *et seq.* (“PAGA”) is entered into between Plaintiff Simone N. Roger (“Rogers” or the “Named Plaintiff”), individually and as representative on behalf of certain additional aggrieved employees as further defined in Paragraph 10 of this Agreement (collectively, with the Named Plaintiff, the “Aggrieved Employees”), and defendant ConAm Management Corp. (“ConAm”). The Aggrieved Employees and ConAm will sometimes be referred to collectively herein as the “Settling Parties.”

2. On or around January 6, 2020, Rogers, a former employee of ConAm, submitted a Notice Under Labor Code § 2699.3 (the “PAGA Notice”) to the Labor and Workforce Development Agency (“LWDA”) alleging that ConAm violated Labor Code §§ 201, 202, 203, 226, 226.7, 510, 512, 1194, and 2802, as well as corresponding Sections of Wage Order 5 of the Industrial Welfare Commission, by, *inter alia*, failing to provide legally compliant meal periods and rest breaks, failing to pay for all hours worked, failing to properly calculate the legal and proper overtime rate(s) of pay, failing to provide legally compliant wage statements, failing to reimburse business expenses, and failing to timely pay all wages due upon separation.

3. On or around March 12, 2020, Rogers filed the instant action in The Superior Court of California for the County of San Diego, assigned Case Number 37-2020-00013563-CU-OE-CTL (“Action”). The operative complaint in the action alleges multiple causes of action under PAGA based on the alleged violations of the California Labor Code and Wage Order 5 described in her PAGA Notice. ConAm has denied all the allegations of the PAGA Notice and the Action, and maintains that it employed the Named Plaintiff and all Aggrieved Employees in full compliance with California law.

4. The Settling Parties have exchanged significant information regarding ConAm’s employment practices, as applied to Rogers and other non-exempt California onsite employees, and participated in a full-day mediation before a well-respected mediator familiar with the

1 relevant California law. Accordingly, the Settling Parties are fully able to assess the value of the
2 claims involved in this Action. This Agreement comes after approximately a year of litigation,
3 including approximately a month of settlement negotiations.

4 5. The Settling Parties have now agreed to avoid further litigation and to settle and
5 resolve all existing and potential disputes, actions, lawsuits, charges and claims that the
6 Aggrieved Employees have or may have against ConAm that are asserted in the Complaint and/or
7 PAGA Notice and any claims under PAGA that could have been asserted in the Complaint and/or
8 PAGA Notice based on the facts alleged therein, to the fullest extent permitted by law and
9 without any admission of liability or wrongdoing by either party. The Named Plaintiff and
10 Aggrieved Employees' Counsel have concluded that the Settlement reflected herein is fair,
11 reasonable, and in the best interests of the Aggrieved Employees and respectfully request that the
12 Settlement be approved by the Court.

13 6. This Agreement shall become effective upon the "Effective Date," as set forth in
14 Section VI below. The Settling Parties hereby agree to do all things and to engage in all
15 procedures reasonably necessary and appropriate to obtain Court approval of this Agreement, in
16 consideration for: (a) the payment by ConAm of the consideration described herein, subject to
17 the terms, conditions and limitations of this Agreement; and (b) the release of claims by the
18 Aggrieved Employees (including, without limitation, the Named Plaintiff), as described in
19 Paragraphs 41 and 42 of this Agreement, and entry of Judgment thereafter.

20 **II.**
21 **PAYMENTS TO THE AGGRIEVED EMPLOYEES, AGGRIEVED EMPLOYEES'**
22 **COUNSEL, NAMED PLAINTIFF, CLAIMS ADMINISTRATOR, AND LWDA**

23 7. Subject to Court approval and the provisions of this Agreement, ConAm shall pay
24 a total of five hundred fifty thousand U.S. dollars and no cents (\$550,000.00) (the "Gross
25 Settlement Value" or "GSV"), in consideration for the settlement of this Action and the related
26 release of all claims described in Paragraphs 41 and 42 that the Aggrieved Employees (including,
27 without limitation, the Named Plaintiff) may have against ConAm. The Settling Parties believe
28 that the data disclosed in furtherance of mediation contained approximately thirty-seven thousand
two hundred (37,200) pay periods associated with the Aggrieved Employees (as defined herein).

1 If it turns out that this number overstates or understates the actual number of payroll periods in
2 existence at the time of the mediation by more than ten percent, the GSV will be adjusted upward
3 or downward by a proportionate amount (i.e., for a decrease of eleven percent in pay periods,
4 Defendant shall subtract 1% from the Gross Settlement Value, for a twenty percent increase in
5 pay periods Defendant shall add an extra 10% to the Gross Settlement Value).

6 8. No portion of the GSV shall be disbursed or distributed until after the Effective
7 Date, except to the limited extent as explicitly provided in Paragraph 38.

8 9. The Gross Settlement Value is the maximum amount that ConAm shall be
9 required to pay for settlement of this Action. The GSV will cover compensation to the Aggrieved
10 Employees, additional compensation to the Named Plaintiff as the Aggrieved Employees'
11 representative, the cost of claims administration, compensation to the LWDA under California
12 Labor Code § 2699(i), and attorneys' fees and reimbursement of litigation costs and expenses to
13 Aggrieved Employees' Counsel.

14 **III.**
15 **SCOPE OF THE AGGRIEVED EMPLOYEES BOUND BY THIS SETTLEMENT**

16 10. The Settling Parties agree that the following ConAm employees shall be bound by
17 this Settlement, including the release of claims described in Paragraphs 41 through 44 of this
18 Agreement: onsite non-exempt employees who worked in California during the time period from
19 January 1, 2019, through the earlier of (i) the Date of Settlement Approval or (ii) May 3, 2021
20 ("Release Period").

21 11. All the Aggrieved Employees shall be bound by the release of claims described in
22 Paragraphs 41 and 42 of this Agreement.

23 12. The Settling Parties' settlement of this Action, and the rights of the Settling Parties
24 and the Aggrieved Employees hereunder, are contingent upon approval by the Court of this
25 Agreement. In consideration of the covenants undertaken herein by ConAm, including, without
26 limitation, ConAm's agreement to pay an amount not to exceed the Gross Settlement Value, this
27 Agreement settles any and all claims described in Paragraphs 41 and 42 of this Agreement.
28

**IV.
APPOINTMENT OF CLAIMS ADMINISTRATOR AND AGGRIEVED EMPLOYEES'
COUNSEL**

13. Subject to the Court's approval, the Settling Parties jointly propose CAC Services, LLC as the third-party company to be appointed as "Claims Administrator" for this Settlement. The Claims Administrator will be responsible for, *inter alia*, calculating the share of the Settlement to be made available to each of the Aggrieved Employees; mailing Settlement Checks and accompanying notices to the Aggrieved Employees (including the Named Plaintiff); researching and updating addresses through skip-traces and similar means; answering questions from the Aggrieved Employees, reporting on the status of the Settlement to the Settling Parties; preparing declarations regarding its due diligence in completing and facilitating the claims administration process, providing the Settling Parties with data regarding the calculation of distributions, establishing and maintaining a non-interest-bearing distribution account for purposes of distributing Settlement Checks and distribution of attorneys' fees and costs, Enhancement Awards, and the payment to the LWDA, calculating withholding amounts and other tax obligations; and performing such other tasks as required to administer this Agreement or as directed by the Settling Parties. The fees and/or expenses of the Claims Administrator shall be paid out of the GSV.

14. Subject to the Court's approval, the Settling Parties hereby stipulate to the Court's appointment of Eric Yaeckel, Sullivan & Yaeckel Law Group, APC, as counsel with respect to the Aggrieved Employees ("Aggrieved Employees' Counsel").

**V.
SETTLEMENT APPROVAL AND ADMINISTRATION**

15. The Settling Parties' Settlement of this Action, and their rights and obligations hereunder, are expressly conditioned on the Court's approval of this Settlement as to the Aggrieved Employees defined in Section III. The Court shall approve of this Settlement through the entry of an order and judgment approving this PAGA Settlement and dismissing this Action with prejudice ("Approval Order and Judgment"), in a form agreed to by the Settling Parties.

1 16. Aggrieved Employees' Counsel shall file an *ex parte* application for Approval of
2 the Settlement with the Court, ("Approval Hearing"). The date this application is approved and
3 entered shall be the "Date of Settlement Approval." In conjunction with this application,
4 Aggrieved Employees' Counsel shall submit this Agreement and supporting papers, and the
5 proposed Approval Order and Judgment. The Approval Order and Judgment shall reflect, *inter*
6 *alia*, the settlement and entry of judgment of this Action and the Court's approval of the
7 settlement pursuant to the terms of this Agreement, provide for the payment of the GSV to the
8 Claims Administrator to be distributed pursuant to this Agreement, contain the release of claims
9 of the Aggrieved Employees (including, without limitation, the Named Plaintiff) described in
10 Paragraphs 41 and 42 of this Agreement, and state that the Court's Approval Order and Judgment
11 shall bar and be res judicata with respect to any claims asserted by the Aggrieved Employees
12 (including, without limitation, the Named Plaintiff) and/or the State of California that are covered
13 by this Agreement and the release of claims herein.

14 17. Not later than fifteen (15) business days after receipt of the Court's entry of the
15 Approval Order and Judgment, and to the extent possible based on the presence of information in
16 its records, ConAm shall provide to the Claims Administrator a spreadsheet ("Spreadsheet") in
17 electronic format that contains the name, social security number, dates of employment, number of
18 pay periods worked during the Release Period, last known mailing address, and phone number of
19 each Aggrieved Employee during the Release Period.

20 18. ConAm shall meet-and-confer with the Claims Administrator regarding the format
21 of the Spreadsheet referenced in Paragraph 17 of this Agreement and cooperate to provide any
22 additional information which the Claims Administrator may request that is reasonable and
23 necessary for the purpose of distributing Settlement Payments to the Aggrieved Employees and
24 otherwise administering this Agreement.

25 19. Prior to mailing Settlement Payments to the Aggrieved Employees, the Claims
26 Administrator shall perform a search based on the National Change of Address Database for
27 information to update and correct for any known or identifiable address changes. Any mailings
28 returned to the Claims Administrator as non-deliverable on or before the Check Cashing

Deadline, as defined by Paragraph 40, shall be sent promptly via regular first-class U.S. mail to the forwarding address affixed thereto. If no forwarding address is provided, the Claims Administrator shall promptly attempt to determine the correct address using a skip-trace, or other search using the name, address and/or Social Security number of the Aggrieved Employee involved, and shall perform a single re-mailing.

20. Each Settlement Payment shall be accompanied by a "Settlement Notice" (collectively with the Settlement Payment, a "Settlement Packet"). The Settlement Notice shall contain the release and waiver of claims against ConAm contained in Paragraphs 39 and 40 of this Agreement. The Settlement Notice shall also contain an easily understood statement explaining that the Settlement Payment is in consideration of the release and waiver of all of the PAGA claims related to those alleged in this Action, as described in Paragraphs 39 and 40 of this Agreement and the Settlement Notice, and that such release shall be effective whether or not he or she deposits or cashes the check that has been mailed to him or her. The Settlement Notice shall also explain that the recipient does not have to take any action before depositing or cashing the enclosed Settlement Check, except that it must be deposited or cashed before the Check Cashing Deadline, as defined in Paragraph 40 of this Agreement.

VI. THE EFFECTIVE DATE

21. This Agreement shall become final and effective on the occurrence of all of the following events described in Paragraphs 21(a) through 21(c) (the “Effective Date”):

(a) Entry by the Court of the Approval Order and Judgment, as described in Paragraphs 15 and 16 of this Agreement, appointment of Aggrieved Employees' Counsel as described in Paragraph 14 of this Agreement, and appointment of a Claims Administrator as described in Paragraph 13 of this Agreement.

(b) Submission by Aggrieved Employees' Counsel of both this Agreement and the Approval Order and Judgment to the LWDA, as described in Paragraph 27 of this Agreement.

1 (c) The occurrence of the "Effective Date of Judgment," which shall be
2 deemed to be the last to occur of the following:

3 (i) If an appeal or other review is not sought from the Approval Order and
4 Judgment, the sixty-fifth (65th) calendar day after the Approval Order and
5 Judgment is signed and entered by the Court; or

6 (ii) If an appeal or other review is sought from the Approval Order and
7 Judgment, the next day after the Approval Order and Judgment is affirmed or the
8 appeal or other review is dismissed or denied, and the judgment is no longer
9 subject to judicial review or other challenge.

10 22. The Settling Parties shall jointly prepare the proposed Approval Order and
11 Judgment. Said proposed Approval Order and Judgment shall be lodged with the Court no later
12 than five (five) court days before the Approval Hearing.

13 **VII.**
14 **EFFECT OF NON-APPROVAL OR FAILURE OF THE EFFECTIVE DATE TO OCCUR**

15 23. If the Effective Date does not occur, this Agreement shall be void. In such event:

16 (a) Nothing in this Agreement shall be construed as a determination,
17 admission, or concession of any substantive or procedural issue in this Action, and
18 nothing in this Agreement may be offered into evidence in any hearing or trial, or in any
19 subsequent pleading or in any judicial, arbitral, or administrative proceeding;

20 (b) The Settling Parties expressly reserve their rights with respect to the
21 prosecution and defense of this Action as if this Agreement never existed. In particular,
22 ConAm does not waive, but rather expressly reserves, all rights to challenge any and all
23 claims and allegations asserted in this Action upon all procedural and substantive grounds,
24 including, without limitation, the ability to challenge representative treatment on any
25 grounds and to assert any and all potential defenses or privileges. The Settling Parties
26 agree that ConAm retains and reserves these rights, and they agree not to take a position to
27 the contrary. Specifically, the Settling Parties agree that, if this Action were to proceed,
28

1 they will not present any argument based on this Agreement, or any exhibit, attachment,
2 act performed or document executed pursuant to this Agreement; and

3 (c) The Settling Parties shall each bear half (50%) of any costs for notice or
4 claims administration incurred by the Claims Administrator through the date that the
5 Settlement is determined to be void; and

6 (d) Notwithstanding the foregoing, the Settling Parties agree that, if this
7 Agreement is not approved by the Court, the Settling Parties shall work together in good
8 faith to address any concerns identified by the Court.

9 **VIII.**
10 **ATTORNEYS' FEES, COSTS, AND EXPENSES, PAYMENT TO THE LWDA, AND**
11 **ENHANCEMENT AWARDS**

12 24. This Action alleges a claim for attorneys' fees and costs pursuant to, *inter alia*, the
13 California Labor Code. The Settling Parties agree that any and all such claims for attorneys' fees
14 and costs have been settled as a part of this Agreement.

15 25. ConAm recognizes that Aggrieved Employees' Counsel will apply to the Court for
16 an award of attorneys' fees in an amount up to, but not more than, thirty three and 1/3 percent (33
17 and 1/3%) of the GSV, as well as an award for actual costs and expenses incurred up to the date
18 of filing of said application, all of which shall be paid from the GSV. ConAm will not oppose
19 Aggrieved Employees' Counsel's application under this Paragraph 25 for said amount, and
20 Aggrieved Employees' Counsel's application under this Paragraph 25 shall be scheduled for
21 determination at the Approval Hearing. The Named Plaintiff, Aggrieved Employees' Counsel,
22 and/or the Aggrieved Employees shall not seek payment of attorneys' fees or reimbursement of
23 costs or expenses except as set forth herein.

24 26. ConAm recognizes that Aggrieved Employees' Counsel will apply to the Court for
25 an individual Enhancement Award to the Named Plaintiff, in an amount up to, but not more than
26 five thousand U.S. dollars and no cents (\$5,000.00) for Rogers, in recognition of her efforts and
27 time spent in furtherance of the Action. ConAm will not oppose Aggrieved Employees'
28 Counsel's application under this Paragraph 26 for said amount.

27. The Claims Administrator will allocate seventy-five percent (75%) of the Net Settlement Value to civil penalties under PAGA, to be paid directly to the LWDA. Pursuant to California Labor Code § 2699(l)(2), within ten (10) days of the full execution of this Agreement by the Settling Parties, Aggrieved Employees' Counsel shall submit a fully-executed copy of this Agreement to the LWDA. Pursuant to California Labor Code § 2699(l)(3), Aggrieved Employees' Counsel shall submit a copy of the Approval Order and Judgment to the LWDA within 10 days after its entry by the Court.

28. Any awards pursuant to Paragraphs 25 or 26, as well as payment to the LWDA pursuant to Paragraph 27, will be funded solely and completely from the GSV.

29. If the Court does not approve the total amount of attorneys' fees, costs, and/or Enhancement Awards requested by Aggrieved Employees' Counsel pursuant to Paragraphs 25 and 26 of this Agreement, any remaining portion of the requested amount will be added to the Net Settlement Value (as that term is defined in Paragraph 31(d) of this Agreement).

30. Any proceedings or Court decisions related to Aggrieved Employees' Counsel's application for attorneys' fees, costs and expenses, shall not terminate or cancel this Agreement, or otherwise affect the finality of the Approval Order and Judgment, or affect the settlement and releases set forth herein concerning this Action. Further, nothing in this Agreement shall prevent, waive, impair or impinge upon Aggrieved Employees' Counsel's right to appeal the Court's decision related to the application for attorneys' fees, costs and expenses, and/or the Enhancement Awards.

IX. PLAN FOR ALLOCATION AND DISTRIBUTION OF THE SETTLEMENT FUND

31. The GSV shall be allocated, in order, as follows:

(a) First, to any attorneys' fees and reasonable and necessary costs and expenses of Aggrieved Employees' Counsel, as may be awarded by the Court pursuant to Paragraph 25 of this Agreement.

(b) Second, to any Enhancement Awards, as may be awarded by the Court pursuant to Paragraph 26 of this Agreement.

1 (c) Third, to the costs and expenses incurred by, or fees imposed by, the
2 Claims Administrator in performing its duties under this Agreement.

3 (d) Fourth, to the "Net Settlement Value" or "NSV." The Net Settlement
4 Value or NSV shall be defined as the maximum possible value of the GSV less the items
5 described in Paragraphs 31(a) through 30(c) above.

6 (i) From the Net Settlement Value, the Claims Administrator will first
7 make the payment to the LWDA under PAGA pursuant to Paragraph 27 of this
8 Agreement.

9 (ii) The remainder of the Net Settlement Value shall then be made
10 available to the Aggrieved Employees listed in the Spreadsheet. The Settlement
11 Payments will be calculated on a pro rata basis based on the number of payroll
12 periods each Aggrieved Employee worked during the Release Period according to
13 the Spreadsheet, as further described in Section X below. The Claims
14 Administrator shall be responsible for the allocation and distribution of the Net
15 Settlement Value to the Aggrieved Employees.

16 32. The Claims Administrator shall make payments from the distribution account only
17 pursuant to the terms of this Agreement and only after the Effective Date.

18 33. For the purpose of calculating applicable taxes:

19 (a) One hundred percent (100%) of each Settlement Payment shall be treated
20 as penalties and allocated to ordinary income, payable on a Form 1099.

21 (b) Fifty percent (50%) of each Enhancement Award shall be treated as
22 penalties and allocated to ordinary income, payable on a Form 1099, and the remaining
23 fifty percent (50%) shall be treated as wages, payable on a W-2.

24 (c) Each Aggrieved Employee (including the Named Plaintiff) shall be
25 individually responsible for his or her share of taxes attributable to receipt of his or her
26 Settlement Payment.

X.
CALCULATION OF DISTRIBUTION TO THE AGGRIEVED EMPLOYEES

34. As soon as practicable after receiving the spreadsheet referenced in Paragraph 17, the Claims Administrator shall perform the following calculation for use in allocation and distribution of the NSV to the Aggrieved Employees:

(a) The Claims Administrator will divide the remainder of the NSV following the allocation of the payment to the LWDA pursuant to Paragraphs 27 and 31 of this Agreement by the total number of pay periods attributable to the Aggrieved Employees to arrive at the Pay Period Value.

(b) The dollar amount of the disbursement to each Aggrieved Employee ("Settlement Payment" or "Settlement Check") shall be the number which results from multiplying the number of workweeks attributable to a given Aggrieved Employee, as listed in the Spreadsheet, by the Pay Period Value.

35. The information contained in the Spreadsheet shall be based on Defendant's records and shall be presumed to be correct.

36. In the event the Court denies approval of this Settlement because of this allocation method, the Settling Parties agree that they shall resolve any such problem by revising the allocation method, and not by increasing the GSV or limiting the release in Paragraphs 41 and 42 of this Agreement.

XI.
PROCESS FOR DISTRIBUTION OF THE SETTLEMENT

37. ConAm shall pay the GSV to the Claims Administrator not later than ten (10) court days following the Date of Settlement Approval, for distribution to the Aggrieved Employees, Aggrieved Employees' Counsel's fees and costs, the Enhancement Awards, Claim Administrator's fees and/or costs, and payment to the LWDA under PAGA, as provided for herein. The Claims Administrator shall deposit the GSV in a non-interest-bearing distribution account immediately upon receipt of the fund transfer discussed in this Paragraph 37.

38. Not later than five (5) court days after the Date of Settlement Approval, but not before the Date of Settlement Approval, the Claims Administrator shall transfer the monies awarded pursuant to Paragraphs 25 and 26 to Aggrieved Employees' Counsel. Aggrieved Employees' Counsel shall hold said funds in their trust account until the Effective Date, after which they may be disbursed to Aggrieved Employees' Counsel and the Named Plaintiff (respectively). Should an appeal be filed prior to the Effective Date, Aggrieved Employees' Counsel shall transfer said funds back to the Settlement Administrator within ten (10) business days, after which the Settlement Administrator shall hold the entire Gross Settlement Amount until further jointly instructed by the parties (or the Court).

39. Not later than ten (10) court days after the Effective Date, but only after the Effective Date, the Claims Administrator shall: mail, via first-class mail, the Settlement Packets to all the Aggrieved Employees whose address is known; and transfer the monies identified in Paragraph 27 to the LWDA.

40. The Settling Parties intend for the entire NSV to be distributed to the Aggrieved Employees. After the Claims Administrator mails out the Settlement Payments, the Aggrieved Employees shall have one hundred and twenty (120) calendar days to cash the check that was mailed to them. After one hundred and twenty (120) calendar days from the date of mailing, the checks shall become null and void (the “Check Cashing Deadline”), and any monies remaining in the distribution account shall be distributed to the State of California Unclaimed Wages Fund.

XII. RELEASES

41. In exchange for the consideration, undertakings, and covenants agreed to by ConAm in this Agreement, and to the fullest extent permitted by applicable law, the Named Plaintiff, on behalf of herself, the Aggrieved Employees, and the State of California, hereby release, discharge, and covenant not to sue ConAm, and all of its respective past and present employees, directors, officers, attorneys, representatives, insurers, agents, parents, subsidiaries, affiliates, related companies, predecessors, successors, lessees, and assigns, and any entity that could be jointly liable with any of these (individually and collectively “ConAm Releasees”) from

1 and with respect to all actions, causes of action, suits, liabilities, claims, and demands whatsoever,
2 and each of them, whether known or unknown, from the beginning of the Release Period to the
3 date this Court's Approval Order and Judgment is entered, inclusive, which the Named Plaintiff,
4 the Aggrieved Employees, and the State of California have, had, or hereafter may claim to have,
5 against ConAm Releasees, or any of them, under PAGA, which are set forth in the PAGA Notice
6 and/or the Action or could have been raised in the PAGA Notice and/or the Action based upon
7 the facts set forth therein, including all PAGA claims predicated on alleged violations of Labor
8 Code §§ 201, 202, 203, 226, 226.7, 510, 512, 1194, and 2802, as well as corresponding Sections
9 of Wage Order 5 of the Industrial Welfare Commission.

10 42. **Waiver of California Civil Code Section 1542.** To the extent Civil Code section
11 1542 is applicable (and the Settling Parties agree that it should not be applicable, as Paragraph 41
12 does not contain a general release), the Named Plaintiff, on behalf of themselves, the Aggrieved
13 Employees, and the State of California, hereby waive the protections of that section, or any
14 similar provisions under state, federal, or local law. The intent of this paragraph is not to extend
15 the released claims beyond those set out in Paragraph 41, but rather to ensure that the release in
16 Paragraph 41 is effective, notwithstanding any allegation that the Named Plaintiff or the State of
17 California later discovered information that was not available to them at the time of this
18 settlement. California Civil Code Section 1542 provides as follows:

19 **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
20 **THAT THE CREDITOR OR RELEASING PARTY DOES**
21 **NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
22 **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."

23 43. Aggrieved Employees' Counsel and the Named Plaintiff represent and warrant
24 that—aside from this Action and the Complaints—it and they have not filed any complaints,
25 charges, lawsuits, or other legal actions with any court or government agency relating to any
26 claims being released in Paragraphs 41 through 42 of this Agreement. Aggrieved Employees'
27
28

1 Counsel and the Named Plaintiff further represent and warrant that it and they have not heretofore
2 assigned or transferred to any person not a party to this Agreement any released matter.

3 44. The Named Plaintiff, on behalf of herself and her respective heirs, family
4 members, executors and assigns, but not on behalf of the Aggrieved Employees, hereby fully and
5 forever releases The ConAm Releasees, from, and agree not to sue concerning, or in any manner
6 to institute, prosecute or pursue, or cause to be instituted, prosecuted, or pursued, any claim, duty,
7 charge, obligation or cause of action relating to any matters of any kind, whether presently known
8 or unknown, suspected or unsuspected, that he may possess against any of the The ConAm
9 Releasees arising from any omissions, acts or facts that have occurred up until and including the
10 date that they sign this Agreement (collectively, the "Claims"), including without limitation: (a)
11 any and all Claims that were alleged, are alleged, or could have been alleged in the Action and/or
12 the PAGA Notice; (b) any and all Claims relating to or arising from their employment
13 relationship with ConAm; (c) any and all Claims for wrongful discharge of employment;
14 termination in violation of public policy; discrimination; harassment; retaliation; breach of
15 contract, both express and implied; breach of a covenant of good faith and fair dealing, both
16 express and implied; promissory estoppel; negligent or intentional infliction of emotional distress;
17 fraud; negligent or intentional misrepresentation; (d) any and all Claims for violation of any
18 federal, state or municipal statute, regulation, ordinance, constitution or common law, including,
19 but not limited to, Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991; the
20 Americans with Disabilities Act of 1990; the Fair Credit Reporting Act; the Fair Labor Standards
21 Act; the Employee Retirement Income Security Act of 1974; the Sarbanes-Oxley Act; California
22 Fair Employment and Housing Act; the California Family Rights Act; California wage and hour
23 law; the California Unfair Competition Law; the California Labor Code; the California
24 Government Code; the California Business & Professions Code; or any other California law,
25 ordinance, or regulation and all amendments to each such statute and regulation; and (e) any and
26 all Claims for penalties, attorneys' fees, costs, and/or penalties. Notwithstanding the foregoing,
27 the Claims released pursuant to this paragraph do not include any Claim that cannot be released
28 as a matter of applicable law, any Claims arising under this Agreement or arising after the date of

1 this Agreement, or any claims under the Age Discrimination and Employment Act. Named
2 Plaintiff further agrees that the waiver of Section 1542 in Paragraph 42 applies to all Claims
3 released in this Paragraph 44.

4 **XIII.**
5 **ADDITIONAL TERMS AND CONDITIONS**

6 45. Settlement Fair and Reasonable: Aggrieved Employees' Counsel has considerable
7 experience in litigating and settling wage-and-hour representative actions of this type, and is
8 sufficiently familiar with the facts of this case and the applicable laws and regulations to make an
9 informed judgment as to the fairness of this Settlement. In light of this experience, and for
10 reasons that will be more fully explained in the Motion for Approval of the Settlement, Aggrieved
11 Employees' Counsel and the Named Plaintiff believe that the settlement terms herein are fair and
12 reasonable with regard to the interests of the Aggrieved Employees.

13 46. Settlement the Result of Arm's-Length Bargaining: The terms of the Settlement of
14 this Action resulted from more than a year and a half of litigation and more than ten months of
15 arm's-length negotiations.

16 47. Notices: Except for the Settlement Notices to Aggrieved Employees and other
17 communications specifically required by this Agreement to be made to and by the Claims
18 Administrator, all notices, requests, demands and other communications related to or in
19 connection with this Agreement shall be in writing, and shall be provided by appropriate method
20 depending on the urgency (e.g., personal delivery, facsimile, overnight delivery, or first-class
21 U.S. mail) to:

22 **TO AGGRIEVED EMPLOYEES:**

23 Eric K. Yaeckel
24 Sullivan & Yaeckel Law Group, APC
25 2330 3rd Ave.
26 San Diego, CA 92101
Phone: 619-702-6760
Fax: 619-702-6761

TO CONAM, LLC:

Adam P. KohSweeney
O'MELVENY & MYERS LLP
Two Embarcadero Center 28th Floor
San Francisco, CA 94111
Telephone: 415-984-8700
Facsimile: 415-984-8701

27 48. No Admission of Liability: Nothing herein shall constitute any admission by
28 ConAm of wrongdoing or liability or of the truth of any factual allegations in this Action.

1 Nothing herein shall constitute an admission by ConAm that this Action was properly brought as
2 a representative action other than for settlement purposes. To the contrary, ConAm has denied
3 and continues to deny each and every material factual, procedural, and/or legal allegation and
4 alleged claim asserted in this Action. To this end, the settlement of this Action, the negotiation
5 and execution of this Agreement, and all acts performed or documents executed pursuant to or in
6 furtherance of this Agreement or the Settlement are not, shall not be deemed to be, and may not
7 be used as an admission or evidence of any wrongdoing or liability on the part of ConAm, or of
8 the truth of any of the factual allegations in this Action; and are not, shall not be deemed to be,
9 and may not be used as, an admission or evidence of any fault or omission on the part of ConAm
10 in any civil, criminal or administrative proceeding in any court, administrative agency or other
11 tribunal.

12 49. Modification by Writing Only: This Agreement, and its terms and Exhibits, may
13 be modified only in a writing signed by all counsel of record for the parties, and will not become
14 effective unless and until approved by the Court or otherwise as ordered by the Court.

15 50. Representations:

16 (a) Aggrieved Employees' Counsel represents that, other than Named Plaintiff,
17 no other employees of ConAm have retained Aggrieved Employees' Counsel related to
18 claims against ConAm.

19 (b) The Named Plaintiff and the Aggrieved Employees' Counsel represent that
20 they are presently unaware of any other lawsuit or administrative proceeding which
21 alleges any of the claims asserted in this Action that is not already identified in this
22 Agreement.

23 (c) The Named Plaintiff, on behalf of themselves and the Aggrieved
24 Employees, has expressly authorized Aggrieved Employees' Counsel to take all
25 appropriate action required or permitted to be taken pursuant to this Agreement to
26 effectuate its terms.

1 (d) Each attorney executing this Agreement or any of its exhibits on behalf of
2 any party hereto hereby warrants that full authority to do so has been given by his/her
3 client(s).

4 (e) ConAm, Aggrieved Employees Counsel, and the Named Plaintiff waive
5 their right to file an appeal, writ, or any challenge whatsoever to the terms of this
6 Agreement; provided, however, that Aggrieved Employees' Counsel and the Named
7 Plaintiff may appeal the Court's determination with regard to the requests for attorneys'
8 fees and costs and the Enhancement Awards set out in Paragraphs 25 and 26. Consistent
9 with Paragraph 29, however, any such appeal will have no effect whatsoever on the other
10 terms and provisions of this Agreement, including, by way of example but not of
11 limitation, the releases set out in Paragraphs 41 through 42 of this Agreement.

12 51. Further Cooperation. The Settling Parties and their respective counsel of record
13 shall proceed diligently to prepare and execute all documents, to seek the necessary Court
14 approvals, and to do all other things reasonably necessary to conclude this Settlement.

15 52. Construction and Integration. This Agreement, including its exhibits, constitutes
16 the entire agreement and understanding between the Settling Parties, and supersedes any previous
17 agreements or understandings between the Settling Parties. No representations, warranties or
18 inducements have been made to any party concerning the subject matter of this Agreement and/or
19 exhibits other than the representations, warranties and covenants contained in such documents.
20 This Agreement and related exhibits shall be construed each as a whole, and with reference to one
21 another, according to their fair meaning and intent. Each of the Settling Parties represent that
22 its/their counsel has participated and cooperated in the drafting and preparation of this Agreement
23 and related exhibits; hence, in any construction to be made of this Agreement and/or exhibits, the
24 same shall not be construed against any party on the basis that said party was the drafter.

25 53. Governing Law: This Agreement and the exhibits hereto shall be deemed to have
26 been negotiated, executed and delivered, and to be wholly performed, in the State of California.
27 The rights and obligations of the parties under the Agreement shall be construed and enforced in
28

1 accordance with, and be governed by, the substantive and procedural laws of the State of
2 California without regard to California's choice of law principles.

3 54. Counterparts: This Agreement may be executed in one or more faxed
4 counterparts, which may be filed with the Court. All executed counterparts, and each of them,
5 shall be deemed to be one and the same instrument. Once available, a complete set of executed
6 counterparts shall be filed with the Court. Copies of the complete set of executed counterparts
7 may be used for all purposes in lieu of the originals, and shall have the same force and effect as
8 the originals.

9 55. Attorneys' Fees, Costs and Expenses: Except as otherwise specifically provided
10 for herein, each party shall bear his/her/its own attorneys' fees, costs and expenses, taxable or
11 otherwise, incurred by them in or arising out of this Action, and shall not seek reimbursement
12 thereof from any other party to this Agreement.

13 56. California Code of Civil Procedure Section 384 Does Not Apply: The Settling
14 Parties agree that, since this is not a class action, California Code of Civil Procedure § 384 does
15 not apply to this Agreement.

16 57. Calculation of Time: To resolve ambiguity, any reference to a span of "days" in
17 this Agreement should be interpreted as a reference to calendar days unless stated to the contrary.
18 To the extent that a given span of days ends on a national holiday, or weekend, the calculation
19 should be deemed as ending on the next business day, e.g., a calculation that ends on a Saturday
20 will carry forward to the following Monday.

21 58. Publicity: The Named Plaintiff and Aggrieved Employees' Counsel (including,
22 without limitation, all counsel signatory hereto) agree that they will not publicize or announce this
23 Settlement in press releases, marketing materials, or on the internet until after the Effective Date,
24 unless required by the Court. After the Effective Date, Named Plaintiff and Aggrieved
25 Employees' Counsel agree that references to this Settlement on their websites, the internet or in
26 other public communications will not identify the claims asserted (except that reference to the
27 matter as a "PAGA representative action" is not prohibited) or ConAm as the defendant, unless
28 the case is being cited and/or mentioned in a filing with any state or federal court in connection

1 with Aggrieved Employees' Counsel seeking to obtain approval from the court as appointment as
2 class counsel or counsel for aggrieved employees in a PAGA action, or in connection with a fee
3 request. Notwithstanding this Paragraph 58, the Settling Parties agree that the following may be
4 stated in response to inquiries into this dispute and such statement shall not be considered a
5 breach of this Agreement: "The matter has been resolved."

6 59. Continuing Jurisdiction: Except as otherwise specifically provided herein,
7 Department I of the Superior Court of the State of California for the County of Santa Clara shall
8 retain jurisdiction to construe, interpret and enforce this Agreement and the Settlement, to
9 supervise all notices, the administration of the Settlement and this Agreement, and the distribution
10 of the settlement funds, and to hear and adjudicate any dispute arising from or related to the
11 Settlement and/or this Agreement.

12
13 **IN WITNESS WHEREOF**, the undersigned Settling Parties and their duly-authorized
14 representatives accept and agree to the terms of this Agreement and hereby execute it voluntarily
15 and with a full understanding of its consequences.

16
17 **UNDERSTOOD AND AGREED:**

18 **ConAm Management Corporation**

19 Dated: _____, 2021

20 By: _____

21 Its: _____

22
23 **UNDERSTOOD AND AGREED:**

24  an individual

25 **Simone N. Rogers**

26 Dated: April 30, 2021

1 with Aggrieved Employees' Counsel seeking to obtain approval from the court as appointment as
2 class counsel or counsel for aggrieved employees in a PAGA action, or in connection with a fee
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10 of the settlement funds, and to hear and adjudicate any dispute arising from or related to the
11 Settlement and/or this Agreement.

12
13 **IN WITNESS WHEREOF**, the undersigned Settling Parties and their duly-authorized
14 representatives accept and agree to the terms of this Agreement and hereby execute it voluntarily
15 and with a full understanding of its consequences.

16
17 **UNDERSTOOD AND AGREED:**

18 **ConAm Management Corporation**

19 Dated: May 4, 2021

20 By: _____

21 Its: Executive Vice President and General Counsel

22
23 **UNDERSTOOD AND AGREED:**

24 _____, an individual

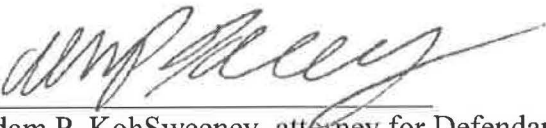
25 **Simone N. Rogers**

26 Dated: _____, 2021

1 **APPROVED AS TO CONTENT AND FORM:**

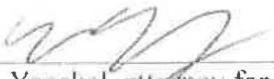
2
3 Eric K. Yaeckel, attorney for Plaintiff, the State of California, and the Aggrieved Employees

4 Dated: _____, 2021

5
6 
7 Adam P. KohSweeney, attorney for Defendant

8 Dated: May 4, 2021

1 **APPROVED AS TO CONTENT AND FORM:**

2 
3 Eric K. Yaeckel, attorney for Plaintiff, the State of California, and the Aggrieved Employees

4 Dated: 4-30-, 2021

5
6
7 Adam P. KohSweeney, attorney for Defendant

8 Dated: _____, 2021
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