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8 Attorneys for Plaintiff Carlos Araujo, on behalf of himself and all "aggrieved employees"
9 pursuant to Labor Code § 2698 *et seq.*

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES – SANTA MONICA COURTHOUSE**

12 CARLOS ARAUJO, on behalf of himself
13 and all "aggrieved employees" pursuant to
14 Labor Code § 2698 *et seq.*,

15 Plaintiffs,

16 v.

17 TJB GEARYS, LLC, a California limited
18 liability company, GEARYS BEVERLY
HILLS, an entity form unknown, and
DOES 1 through 10, inclusive,

19 Defendants.

Case No. 20SMCV00624

Assigned to the Hon. H. Jay Ford, Dept. O

UNLIMITED JURISDICTION

**SUPPLEMENTAL DECLARATION OF
DANIEL GAINES IN SUPPORT OF
STIPULATION AND [PROPOSED] ORDER
APPROVING SETTLEMENT OF PRIVATE
ATTORNEYS GENERAL ACT CLAIMS AND
DISMISSING ACTION WITH PREJUDICE**

Action Filed: April 27, 2020

Trial Date: None Set

1 I, DANIEL F. GAINES, hereby declare and state as follows:

2 1. I am an attorney duly admitted to the practice of law in the State of California. I am
3 a shareholder of Gaines & Gaines, APLC, counsel for Plaintiff Carlos Araujo in this action. I have
4 personal knowledge of the facts set forth herein and if called as a witness to testify to them, I could
5 and would do so competently.

6 2. I provide this supplemental declaration to address the questions posed by the Court
7 in connection with the parties' previously filed Stipulation and [Proposed] Order Approving the
8 Settlement of Private Attorneys General Act Claims and Dismissing Action with Prejudice (the
9 "Stipulation") in this matter. The Court's analysis of the Stipulation contained in its Minute Order
10 dated October 15, 2020 is attached hereto as **Exhibit A**.

11 3. Proof of Service of Settlement on the LWDA: My office complied with Labor Code
12 section 2699(1)(2)'s requirement of service of the proposed settlement on the Labor and Workforce
13 Development Agency ("LWDA"). It was submitted electronically via the LWDA's website on
14 September 21, 2020. A true and correct copy of the email confirming that transmission is attached
15 hereto as **Exhibit B**.

16 4. Definition of Aggrieved Employees: The Aggrieved Employees are defined in the
17 Settlement Agreement (the "Agreement") as: "all non-exempt employees of TJB Gearys, LLC
18 employed in California between February 18, 2019 and September 15, 2020." *See* Agreement,
19 Sections 1.01(a) and (g) attached hereto as **Exhibit C**.

20 5. Time Period for Aggrieved Employees Matches the Statute of Limitations: This
21 period covering the Aggrieved Employees matches the statute of limitations allowable under
22 PAGA. It commences exactly one year before the date upon which my firm gave notice of the
23 claims in this case to Defendant and the LWDA, via letter sent by online submission and by certified
24 mail to Defendant and the LWDA on February 18, 2020. The end date of the defined period for
25 Aggrieved Employees, September 15, 2020, matches the date the parties entered into the
26 Agreement, as well as the end date for the release period. **Exhibit C**, Sections 1.01(a) and (g).

1 6. All Payees are Current or Former Employees of Defendant: All of the Aggrieved
2 Employees worked at least one pay period as a nonexempt employee of TJB Gearys, LLC between
3 February 18, 2019 and September 15, 2020. **Exhibit C**, Section 1.01(a)

4 7. Settlement Amount and Payor: The total amount of the settlement is \$135,000, all
5 of which is being paid by the sole Defendant, TJB Gearys, LLC. There is no reversion.

6 8. Payment Due: The Payment is due 30 calendar days after the date the Court enters
7 the order approving the settlement of the PAGA penalties as described in the Agreement. *See*
8 Agreement, Sections 1.01(e) and 3.03(a)(2).

9 9. The amount of the settlement is fair, just and reasonable and not collusive. Plaintiff
10 investigated the claims by conducting informal discovery to ascertain the size of the aggrieved
11 employee group, the number of affected pay periods at issue among them, and the strength of their
12 alleged claims based on the information and documentation provided by Defendant. Following the
13 investigation, the parties engaged in arm's-length negotiations through mediation with well-
14 respected neutral, Eve Wagner. The arm's-length negotiations lead to a non-collusive, resolution
15 of the PAGA claims asserted in the action.

16 10. Potential Range of Recovery: Based on the information and documents obtained
17 through informal discovery and during mediation, Plaintiff assessed the maximum value of the
18 PAGA claims (without stacking) asserted to be approximately \$107,600 (at the rate of a \$100.00
19 penalty for 1,076 pay periods at issue for approximately 51 aggrieved employees during the
20 applicable time frame).

21 11. Allocation of Settlement:

22 (a) Deductions: The settlement provides that attorneys' fees and costs in the
23 amount of \$61,500 will be deducted from the gross settlement amount of \$135,000. Administration
24 costs of no more than \$3,500 will also be deducted from the gross settlement amount. **Exhibit C**,
25 Section 3.01

26 (b) General Release Payment: The settlement provides a payment of \$7,500 to
27 Plaintiff Araujo. This payment is requested to compensate him for his service in coming forward
28 to litigate this matter on behalf of the other current and former employees of Defendant, but

1 primarily in exchange for his full general release of any and all claims he may have against
2 Defendant. This release far exceeds the limited release given by the other Aggrieved Employees.

3 (c) Payment to LWDA: After the contemplated deductions, 75% of the net
4 settlement amount (\$46,875) shall be paid to the LWDA

5 (d) Allocation to Aggrieved Employees: The remaining 25% of the net
6 settlement amount (\$15,625) shall be paid to the 51 Aggrieved Employees. Payments will be made
7 on a pro rata basis based on the number of pay periods each Aggrieved Employee worked during
8 the Release Period. The Aggrieved Employees are identified based on Defendant's payroll records.

9 (e) Tax Treatment:

10 100% of the PAGA payments are considered penalties and will not be subject to
11 local, state or federal tax withholdings.

12 12. Claims Being Released: The released claims are defined as: "any and all claims
13 and/or causes of action under the California Private Attorneys General Act alleged in the Action,
14 or which could have been alleged in the Action based on the facts and claims alleged therein,
15 including but not limited to alleged violations of Labor Code §§ 201-203, 226(a), 226.3, 226.7,
16 510, 512, 1194, 2750, 2751, and 2802."

17 13. Scope of Release: The release is exactly tailored to the claims alleged and litigated
18 in this matter. The release does not release claims in any other case. No notice of related case was
19 filed because there is no related case of which the parties are aware, and therefore, no other counsel
20 needed to be advised of this settlement. The release only releases claims under PAGA by the
21 Aggrieved Employees. Therefore, the Aggrieved Employees are only releasing claims for penalties
22 under PAGA, not any claims for wages. Only Plaintiff Araujo is giving a waiver of Civil Code
23 section 1542 and based thereon, only Plaintiff is releasing any claims he may have for nonpayment
24 of wages.

25 14. Effective Date of Release: The Aggrieved Employees are only releasing their claims
26 upon the date that the Order approving payment of the PAGA penalties in the Settlement
27 Agreement is entered. Because payment to each Aggrieved Employee is automatic (i.e., no
28

1 requirement to submit a claim form), the court's approval is the only requirement for Defendant to
2 make full payment to the Aggrieved Employees.

3 15. Fees and Costs:

4 (a) Amount: The Agreement provides for Plaintiff's counsel to be paid
5 attorneys' fees in an amount up to \$54,000 and costs in the amount up to \$7,500.

6 (b) Reasonableness: The amount requested is reasonable. Although PAGA
7 settlements are not analyzed or approved on the same basis as class action settlements, the requested
8 amount of fees is reasonable under applicable California authority based on the following:

9 (i) *Contingent Nature of Case:* Plaintiff's counsel undertook this matter
10 solely on a contingent basis, with no guarantee of recovery. In doing so, counsel took the risks that
11 the claims may either be summarily adjudicated or lose at trial.

12 (ii) *Counsel's Experience and Skill:* As set forth in the Declaration of
13 Daniel F. Gaines filed on September 21, 2020 (the "Gaines Sept. Decl."), counsel has extensive
14 knowledge and experience litigating complex wage and hour and other class action litigation such
15 as this matter. *See* Gaines Sept. Decl., ¶¶ 2-5.

16 (iii) *Results Achieved:* The results are no less than outstanding here. The
17 settlement amount represents over 100% of the potential maximum recoverable discretionary
18 penalties. In fact, this litigation resulted in benefits to the Aggrieved Employees which are not part
19 of the Agreement. Prior to mediation, Defendant entered into settlement agreements with
20 approximately 46 of the 51 Aggrieved Employees, through which it obtained releases in exchange
21 for the payment of the aggregate sum of \$35,000. Plaintiff maintains that counsel is entitled to
22 attorneys' fees on the sums paid to these 46 Aggrieved Employees based on a catalyst theory of
23 recovery.

24 (iv) *Preclusion from other Employment:* As California law recognizes,
25 Plaintiff's counsel's commitment to this litigation should not be assessed in a vacuum. *See Serrano*
26 *v. Priest* (1977) 20 Cal.3d 25 at 49. A relevant factor in determining attorneys' fees is whether the
27 litigation required counsel to forego other employment. *See id.* Additional work was available that
28 counsel had to forego to devote the time necessary to pursue this litigation.

1 (c) Fees Only For Work on PAGA Action: The fees are solely for work
2 performed in this litigation.

3 (d) Administration Costs Are Reasonable: The costs to be paid to the Settlement
4 Administrator (“Administrator”) are reasonable as they represent the cost for the Administrator to
5 process the information that identifies the 51 Aggrieved Employees; prepare, process and transmit
6 settlement checks to each Aggrieved Employee; and prepare a tax return and establish a qualified
7 settlement fund.

8 16. Administration Issues:

9 (a) Administrator’s Responsibilities: Defendant will provide the Administrator
10 with a list of all Aggrieved Employees within 15 days of this Court’s approval of the settlement.
11 The list shall state the first name and last name for each Aggrieved Employee, the last known
12 address for each Aggrieved Employee (verified by Defendant’s payroll records), each Aggrieved
13 Employee’s social security number, and the number of pay periods worked by each Aggrieved
14 Employee during the Release Period. **Exhibit C**, Section 3.03(a)(1). For each mailing that is
15 returned as undeliverable, the Administrator shall promptly attempt to locate the Aggrieved
16 Employee by using an address refresher database. **Exhibit C**, Section 3.03(a)(2).

17 (b) Protection of Employee Data and Insurance: The parties will only select an
18 Administrator which has procedures in place to protect employee data and carries insurance for
19 data breach. It has been my firm’s practice to only use such companies, and I know that the handful
20 of companies which my firm agrees to use to administer settlements meet these requirements.

21 (c) Enclosures with Settlement Mailing: The mailing will include a copy of the
22 Notice of PAGA Settlement which fairly and accurately describes the settlement because it
23 explains: the claims asserted in the litigation, the details of the settlement and how the payment was
24 determined, and the claims being released. *See* Gaines Sept. Decl., Exhibit B.

25 (d) Uncashed Checks: The value of any settlement check that remains uncashed
26 after 180 days shall be transmitted to the LWDA. **Exhibit C**, Section 3.04(b).

27 17. Judgment: The Agreement and the proposed order submitted to the Court provide
28 for the parties to file a stipulation and request entry of an order approving the terms in the submitted

1 Agreement. **Exhibit C**, Sections 3.01 and 3.02. Upon entry of the Court's Order, the matter is
2 dismissed, but the Court retains jurisdiction over the parties and the Aggrieved Employees pursuant
3 to Code of Civil Procedure Section 664.6 to interpret and enforce the terms, conditions and
4 obligations of the Agreement. **Exhibit C**, Section 6.11. The order will be sent to the LWDA in
5 compliance with Labor Code section 2699(1)(2) by online submission through the LWDA's
6 website.

7 I declare, under penalty of perjury, under the laws of the State of California, that the
8 foregoing is true and correct. Executed this 29th day of October, 2020 at Calabasas, California.

9
10 ***Daniel F. Gaines***

11 _____
12 DANIEL F. GAINES
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EXHIBIT A

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

West District, Santa Monica Courthouse, Department O

20SMCV00624

October 15, 2020

**CARLOS ARAUJO, ON BEHALF OF HIMSELF AND ALL
AGGRIEVED EMPLOYEES PURSUANT TO LABOR CODE
2698 ET SEQ vs TJB GEARYS, LLC, et al.**

3:21 PM

Judge: Honorable H. Jay Ford III
Judicial Assistant: K. Neal
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Non-Appearance Case Review Re: Approval of "Stipulation and Order Approving Private Attorneys General Act Claims" Filed on September 21, 2020;

Hearing - Other Plaintiff's request for approval of the settlement of "Stipulation and Order Approving Private Attorneys General Act Claims" is scheduled for 12/01/2020 at 08:30 AM in Department O at Santa Monica Courthouse.

At least nine days prior to the hearing, counsel for plaintiff shall submit such supplemental brief and declaration(s) as is necessary to address the following questions. If any question is not applicable to the facts of this case, please explain why:

1. Is there Proof of Service on the LWDA? (For "settlement of any civil action filed pursuant to" PAGA, "the proposed settlement shall be submitted to the agency at the same time that it is submitted to the court.") Lab. Code § 2699(1)(2)).

2. How are the aggrieved employees defined?

- Does the definition exceed the statute of limitations? (Generally under Code of Civ. Pro. §340(a) one year). The PAGA tolls any statute of limitations while aggrieved parties await a response or investigation from the LWDA. Lab. Code, § 2699.3(d).

- Are all the payees persons who were employed by the alleged violator and against whom one or more of the alleged violations was committed? Labor Code §2699 (c).

3. What is the total amount of the settlement?

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

West District, Santa Monica Courthouse, Department O

20SMCV00624

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AGGRIEVED EMPLOYEES PURSUANT TO LABOR CODE
2698 ET SEQ vs TJB GEARYS, LLC, et al.**

3:21 PM

Judge: Honorable H. Jay Ford III

CSR: None

Judicial Assistant: K. Neal

ERM: None

Courtroom Assistant: None

Deputy Sheriff: None

-
- If there is more than one defendant, who is paying how much?
 - When is payment due?
 - Is the amount fair, just and reasonable based on the claims alleged and facts developed?
 - What investigation was done?
 - What is the evidence that the settlement is not collusive and was reached in arms- length negotiations?
 - What is the range of potential recovery?

4. How will the settlement be allocated?

- What costs and fees will be deducted from the gross settlement amount? Do they include administration costs?
- Does the settlement propose an "incentive payment" or "service award" to the Plaintiff? If so, what explanation is provided as to why this should be from the PAGA payment, as opposed to a separate payment to Plaintiff for a release of any individual wage and hour claims that may brought?
- How much of the net will go to the LWDA (75%)?
- How will the balance (25%) be allocated among the aggrieved employees? How are the aggrieved employees to be identified?
- What is the tax treatment of the amounts disbursed to the aggrieved employees?

5. What claims are being released?

- Are the claims being released greater than what was alleged in the letter plaintiffs sent to the

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

West District, Santa Monica Courthouse, Department O

20SMCV00624

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2698 ET SEQ vs TJB GEARYS, LLC, et al.**

October 15, 2020

3:21 PM

Judge: Honorable H. Jay Ford III

Judicial Assistant: K. Neal

Courtroom Assistant: None

CSR: None

ERM: None

Deputy Sheriff: None

LWDA?

- Does the Release purport to release claims in other cases?
- Was a Notice of Related Case filed and ruled on?
- Have all counsel in all cases been advised? (Be mindful of the possibility of a "reverse auction," where there are multiple pending cases and defendant negotiates with counsel with the weakest case and seeks to preclude other (and better) claims by reason of the settlement.)
- Does the Release purport to release anything other than claims for penalties set forth in the letter? The Release should not purport to release any claim for wages and should expressly so state since some things denominated "penalties" in the Labor Code are actually "wages." No Civil Code §1542 waiver should be included.
- When will the release be effective? Be wary of effective dates that precede the payment date.

6. Fees and Costs

- What amount will go to the attorneys as fees and costs?
- Are the amounts reasonable?
- Do the fees include work for anything other than litigating the PAGA claim? If so, why is this reasonable?
- Are the administration costs reasonable?

7. Administration Issues

- How will the settlement be administered?
- If checks are mailed how will addresses be verified?

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

West District, Santa Monica Courthouse, Department O

20SMCV00624

October 15, 2020

**CARLOS ARAUJO, ON BEHALF OF HIMSELF AND ALL
AGGRIEVED EMPLOYEES PURSUANT TO LABOR CODE
2698 ET SEQ vs TJB GEARYS, LLC, et al.**

3:21 PM

Judge: Honorable H. Jay Ford III

CSR: None

Judicial Assistant: K. Neal

ERM: None

Courtroom Assistant: None

Deputy Sheriff: None

- Does the administrator have procedures in place to protect employee data and insurance for any data breach?

- Is there a letter that will go to aggrieved employees explaining the payment? If so, does it accurately and fairly described the settlement?

- How long before checks are stale?

- What happens to unclaimed funds?

8. Judgment

- Will there be a judgment of dismissal?

- Is there a provision that the Court will retain jurisdiction to enforce the settlement? (Code of Civ. Pro. §664.6)

- How will the judgment be sent to the LWDA? (Labor Code §2699(l)(3))

The clerk is to give notice to Attorney Alex Katofsky. Thereafter, Mr. Katofsky is to give notice to all required parties.

Certificate of Mailing is attached.

EXHIBIT B

From: FormAssembly <no-reply@formassembly.com> On Behalf Of DIR PAGA Unit
Sent: Monday, September 21, 2020 3:08 PM
To: sepideh@gaineslawfirm.com
Subject: Thank you for your Proposed Settlement Submission

09/21/2020 03:07:29 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case,
please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: [http://labor.ca.gov/Private Attorneys General Act.htm](http://labor.ca.gov/Private_Attorneys_General_Act.htm)

EXHIBIT C

PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 ET SEQ.)
SETTLEMENT AGREEMENT

Carlos Araujo v. TJB GEARYS, LLC

(Los Angeles County Superior Court, Case Number 20SMCV00624)

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned Parties, subject to the approval of the Court, that the settlement of this action shall be effectuated upon and subject to the following terms and conditions. Capitalized terms used herein shall have the meanings set forth in Article I or elsewhere in this Private Attorneys General Act (Labor Code § 2698 *et seq.*) Settlement Agreement (“Agreement”).

This Agreement is made by and between Defendant TJB Gearys, LLC (“Defendant”), Plaintiff Carlos Araujo (“Plaintiff”), for himself and on behalf of the State of California, and the law firms defined below as “Plaintiff’s Counsel” and “Defense Counsel.” (Defendant, Plaintiff and Aggrieved Employees, as defined herein, are sometimes collectively referred to as the “Parties.”) This Agreement shall be effective upon the last date upon which it is signed by the Parties.

The Parties agree that the Litigation shall be, and hereby is, ended, settled, resolved, and concluded by agreement of Defendant to pay the total sum of One Hundred Thirty-Five Thousand U.S. Dollars (\$135,000) (hereinafter referred to as the “Settlement Sum”) for settlement of the Private Attorneys General Act (“PAGA”) penalties, which shall be inclusive of Plaintiff’s Counsel attorneys’ fees and costs and the settlement administrator’s fees and costs.

Article I.

Definitions.

Section 1.01 **Definitions.**

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

- (a) “Aggrieved Employees” means all non-exempt employees of TJB Gearys, LLC employed in California between February 18, 2019 and September 15, 2020. Defendant represents and warrants that there are no more than 51 Aggrieved Employees.
- (b) “Complaint” means the operative Complaint filed by Plaintiff on April 27, 2020 in Los Angeles County Superior Court, Case No. 20SMCV00624. This action is referred to as the “Litigation.”
- (c) “Court” means the Superior Court for the State of California, County of Los Angeles.
- (d) “Defense Counsel” or “Counsel for Defendant” is:

Michelle La Mar, Esq.
LOEB & LOEB, LLP
10100 Santa Monica Blvd., Suite 2200
Los Angeles, CA 90067

(e) "Effective Date" means the date the Court enters the order approving the settlement of the
PAGA penalties as described in this Agreement.

(f) "Plaintiff's Counsel" is:

Alex P. Katofsky, Esq.
Daniel F. Gaines, Esq.
GAINES & GAINES, APLC
27200 Agoura Road, Suite 101
Calabasas, CA 91301

(g) "Release Period" means the time period February 18, 2019 and September 15, 2020.

(h) "Released Claims" means any and all claims and/or causes of action under the California
Private Attorneys General Act alleged in the Action, or which could have been alleged in
the Action based on the facts and claims alleged therein, including but not limited to alleged
violations of Labor Code §§ 201-203, 226(a), 226.3, 226.7, 510, 512, 1194, 2750, 2751,
and 2802.

(i) "Released Parties" means Defendant and its former and present parents, subsidiaries and
affiliated corporations and their officers, directors, employees, managers, partners,
shareholders, agents, insurers, and any other successors, assigns, or legal representatives.

Article II.

Background.

Section 2.01 Background.

- (a) On April 27, 2020, Carlos Araujo filed a Complaint in the Superior Court of the State of
California for the County of Los Angeles, entitled *Carlos Araujo, et al. v. TJB Gearys,
LLC. et al.*, case number 20SMCV00624. The Litigation was brought by Carlos Araujo,
on behalf of the State of California and other aggrieved employees, as a PAGA action based
on violations of Labor Code §§ 201-203, 226(a), 226.3, 226.7, 510, 512, 1194, 2750, 2751,
and 2802.
- (b) Defendant subsequently entered into settlement agreements with approximately 46 of the
51 Aggrieved Employees, through which it obtained releases in exchange for the payment
of the aggregate sum of \$35,000. Defendant contends that these Aggrieved Employees
released all claims asserted in the Litigation; Plaintiff maintains otherwise and also argues

that he is entitled to recover attorneys' fees on the sums paid to these 46 Aggrieved Employees based on a catalyst theory of recovery.

- (c) Through this Litigation, the Parties have engaged in discovery and fully shared the information necessary for all sides to conduct a legitimate investigation into the allegations of the Litigation and potential defenses thereto. The Parties have reached this Settlement only after discovery and investigation was performed.
- (d) This settlement contemplates the (a) entry of an order by the Court approving the payment allocated for settlement of the PAGA penalties; (b) dismissal of the Litigation with prejudice; and (c) all parties bearing their respective fees and costs except as expressly provided in this Agreement.

Article III.

Approval and Implementation of Settlement.

Section 3.01 Cooperation.

The Parties will cooperate in obtaining through an unopposed motion an Order from the Court approving the payment of PAGA penalties as described in this Agreement at the earliest possible date. Plaintiff's Counsel shall request and be paid up to \$54,000.00 for attorneys' fees and up to \$7,500 for reimbursement of litigation costs from the Settlement Sum, and Defendant will not oppose these requests. Plaintiff Araujo shall request and be paid up to \$7,500 as a general release payment from the Settlement Sum, and Defendant will not oppose this request. The Parties agree to use their best efforts to expedite the preparation and submission of the settlement documents. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to the approval and implementation of the payment of PAGA penalties as described in this Agreement.

Section 3.02 Court Approval.

The Parties will seek to obtain the Court's approval of the payment of PAGA penalties as described in this Agreement by way of a joint stipulation (or by unopposed motion, if required by the Court), to be filed by Plaintiff's counsel as soon as practicable. Plaintiff's Counsel and Defense Counsel will jointly lodge this Agreement with the Court for its approval. The Court's approval of the payment of PAGA penalties as described in this Agreement shall be embodied in a written Order. Should the Court not grant approval of the payment of PAGA penalties as described in this Agreement, then the entirety of this Agreement shall be null and void.

Section 3.03 Notice to Aggrieved Employees.

(a) Notice.

Notice shall be provided to the Aggrieved Employees in the following manner:

- (1) No later than fifteen (15) calendar days after the Effective Date, Defendant shall provide the settlement administrator with a list of all Aggrieved Employees ("Aggrieved Employees List"). The Aggrieved Employees List shall state the first name and last name for each Aggrieved Employee, the last known address for each Aggrieved Employee, each Aggrieved Employee's social security number, and the number of pay periods worked by each Aggrieved Employee during the Release Period.
- (2) No later than thirty (30) calendar days after the Effective Date, the settlement administrator shall mail the Notice of PAGA Settlement (attached hereto as Exhibit "A") to all Aggrieved Employees, together with their settlement checks by first-class United States mail, postage prepaid, to the last known address of each recipient with directions to the Postmaster to forward the Notice of PAGA Settlement and return all undeliverable Notices to the settlement administrator. For each Notice of PAGA Settlement that is returned as undeliverable, the settlement administrator shall promptly attempt to locate the Aggrieved Employee by using an address refresher database. Concurrently, the settlement administrator shall mail the required payment to the LWDA.
- (3) All costs incurred by the settlement administrator in connection with the current settlement, including mailing of the Notice of PAGA Settlement described herein, whether foreseen or not, shall be paid out of the Settlement Sum. These costs shall not exceed \$3,500; to the extent they exceed this amount, they shall be paid from the Net Settlement Amount (as defined herein); to the extent they fall below this amount, they shall be added to the amount distributable to the Aggrieved Employees and the LWDA.

Section 3.04 Settlement Payment Procedures.

(a) Deposit of Settlement Sum with Settlement Administrator

No later than ten (10) calendar days after the Effective Date, Defendant shall deposit the Settlement Sum with the settlement administrator.

(b) Payment of PAGA Penalties.

The total sum available for payment of PAGA penalties shall be calculated by deducting Plaintiff's counsel's fees and costs (\$61,500), Plaintiff Araujo's general release payment (\$7,500), and the costs of administration referenced in Section 3.03(a)(3) above (no more than \$3,500) from the \$135,000 Settlement Sum (this will yield the "Net Settlement Amount," which is estimated to be approximately \$62,500).

Seventy-five percent (75%) of the Net Settlement Amount shall be paid to the LWDA; the remaining twenty-five percent (25%) of the Net Settlement Amount (the "Employee Net Settlement Amount") shall be paid to Aggrieved Employees pro rata based on the number of pay periods worked during the Release Period. **100% of the PAGA payments are considered penalties and will not be subject to local, state or federal tax withholdings.** All Aggrieved Employees who cash their settlement check may receive an IRS Form 1099 their portion of the

settlement, if deemed required by the settlement administrator (in compliance with IRS guidelines).

The settlement checks issued to Aggrieved Employees shall remain valid for one hundred eighty (180) days. Thereafter, all uncashed checks shall be transmitted to the LWDA.

(c) Attorneys' Fees and Costs and General Release Payment.

Within five (5) calendar days of receipt of the Settlement Sum by the settlement administrator from Defendant, the settlement administrator shall pay the \$61,500 allocated to attorneys' fees and costs to Plaintiff's Counsel and the \$7,500 allocated to Plaintiff Araujo's general release payment to Plaintiff Araujo.

(d) Settlement Administrator Expenses.

Within five (5) calendar days following the conclusion of the notice period, the settlement administrator shall pay itself up to the \$3,500 allocated to it for administration fees.

Article IV.

Limitations On Use Of This Settlement.

Section 4.01 No Admission.

This Agreement and compliance with this Agreement shall not be construed as an admission by Defendant of any liability whatsoever, or as admission by Defendant of any violations of Plaintiff's or the Aggrieved Employees' rights, violation of any order, law, statute, duty or contract whatsoever. Defendant specifically disclaims any liability to Plaintiff, the Aggrieved Employees, or any other allegedly aggrieved employee for any alleged violation of his/her rights, or for any alleged violation of any order, law, statute, duty or contract.

Section 4.02 Non-Evidentiary Use.

Neither this Agreement nor any of its terms shall be offered or used as evidence by any of the Parties, or their respective counsel in the Litigation or in any other action or proceeding; provided, however, this shall not prevent this Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Agreement.

Section 4.03 Nullification.

- (a) If the Court should for any reason fail to approve the payment of PAGA penalties as described in this Agreement, then (a) this Agreement shall be considered null and void, (b) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect, and (c) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court.

- (b) Invalidation of any material portion of this Agreement shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

Article V.

Release and Waiver of Claims.

Section 5.01 Release by Aggrieved Employees.

Upon entry of the Order approving payment of the PAGA penalties as described in this Agreement, Plaintiff, all Aggrieved Employees, and the State of California shall be deemed to have fully, finally, and forever released, relinquished, and discharged each and all of the Released Parties from the Released Claims that arose during the Release Period.

Section 5.02 Release by Carlos Araujo.

Upon the Effective Date and subject to Defendant's full payment of all sums required by this Settlement as well as the expiration of the revocation period set forth below, Plaintiff Carlos Araujo shall be deemed to have fully, finally, and forever released the Released Parties from any and all claims, obligations, demands, actions, rights, causes of action, and liabilities against the Released Parties, of whatever kind and nature, character, and description, whether in law or equity, whether sounding in tort, contract, federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, whether known or unknown, and whether anticipated or unanticipated, including unknown claims covered by Civil Code Section 1542, arising through the Effective Date, for any type of relief, including, without limitation, claims for wages, damages, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief. These claims include, but are not limited to, the Age Discrimination in Employment Act, the Family Medical Leave Act, the California Family Reporting Act, the Released Claims, as well as any other claims under any provision of the California Labor Code or any applicable California Industrial Welfare Commission Wage Orders, and claims under local, state, or federal discrimination statutes, including, without limitation, the California Fair Employment and Housing Act, California Government Code §§ 12940 *et seq.*; the Unruh Civil Rights Act, California Civil Code §§ 51 *et seq.*; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000 *et seq.*; the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*; the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 *et seq.*; and all of their implementing regulations and interpretive guidelines. With respect to these released claims as described in this Section, Plaintiff Araujo shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits she may otherwise have had pursuant to Section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Plaintiff understands and acknowledges that the significance and consequence of this waiver of California Civil Code Section 1542 is that even if he should eventually suffer injury arising out of or pertaining to the employment relationship or, where applicable, its termination through the Effective Date, he will be unable to make any claim for those injuries. Furthermore, Plaintiff acknowledges that he consciously intends these consequences even as to claims for injuries that may exist as of the Effective Date but which he does not know exist and which, if known, would materially affect his decision to execute this Agreement, regardless of whether their lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

Section 5.03 Older Worker Benefits Protection Act.

Pursuant to the Older Workers' Benefit Protection Act, Araujo acknowledges and agrees that: (i) he will have twenty-one (21) days from Araujo's receipt of this Agreement in which to consider the terms of Araujo's release and waiver of any and all claims under the Age Discrimination in Employment Act before executing it; (ii) any changes to the terms of this Agreement, whether material or immaterial, will not restart this twenty-one (21) day period; (iii) Araujo will have seven (7) days after his execution of this Agreement in which to revoke his or her acceptance of his release, in which event a written notice of such revocation must be received by Michelle M. La Mar, Loeb & Loeb LLP, 10100 Santa Monica Blvd., Suite 2200, Century City, CA 90067, (310) 282-2133 on or before the seventh (7th) day; and (iv) this Agreement will not become effective and enforceable until the seven (7) day revocation period has expired without revocation of the general release by Araujo.

Article VI.

Miscellaneous Provisions.

Section 6.01 Voluntariness.

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

Section 6.02 Amendments.

The terms and provisions of this Agreement may be amended only by a written agreement that is both (a) signed by the Plaintiff, Plaintiff's Counsel, Defendant and Defense Counsel who executed this Agreement and (b) approved by the Court. Any waiver of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement unless expressly so indicated otherwise.

Section 6.03 Assignment.

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Aggrieved Employee, Plaintiff's Counsel, or Defense Counsel without the express written consent of each other Party and their respective counsel hereto. The

representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement, and shall not be construed to confer any right or to avail any remedy to any other person. Plaintiff expressly warrants that he has not transferred to any person or entity any right or cause of action, or claim released by this Agreement.

Section 6.04 Governing Law.

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California.

Section 6.05 Entire Agreement.

This Agreement contains the entire understanding of the Parties hereto in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings among the Parties hereto with respect to the settlement of the Litigation.

Section 6.06 Waiver of Compliance.

Any failure of any Party, Defense Counsel, and/or Plaintiff's Counsel hereto to comply with any obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the extent permitted under applicable law, by the Party or Parties and their respective counsel hereto entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

Section 6.07 Counterparts.

This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

Section 6.08 Attorneys' Fees and Costs.

Except as expressly provided herein, Defendant and Plaintiff shall each bear their own attorney's fees and costs.

Section 6.09 Dispute(s).

Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, the Parties agree to submit any such dispute(s) to the Court. To the extent any Party seeks to enforce any of the terms of this Agreement in Court

or before the Court, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

Section 6.10 Binding.

This Agreement shall bind and inure to the benefit of the Parties hereto and to their respective successors, assigns, legatees, heirs, and personal representatives.

Section 6.11 Continuing Jurisdiction.

The Parties agree that upon the occurrence of the dismissal of this case pursuant to the terms of this Agreement, this Agreement shall be enforceable by the Court pursuant to Code of Civil Procedure Section 664.6 and the Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties and Aggrieved Employees to interpret and enforce the terms, conditions and obligation of the Agreement.

IN WITNESS WHEREOF, the Parties have executed this Private Attorneys General Act Settlement Agreement on the date set forth.

APPROVED AND ACCEPTED.

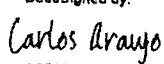
Dated: 09/18, 2020

TJB GEARYS, LLC

By


Name: Thomas J. Blumenthal
Title: CEO

September 17, 2020
Dated: _____, 2020

DocuSigned by:

By AC72510684EC4EA
Carlos Araujo

**APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONS ONLY**

Dated: September 17, 2020

GAINES & GAINES, ALPC

By *Daniel F. Gaines*
Daniel F. Gaines, Esq.
Attorneys for Plaintiff

Dated: September 18, 2020

LOEB & LOEB, LLP

By */s/ Michelle M. La Mar*
Michelle La Mar, Esq.
Attorneys for Defendant

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PROOF OF SERVICE AND CERTIFICATION

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 27200 Agoura Road, Suite 101, Calabasas, CA 91301.

On October 29, 2020, I served the foregoing document described **SUPPLEMENTAL DECLARATION OF DANIEL GAINES IN SUPPORT OF STIPULATION AND [PROPOSED] ORDER APPROVING SETTLEMENT OF PRIVATE ATTORNEYS GENERAL ACT CLAIMS AND DISMISSING ACTION WITH PREJUDICE** the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

**Michelle Marie La Mar
Terry Garnett
Loeb & Loeb
10100 Santa Monica Blvd #2200
Los Angeles, CA 90067-4164**

____ (BY ☐ U.S. MAIL/ BY ☐ CERTIFIED MAIL, RETURN RECEIPT REQUESTED) The sealed envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with United States postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more that one day after date of deposit for mailing in affidavit.

____ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or other facility regularly maintained by the express service carrier or delivered the sealed envelope to an authorized carrier or driver authorized by the express carrier to receive documents.

XX (BY ELECTRONIC SERVICE) The above-stated document was submitted for service by electronic transmission pursuant to an agreement between counsel due to COVID-19 on the counsel of record listed above.

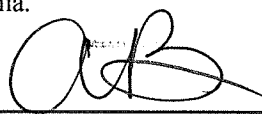
XX (ONLINE TO THE LWDA): I caused the above-described document to be delivered to the Labor Workforce Development Agency via online process at the PAGA Filing website in accordance with the procedure imposed by the LWDA.

____ (BY PERSONAL DELIVERY) By causing a true copy of the within document(s) to be personally hand-delivered to the office(s) of the addressee(s) set forth above, on the date set forth above.

I certify that the above document was printed on recycled paper.

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

Executed on October 29, 2020, at Calabasas, California.



AMELIA BOOTH