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Attorneys for Defendants Immediate Response Restoration, Inc.
and Zeyna Pournahavandi

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

CHARLES KOELEMEN, as a Private
Attorney General,

Plaintiff,

v.

IMMEDIATE RESPONSE RESTORATION,
INC., ZEYNA POURNAHAVANDI, AND
DOES 1-10, INCLUSIVE,

Defendants.

Case No. 37-2020-00022039-CU-OE-CTL

REPRESENTATIVE ACTION

**PRIVATE ATTORNEY GENERAL
ACTION**

**STIPULATION REQUESTING
APPROVAL OF PAGA SETTLEMENT;
[PROPOSED] ORDER AND
JUDGMENT**

Judge: Hon. Ronald F. Frazier
Dept.: C-65

1 Plaintiff Charles Koeleman, as a private attorney general (“Plaintiff”) and Defendants
2 Immediate Response Restoration, Inc. (“IRR”) and Zeyna Pournahavandi (collectively
3 “Defendants”) (Plaintiff and Defendants are collectively the “Parties”), by and through their
4 counsel of record, hereby stipulate as follows:

5 WHEREAS, on June 25, 2020 Plaintiff filed this Action¹ for recovery of civil penalties
6 under the California Labor Code Private Attorneys General Act of 2004, California Labor Code
7 § 2698, et seq. (“PAGA”) for Defendants’ alleged violations of California Labor Code §§ 201,
8 202, 203, 226(a), 226.8, 400-410, 510, 512, 558, 1198, 226.7, 1182 et seq., 1197, 1197.1, 1194,
9 and 2802;

10 WHEREAS, Plaintiff alleged ten causes of action for recovery of civil penalties under the
11 PAGA in the Action arising from allegations that Plaintiff and other Aggrieved Employees were
12 required to work off-the-clock, were not paid overtime wages, were not provided with legally
13 compliant meal periods and rest breaks, and were not reimbursed for business expenses they
14 incurred on IRR’s behalf. Specifically, Plaintiff alleged that Defendants violated the California
15 Labor Code by: (1) failing to reimburse for business expenses in violation of Labor Code § 2802;
16 (2) failing to provide accurate itemized wage statements in violation of Labor Code § 226(a); (3)
17 failing to pay minimum wage for all hours worked in violation of Labor Code §§ 1182 et seq.,
18 1197, 1197.1 and 1194; (4) failing to provide terminated employees with all wages due at the time
19 of termination in violation of Labor Code §§ 201, 202 and 203; (5) failing to pay overtime wages
20 in violation of Labor Code § 510; (6) failing to provide meal periods in violation of Labor Code
21 § 512; (7) failing to provide rest breaks to non-exempt employees in violation of Labor Code §
22 226.7 and Paragraphs 11 and 12 of the applicable IWC Wage Order; (8) failing to pay overtime
23 wages, pay minimum wages, and provide meal and rest periods in violation of Labor Code §§
24 558 and 1198; (9) forcing employees to bear IRR’s business expenses and losses and/or making
25 deductions from employees’ wages to pay for business expenses and losses in violation of Labor

26
27 ¹ Unless otherwise noted, all capitalized terms shall have the same definition as set forth in the
28 Stipulation and Agreement for PAGA Representative Action Settlement (the
“Settlement”) attached hereto as Exhibit A.

1 Code §§ 400-410; and (10) willfully misclassifying individuals as independent contractors and/or
2 making deductions from compensation for individuals willfully misclassified as independent
3 contractors in violation of Labor Code § 226.8 (the “PAGA Claims”);

4 WHEREAS, Defendants deny liability for any claims alleged by Plaintiff on his own
5 behalf or on behalf of the Aggrieved Employees or the State of California and any of its agencies,
6 including but not limited to the Department of Industrial Relations, Division of Labor Standards
7 Enforcement, and Labor Workforce and Development Agency (“LWDA”), including the PAGA
8 Claims and the allegations in the Action;

9 WHEREAS, The Parties conducted a thorough investigation into the facts of the Action.
10 This included exchanging extensive data and information as well as documents relating to the
11 underlying alleged violations and IRR’s financial condition. After conducting a thorough
12 investigation of Plaintiff’s and the Aggrieved Employees’ claims, IRR’s policies and financial
13 condition, the Parties negotiated at arms’ length and ultimately agreed upon the Settlement now
14 before this Court for approval;

15 WHEREAS, the Parties’ investigation and informal discovery revealed that there are 28
16 Aggrieved Employees—implicating 888 pay-periods (See Declaration of London D. Meservy in
17 Support of Stipulation Requesting Approval of PAGA Settlement; [Proposed] Order And
18 Judgment (“Meservy Decl.”) at ¶ 9.);

19 WHEREAS, as explained in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), PAGA
20 actions are different from class actions and do not follow class action procedural rules, including
21 for approval of settlements;

22 WHEREAS, because California Labor Code § 2699(l) requires Court approval of the
23 settlement of a PAGA action, the Parties are filing this Stipulation Requesting Approval of PAGA
24 Settlement; [Proposed] Order and Judgment in order to obtain the Court’s approval of the
25 Settlement and resolve this Action in the most efficient manner possible (see, e.g., *Myers, Jr. v.*
26 *Mor Furniture For Less, Inc.*, San Diego Superior Court Case No. 37-2018-00055055-CU-OE-
27 NC [this Court approved a PAGA settlement that parties submitted via stipulation and proposed
28 order]; *Abelar v. American Residential Services, L.L.C.*, 2019 WL 6054607 *1 (C.D. Cal. 2019)

1 [court approved PAGA settlement that parties submitted via stipulation and proposed order]];

2 WHEREAS, the Settlement provides for the Gross Settlement Amount of \$50,000.00,
3 which is inclusive of civil penalties paid to the LWDA and Aggrieved Employees, attorneys' fees,
4 litigation costs and expenses, and the costs of administration of the Settlement;

5 WHEREAS, the Net Settlement Fund, which is the total sum available for payment of
6 civil penalties to the Aggrieved Employees and the LWDA after deducting Attorneys' Fees and
7 Costs and the Settlement Administration Expenses from the Gross Settlement Amount, shall be
8 distributed as follows: Seventy-five percent (75%) of the Net Settlement Fund shall be paid to the
9 LWDA and twenty-five percent (25%) of the Net Settlement Fund shall be paid to the Aggrieved
10 Employees, as required by the PAGA;

11 WHEREAS, the portion of the Net Settlement Fund to be distributed to Aggrieved
12 Employees shall be distributed to Aggrieved Employees on a pro rata basis based upon the
13 number of pay periods assigned to each Aggrieved Employee. As set forth in the Settlement, the
14 number of pay periods assigned to each Aggrieved Employee turns on how many pay periods
15 each of them worked during the PAGA Period;

16 WHEREAS, PAGA Counsel seeks Fifteen Thousand Dollars (\$15,000.00), equal to 30%
17 of the Gross Settlement Amount, for Attorneys' Fees from the Gross Settlement Amount despite
18 the fact that Meservy Law, P.C.'s lodestar alone totals just under \$40,000.00 without any
19 multiplier or taking into account Dente Law, P.C.'s lodestar in the Action (Meservy Decl. at ¶¶
20 16-24.);

21 WHEREAS, PAGA Counsel seeks \$814.78 for Costs from the Gross Settlement Amount
22 for costs they incurred litigating the action (Meservy Decl. at ¶¶ 25.);

23 WHEREAS, the Parties selected Phoenix Settlement Administrators to serve as the
24 Settlement Administrator and seek payment of Settlement Administration Costs totaling One
25 Thousand Seven Hundred Fifty Dollars (\$1,750.00) to Phoenix Settlement Administrators from
26 the Gross Settlement Amount;

27 WHEREAS, based upon their own independent investigation, including the review of
28 Plaintiff's and the Aggrieved Employees' claims and IRR's policies and financial condition,

PAGA Counsel believes that the Settlement, which provides 11.3% of the approximate total PAGA damages at issue, should be approved by this Court (Meservy Decl. ¶¶ 8-15 [which includes an analysis of the total potential recovery at issue]; see, e.g., *Abelar v. American Residential Services, L.L.C.*, 2019 WL 6054607 *4 (C.D. Cal. 2019) [court approves a PAGA settlement providing approximately 4.9% of the total PAGA damages at issue].);

WHEREAS, on July 28, 2022 PAGA Counsel provided a copy of the Settlement to the LWDA as required by PAGA. (A copy of the email from the LWDA confirming receipt of the Settlement is attached as Exhibit A to the Meservy Decl.); and

WHEREAS, the LWDA has not objected to the Settlement or any of its terms (Meservy Decl. ¶ 3.).

NOW, THEREFORE, IT IS HEREBY STIPULATED that the Parties respectfully request that the Court enter the [Proposed] Order and Judgment below:

1. Approving the Settlement;
2. Approving payment of Fifteen Thousand Dollars (\$15,000.00), equal to 30% of the Gross Settlement Amount, from the Gross Settlement Amount to PAGA Counsel for Attorneys' Fees;
3. Approving payment of \$814.78 from the Gross Settlement Amount to PAGA Counsel for Costs;
4. Approving payment of One Thousand Seven Hundred Fifty Dollars (\$1,750.00) to Phoenix Settlement Administrators for Settlement Administration Costs; and

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1 5. Approving payment of the Net Settlement Fund to the LWDA and Aggrieved
2 Employees as set forth in the Settlement.

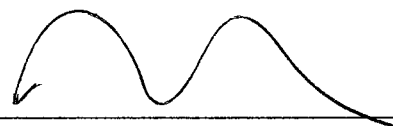
3 IT IS SO STIPULATED

4 Dated: August 23, 2022

6 By: 
7 ~~LONDON D. MESERVY (SB# 216654)~~

8 Attorneys for Plaintiff Charles Koeleman
9 as a Private Attorney General

10 Dated: August 23, 2022

11 By: 
12 ~~JOANNE K. LEIGHTON (SB# 165378)~~

13 Attorneys for Defendants Immediate Response
14 Restoration, Inc. and Zeyna Pournahavandi

15
16 **[PROPOSED] ORDER AND JUDGMENT**

17 Having considered the Parties' Stipulation, submissions, and all legal authorities and
18 documents submitted in support thereof, including the Stipulation and Agreement for PAGA
19 Representative Action Settlement attached hereto as Exhibit A (the "Settlement") and good cause
20 appearing, the Court finds, concludes, and hereby orders as follows:

21 1. All capitalized terms that are not otherwise defined shall have the same definitions
22 as set forth in the Settlement.

23 2. The Court has jurisdiction over the subject matter of this proceeding and over all
24 Parties to this proceeding, including all Aggrieved Employees.

25 3. Plaintiff provided a copy of the Settlement to the LWDA, as required by Section
26 2699(1)(2) of the California Labor Code.

27 4. Pursuant to California Labor Code § 2699(1), the Court hereby approves the terms
28 set forth in the Settlement and finds that the Settlement is in all respects adequate considering the

1 purposes and provisions of the California Labor Code Private Attorneys General Act, California
2 Labor Code § 2698, et seq. and directs the Parties to effectuate the Settlement according to its
3 terms. The Court finds that the Settlement has been reached as a result of informed and non-
4 collusive arm's-length negotiations. The Court further finds that the Parties were able to
5 reasonably evaluate their respective positions. The Court also finds that settlement now will avoid
6 additional and potentially substantial litigation costs, as well as delay and risks if the Parties were
7 to continue to litigate the case. The Court has reviewed the monetary recovery being provided by
8 the Settlement and recognizes the value accorded to the State of California and Aggrieved
9 Employees.

10 5. The Settlement does not constitute an admission by Defendants of liability to
11 Plaintiff or any Aggrieved Employee, nor does this Order constitute a finding by the Court of the
12 validity of any of the claims alleged in this Action, or any liability of Defendants or any of the
13 Released Parties.

14 6. The Court appoints Phoenix Settlement Administrators as Settlement
15 Administrator and approves payment of Settlement Administration Expenses of \$1,750 to
16 Phoenix Settlement Administrators as set forth in the Settlement. The payment authorized by this
17 paragraph shall be made in accordance with the terms of the Settlement.

18 7. The Court approves payment of Litigation Costs totaling \$779.78 and Attorneys'
19 Fees totaling \$15,000.00 to Meservy Law, P.C. and Dente Law, P.C. The payments authorized
20 by this paragraph shall be made in accordance with the terms of the Settlement.

21 8. The Court approves disposition of the Net Settlement Amount to the LWDA and
22 Aggrieved Employees in accordance with the terms of the Settlement.

23 9. Upon the Effective Date, the Released Claims in the Settlement are deemed to
24 have been conclusively released by all Aggrieved Employees against the Released Parties.

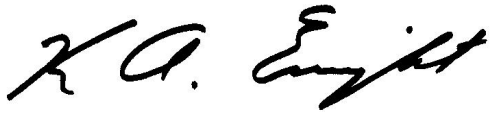
25 10. If the Settlement does not become final and effective in accordance with its terms,
26 this Order and all orders entered in connection herewith, including the Judgment on this Order,
27 shall be vacated and shall have no further force or effect.

28 11. Judgment is hereby entered in accordance with this Order and the terms of the

1 Settlement. Without affecting the finality of the Settlement or this Judgment in any way, the Court
2 shall retain jurisdiction over the Parties for purposes of enforcing and interpreting the Settlement,
3 this Order, and this Judgment.

4 **IT IS SO ORDERED.**

5
6 Dated: September 8, 2022

By: 

Hon. Ronald F. Frazier
Judge of the Superior Court
Judge Kevin A. Enright

EXHIBIT A

MESERVY LAW, P.C.
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Attorneys for Plaintiff Charles Koeleman
as a Private Attorney General

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

CHARLES KOELEMEN, as a Private
Attorney General,

Plaintiff,

v.

IMMEDIATE RESPONSE RESTORATION,
INC., ZEYNA POURNAHAVANDI, AND
DOES 1-10, INCLUSIVE,

Defendants.

Case No. 37-2020-00022039-CU-OE-CTL

REPRESENTATIVE ACTION

**STIPULATION AND AGREEMENT
FOR PAGA REPRESENTATIVE
ACTION SETTLEMENT**

1 This Stipulation and Agreement for Settlement of this PAGA Representative Action is
2 made and entered into by and between Plaintiff Charles Koeleman ("Plaintiff") and Defendants
3 Immediate Response Restoration, Inc. ("IRR") and Zeyna Pournahavandi (collectively
4 "Defendants") (Plaintiff and Defendants are collectively the "Parties") and is made in compromise
5 of disputed claims. The Parties agree that the above-entitled representative action shall be settled
6 on the terms and conditions set forth in this Stipulation, subject to the approval of the Court
7 pursuant to Section 2699(1)(2) of the California Labor Code Private Attorneys General Act of
8 2004, Labor Code section 2698, et. seq. ("PAGA").

9 Definitions

10 1. "Action" means and refers to *Charles Koeleman v. Immediate Response*
11 *Restoration, Inc., et al.*, Case No. 37-2020-00022039-CU-OE-CTL, which is currently pending in
12 San Diego County Superior Court.

13 2. "Aggrieved Employees" means all employees who were employed by IRR in
14 California in the position of Estimator during the PAGA Period. Defendants represent that
15 between June 25, 2019 and December 17, 2021, there were a total of 28 individuals (including
16 Representative Plaintiff) employed by Defendant in California as individuals in a covered position
17 as defined in this paragraph.

18 3. The terms "Agreement," "Settlement," and "Settlement Agreement" mean this
19 Stipulation and Agreement for Settlement of this PAGA Representative Action, which the Parties
20 acknowledge sets forth all material terms and conditions of the Settlement between them, and
21 which is subject to Court approval pursuant to Section 2699(1)(2) of the California Labor Code
22 Private Attorneys General Act of 2004, Labor Code section 2698, et seq.

23 4. "Court" means the California Superior Court, County of San Diego.

24 5. "IRR" means defendant Immediate Response Restoration, Inc.

25 6. "Defendants" mean IRR and Zeyna Pournahavandi.

26 7. "Effective Date" of this Agreement shall be the later of (i) if no person or entity
27 objects to the Settlement, the date after service of notice of entry of the Final Order and Judgment;
28 (ii) if any person or entity objects to the Settlement and the Court nonetheless approves the

1 Settlement, the 61st day after service of notice of entry of the Final Order and Judgment, if no
2 appeal, review, writ, or other challenge has been filed; or (iii) if an appeal, review, writ, or other
3 challenge is sought from the Final Order and Judgment, the day after the Final Order and
4 Judgment is affirmed or the appeal, review, writ, or other challenge is dismissed or denied, and the
5 Final Order and Judgment are no longer subject to further judicial review. The Effective Date is
6 conditioned upon all of the following occurring: (a) this Agreement has been signed by the Parties,
7 PAGA Counsel, and Defendant's counsel; and (b) the Court has entered the Final Order and
8 Judgment.

9 8. "Final Order and Judgment" means the proposed order granting approval of the
10 Settlement and entering Judgment, in the form substantially similar to that attached to this
11 Agreement as Exhibit 1.

12 9. "Gross Settlement Amount" means a total of \$50,000.00, which includes all
13 payments owing as a result of this Agreement and includes: the Net Settlement Fund, including the
14 PAGA Payment Amount; Settlement Administration Costs; and PAGA Counsel Attorneys' Fees
15 and Costs as awarded by the Court.

16 10. "LWDA Payment" means a payment to the California Labor Workforce and
17 Development Agency in an amount equal to 75% of the PAGA Payment Amount.

18 11. "Net Settlement Fund" is the Gross Settlement Amount less all of the following:
19 PAGA Counsel's Attorneys' Fees and Costs, and Settlement Administration Costs.

20 12. "PAGA Payment Amount" means the payment of approximately \$32,400.00 to
21 resolve the claim for civil penalties under PAGA. The PAGA Payment Amount is paid from the
22 Gross Settlement Amount and is comprised of the LWDA Payment and PAGA Aggrieved
23 Employee Payment.

24 13. "PAGA Aggrieved Employee Payment" means a payment of 25% of the PAGA
25 Payment Amount, which the Parties have agreed to pay the Aggrieved Employees out of the Gross
26 Settlement Amount in connection with the settlement of the PAGA Claim.

27 14. "PAGA Claim" means the claim for civil penalties under the California Labor
28 Code Private Attorneys General Act of 2004 (Cal. Lab. Code sections 2698 et seq., "PAGA")

1 alleged in the Action.

2 15. "PAGA Counsel" means Dente Law, P.C. and Meservy Law, P.C.

3 16. "PAGA Period" means June 25, 2019 through December 17, 2021.

4 17. "Released Claims" means the claims that were asserted against the Released
5 Parties in the Action on behalf of the Aggrieved Employees during the PAGA Period, pursuant to
6 the California Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq.
7 ("PAGA"). The Released Claims include all civil penalties under the PAGA for alleged violations
8 of California Labor Code sections 201, 202, 203, 226(a), 226.8, 400-410, 510, 512, 558, 1198,
9 226.7, 1182 *et seq.*, 1197, 1197.1, 1194, and 2802. Released Claims only includes claims for civil
10 penalties under the PAGA for violations of the Labor Code sections listed in the preceding
11 sentence for pay periods in which the Aggrieved Employee worked for IRR as an Estimator. The
12 Settlement does not release any individual claims belonging to the Aggrieved Employees, such as
13 claims for unpaid wages or statutory penalties.

14 18. "Released Parties" means IRR and each of its officers, directors, agents, insurers,
15 employees, board members, partners, owners, shareholders, and attorneys and Zeyna
16 Pournahavandi.

17 19. "Representative Plaintiff" means Plaintiff Charles Koeleman.

18 20. "Settlement Administrator" means Phoenix Settlement Administrators or any other
19 neutral third-party administrator chosen by the Parties, subject to approval by the Court.

20 **Recitals**

21 21. On March 18, 2020, Plaintiff sent a PAGA Notice to the Labor Workforce and
22 Development Agency ("LWDA"), with a copy to Defendants. On June 25, 2020, Plaintiff filed a
23 Complaint for PAGA penalties in the Superior Court of the State of California, County of San
24 Diego in a case styled *Charles Koeleman v. Immediate Response Restoration, Inc., et al.*, Case No.
25 37-2020-00022039-CU-OE-CTL ("Action").

26 22. The Action asserts a PAGA Claim for civil penalties and an award of reasonable
27 attorneys' fees and costs.

28 23. The Parties conducted a thorough investigation into the facts of the Action. This

1 included exchanging extensive data and information as well as documents relating to the
2 underlying alleged violations and IRR's financial condition. After conducting a thorough
3 investigation of Representative Plaintiff's and the Aggrieved Employees' claims, IRR's policies
4 and financial condition, the Parties negotiated at arms' length and ultimately agreed upon the
5 Settlement. The Parties believe that the Settlement is fair, reasonable, and adequate. The Parties
6 understand, acknowledge, and agree that this Settlement Agreement constitutes a compromise of
7 Representative Plaintiff's and the Aggrieved Employees' PAGA Claim, and that it is the desire
8 and intention of the Parties to effect a final and complete resolution of the PAGA Claim that the
9 Representative Plaintiff and the Aggrieved Employees have against Defendants.

10 24. The Parties enter into this Settlement Agreement on a conditional basis. In the
11 event the Court does not enter a Final Order and Judgment, substantially in the form attached as
12 Exhibit 1 to this Settlement Agreement, this Settlement Agreement will be deemed null and void
13 ab initio and will be of no force or effect whatsoever, and will not be referred to or utilized for any
14 purpose whatsoever.

15 25. Defendants deny all of the claims in the Action, and do not waive, but rather
16 expressly reserve, all rights to challenge all such claims and allegations upon all legal, procedural,
17 and factual grounds should this Settlement Agreement not become final. This Settlement
18 Agreement reflects a compromise reached to end litigation.

19 26. The Parties stipulate and agree to the following terms of this Settlement
20 Agreement with the intent that this Agreement finally disposes of the Action with prejudice.

21 **Terms And Conditions**

22 27. Settlement Payments and Calculation of Claims. The following table summarizes
23 the allocation of the Gross Settlement Amount:

24 **Gross Settlement Amount of \$50,000.00 Is Broken Down As Follows:**

- 25 • **\$32,400.00** for the PAGA Payment Amount
 - 26 ○ **\$24,300.00** for the LWDA Payment
 - 27 ○ **\$8,100.00** for the PAGA Aggrieved Employee Payment
- 28 • **PAGA Counsel Attorneys' Fees not to exceed \$15,000.00**
- **PAGA Counsel Costs not to exceed \$850.00**
- **Settlement Administration Costs, not to exceed \$1,750.00**

28. Subject to final Court approval and the conditions specified in this Agreement, and in consideration of the mutual covenants and promises set forth in this Agreement, IRR agrees to pay the Gross Settlement Amount of \$50,000.00. The Gross Settlement Amount includes, but is not limited to, payments to be made for PAGA Counsel's attorneys' fees and costs, the PAGA Payment Amount, and Settlement Administration Costs. The Parties agree, subject to Court approval, that the Gross Settlement Amount shall be apportioned as follows:

a. Settlement Administration Fees And Costs: The fees and costs associated with settlement administration (e.g., preparing and mailing payments to the Aggrieved Employees, tax documentation, etc.) (the "Settlement Administration Costs") will be paid from the Gross Settlement Amount and are estimated to be \$1,750.00. The Parties agree to use Phoenix Settlement Administrators as the Settlement Administrator.

b. PAGA Counsel's Attorneys' Fees and Costs: The Parties agree that, subject to the Court's review and approval, PAGA Counsel will be paid from the Gross Settlement Amount an amount that is up to 30% of the Gross Settlement Amount for attorneys' fees (\$15,000.00), plus actual litigation costs, not to exceed \$850.00 (the "PAGA Counsel Attorneys' Fees and Costs").

c. Net Settlement Fund: After deducting PAGA Counsel's Attorneys' Fees and Costs, and Settlement Administration Costs, the remaining amount will comprise the Net Settlement Fund. The Net Settlement Fund is comprised of the LWDA Payment and the PAGA Aggrieved Employee Payment. The Net Settlement Fund of approximately \$32,400.00 shall be allocated 75% to the LWDA Payment, which is estimated to total \$24,300.00 (\$32,400.00 x 75%). The remaining 25% of the Net Settlement Fund, estimated to total \$8,100.00 (\$32,400.00 x 25%), shall be allocated to the PAGA Aggrieved Employee Payment to be paid to the Aggrieved Employees on a *pro rata* basis based on pay periods worked during the PAGA Period for IRR as an Estimator, as set forth below, which shall be referred to as the Aggrieved Employee's "Individual PAGA Payment."

Example:

Aggrieved Employee A was actively employed as an estimator by IRR during the PAGA

1 Period for 15 pay periods. All Aggrieved Employees were actively employed a combined total of
2 500 pay periods during the PAGA Period. Aggrieved Employee A's Individual PAGA Payment
3 would be calculated as follows:

- 4 ➤ 15 pay periods for Aggrieved Employee A ÷ 500 total pay periods for all
5 Aggrieved Employees = 0.03%.
6 ➤ Aggrieved Employee A is entitled to an Individual PAGA Payment in an amount
7 that is 0.03% of the PAGA Aggrieved Employee Payment.¹

8 d. Taxes and Reporting: The Individual PAGA Payments will be treated as
9 non-wage income to the Aggrieved Employees and reported by the Settlement Administrator on
10 IRS Form 1099.

11 29. Release By Aggrieved Employees and State of California.

12 a. Terms of Release. In exchange for the consideration recited in this
13 Settlement Agreement, Representative Plaintiff, as the representative for the State of California
14 and all Aggrieved Employees, and on behalf of their current, former, and future heirs, executors,
15 administrators, attorneys, agents, and assigns will forever completely release and discharge the
16 Released Parties of any and all Released Claims. The Aggrieved Employees and the State of
17 California are deemed by operation of the Final Order and Judgment to have agreed not to sue or
18 otherwise make a claim against any of the Released Parties for any Released Claims. The Released
19 Claims only include claims for civil penalties under the PAGA for violations of the Labor Code
20 sections specifically pled in the Action for pay periods in which the Aggrieved Employees worked
21 for IRR as an Estimator. The Settlement does not release any individual claims belonging to the
22 Aggrieved Employees, such as claims for unpaid wages or statutory penalties.

23 b. No Claims Based On Stipulation and Agreement. No Aggrieved Employee
24 will have any claim against any of the Released Parties, Defendant's counsel, the Representative
25 Plaintiff, or PAGA Counsel, based on errors in administering claims or performing the mailing
26 and skip-tracing requirements of the Settlement Administrator under this Agreement.

27
28 ¹ The Individual PAGA Payment will be rounded to the nearest penny with .5 rounded down.

1 30. Request For Final Order and Judgment. Upon execution of this Agreement, the
2 Parties shall promptly file a joint stipulation with the Court requesting approval of this Settlement
3 by submitting a proposed Final Order and Judgment, in a form substantially similar to Exhibit 1.
4 Representative Plaintiff agrees to comply with all requirements to give notice of the Settlement to
5 the LWDA, as set forth in California Labor Code §2699(l). In the event that the Court requires a
6 noticed motion for approval as opposed to a joint stipulation, the Representative Plaintiff will file
7 that motion.

8 31. Settlement Funding.

9 a. Upon the Court entering the Final Order and Judgment, and within 5 days
10 after the Effective Date, the Settlement Administrator shall send Defendant's counsel electronic
11 wiring instructions to fund the Net Settlement Fund and the Settlement Administration Costs.

12 b. Within 10 days after the Effective Date, Defendant shall wire to the
13 Settlement Administrator the Net Settlement Fund and the Settlement Administration Costs (the
14 "Initial Funding Date").

15 c. Within 20 days after the Effective Date, the Settlement Administrator shall
16 issue the LWDA Payment, Individual PAGA Payments, and the Settlement Administration Costs
17 payments required by this Agreement (the "Initial Payment Date").

18 d. Within 180 days after the Effective Date, Defendant shall wire to the
19 Settlement Administrator the PAGA Counsel Attorneys' Fees and Costs (the "Second Funding
20 Date").

21 e. Within 3 days after the Second Funding Date, the Settlement Administrator
22 shall issue the PAGA Counsel Attorneys' Fees and Costs payments required by this Agreement to
23 PAGA Counsel (the "Second Payment Date").

24 32. PAGA List. Within 7 days after the Effective Date, IRR will provide a PAGA List
25 to the Settlement Administrator which will identify all Aggrieved Employees by name, social
26 security number, and last known home address (the "PAGA List"). The PAGA List will also
27 contain the number of pay periods credited to each Aggrieved Employee for work performed as an
28 Estimator for IRR during the PAGA Period.

33. List Of Individual Settlement Amounts. Within 10 days after the Settlement Administrator receives the PAGA List, the Settlement Administrator will provide to PAGA Counsel and Defendants' counsel a Proceeds List reflecting the Individual PAGA Payment for each Aggrieved Employee (the "Proceeds List"). The Proceeds List provided to PAGA Counsel will not include the Aggrieved Employees' social security numbers or contact information but will include their names and pay period information.

34. PAGA Payments to Aggrieved Employees.

a. On the Initial Payment Date, the Settlement Administrator will mail to each Aggrieved Employee, via first-class United States Mail, the following: (a) the PAGA Settlement Notice in English, attached as Exhibit 2 to this Agreement and (b) their Individual PAGA Payment (collectively, the "PAGA Packet").

b. Prior to mailing the PAGA Packet, the Settlement Administrator will update all addresses using the National Change of Address System (NCOA). In the event that a PAGA Packet is returned to the Settlement Administrator with a forwarding address, the Settlement Administrator will re-send the PAGA Packet to the forwarding address identified. If no forwarding address is provided, then the Settlement Administrator will promptly conduct a "standard search," sometimes called, "Skip Trace" or "Credit Header" searches, to locate a better address. If a better address is found, the Settlement Administrator will promptly re-send the PAGA Packet. If a better address is not found or the PAGA Packet is ultimately returned without a forwarding address, neither the Settlement Administrator, Defendant, or PAGA Counsel shall be required to take further action.

c. Aggrieved Employees shall have 180 calendar days after the date the PAGA Packet is mailed to them to cash their settlement payment checks. If any Aggrieved Employee's check is not cashed within that period, the settlement payment check will be voided and a stop-payment will be issued. Neither Defendants, Defendants' counsel, Plaintiff, nor PAGA Counsel will have any liability for lost or stolen settlement payment checks, forged signatures on settlement payment checks, unauthorized negotiation of settlement payment checks or failure to timely cash a settlement payment check within the 180 day period.

d. Any unpaid cash residue or unclaimed Aggrieved Employee funds, plus any accrued interest that has not otherwise been distributed pursuant to order of the Court, shall be transmitted to the LWDA.

35. Payments of the LWDA Settlement Payment and Attorneys' Fees And Costs.

a. On the Initial Payment Date, the Settlement Administrator will pay the LWDA Payment from the Net Settlement Fund by issuing a check in the approximate amount of \$24,300.00 payable to "California Labor Workforce and Development Agency."

b. On the Second Payment Date, the Settlement Administrator will pay PAGA Counsel its Court-approved PAGA Counsel Attorneys' Fees and Costs. Such payment is conditional upon PAGA Counsel providing the Settlement Administrator with completed Form W-9s for Dente Law, P.C. and Meservy Law, P.C.

36. Deadlines. If any deadline specified in this Agreement falls on a Saturday, Sunday, or Court holiday, the deadline will be automatically extended to the next regular business day. Unless specified otherwise, all references to "days" shall mean calendar days.

37. Enforcement and Continuing Jurisdiction of the Court. Pursuant to the Parties agreement, this Settlement Agreement will be approved by the Court and will be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6. Even after the entry of the Final Order and Judgment, this Court will have and retain continuing jurisdiction over the Action and over all Parties and the Aggrieved Employees, to the fullest extent necessary or convenient to enforce and effectuate the terms and intent of this Settlement Agreement and all matters provided for in it, and to interpret it.

38. Mutual Full Cooperation. The Parties will fully cooperate with each other to accomplish the terms of this Settlement Agreement, including, but not limited to, execution of such documents and taking such other action as may be reasonably necessary or convenient to implement it.

39. Non-Admission Of Liability. The Parties enter into this Agreement to resolve the dispute that has arisen between them and to avoid the burden, expense and risk of continued litigation. In entering into this Agreement, Defendants do not admit, and specifically deny, that

1 they have violated any federal, state, or local law; violated any regulations or guidelines
2 promulgated pursuant to any statute or any other applicable laws, regulations or legal
3 requirements; violated or breached any duty; engaged in any misrepresentation or deception; or
4 engaged in any other unlawful conduct with respect to the Action. Neither this Agreement, nor any
5 of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an
6 admission or concession by Defendants of any such violations or failures to comply with any
7 applicable law. Except as necessary in a proceeding to enforce the terms of this Agreement, this
8 Agreement and its terms and provisions shall not be offered or received as evidence in any action
9 or proceeding to establish any liability or admission on the part of Defendants or to establish the
10 existence of any condition constituting a violation of, or a non-compliance with, federal, state,
11 local or other applicable law. Similarly, in entering into this Agreement, Plaintiff does not admit,
12 and specifically denies, the merits of Defendants' defenses. Neither this Agreement, nor any of its
13 terms or provisions, or documents submitted in support of the Settlement, nor any of the
14 negotiations connected with it, shall be construed as an admission or concession by Plaintiff of the
15 validity any of Defendants' claimed defenses to the Action. Except as necessary in a proceeding to
16 enforce the terms of this Agreement, this Agreement and its terms and provisions, as well as all
17 documents, pleadings, or declarations filed in support of the Agreement shall not be offered or
18 received as evidence in any action or proceeding to establish any defense in the Action.

19 40. Effective Date Of Defendant's Obligations Under This Agreement. The Parties'
20 obligations under this Settlement Agreement will become final and effective only upon the
21 occurrence of the Effective Date. In the event that this Settlement does not obtain approval of the
22 Court for any reason, all matters covered by this Agreement will be null and void. In such event,
23 neither this Agreement nor any negotiations leading to this Settlement will be used or construed by
24 or against any Party as a determination, admission, or concession of any issue of law or fact in the
25 litigation; and the Parties do not waive, and instead expressly reserve, their respective rights
26 regarding the prosecution and defense of the Action, including all available defenses and
27 affirmative defenses, and to challenge any claim, as if this Settlement Agreement never existed.

28 41. Nullification. If: (1) the Court should for any reason fail to enter the Final Order

1 and Judgment without material modification; or (2) the Court's Final Order and Judgment is
2 reversed or modified as to any material term as defined above, or declared or rendered void as to
3 any material term as defined above, then (a) the Settlement Agreement shall become null and void;
4 and (b) the Parties will revert to their respective positions immediately prior to reaching the
5 settlement.

6 42. Invalidation. Invalidation of any material term of this Settlement Agreement will
7 invalidate this Agreement in its entirety unless the Parties subsequently agree in writing that the
8 remaining provisions will remain in full force and effect.

9 43. Entire Agreement. This Settlement Agreement constitutes the entire integrated
10 agreement between the Parties relating to the Action, and no oral representations, warranties, or
11 inducements have been made to any party concerning this Settlement Agreement other than the
12 representations, warranties, and covenants contained and memorialized in this Settlement
13 Agreement.

14 44. Authorization To Act. PAGA Counsel warrants and represents that they are
15 authorized by the Representative Plaintiff, and counsel of record for Defendants warrants that they
16 are authorized by Defendants, to take all appropriate action required or permitted to be taken by
17 such Parties pursuant to this Settlement Agreement to effectuate its terms, and to execute any other
18 documents required to effectuate the terms of this Settlement Agreement, except for any
19 documents, including but not limited to this Settlement Agreement, that are required to be
20 executed by the Parties.

21 45. Modification Only In Writing. This Settlement Agreement may be amended or
22 modified only by a written instrument signed by all Parties or their successors in interest.

23 46. Binding On Successors. This Settlement Agreement is binding upon and will inure
24 to the benefit of the Parties to this Agreement, as well as their respective attorneys, past, present,
25 and future predecessors, successors, shareholders, officers, directors, employees, agents, trustees,
26 representatives, administrators, fiduciaries, assigns, insurers, executors, partners, parent
27 corporations, subsidiaries, and related or affiliated entities.

28 47. No Prior Assignments. The Aggrieved Employees are deemed by operation of the

1 Final Order and Judgment to represent, covenant, and warrant that they have not directly or
2 indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any
3 person or entity any portion of any liability, claim, demand, cause of action, or rights released and
4 discharged by this Agreement.

5 48. Governing Law. All terms of this Settlement Agreement will be governed by and
6 interpreted according to the laws of the State of California, without giving effect to conflicts of
7 laws principles.

8 49. Counterparts. This Settlement Agreement may be executed in separate
9 counterparts, any one of which need not contain signatures of more than one party, but all of
10 which taken together will constitute one and the same agreement. Signatures transmitted by
11 facsimile machine or electronically in Portable Document Format (PDF) or similar software shall
12 be treated as originals for purposes of this Agreement. The Agreement may also be signed by
13 DocuSign or other, similar commercially available electronic signature pursuant to the U.S.
14 Federal ESIGN Act of 2000 or other applicable law.

15 50. Headings For Convenience Only. The descriptive headings of any paragraphs or
16 sections of this Settlement Agreement are inserted for convenience of reference only and do not
17 constitute a part of this Settlement Agreement.

18 51. Construction Of This Agreement. The Parties agree that the terms and conditions
19 of this Settlement Agreement are the result of arms-length negotiations between the Parties and
20 that this Settlement Agreement will not be construed in favor of or against any Party by reason of
21 the extent to which any Party, or her or its counsel participated in the drafting of this Agreement.
22 This Settlement Agreement constitutes the entire agreement between the Parties. Except as
23 expressly provided in this Agreement, this Settlement Agreement has not been executed in reliance
24 upon any other oral or written representations or terms and no such extrinsic oral or written
25 representations or terms will modify, vary or contradict the terms of this Settlement Agreement. In
26 entering this Settlement Agreement, the Parties explicitly recognize California Civil Code section
27 1625 and California Code of Civil Procedure section 1856(a), which provide that a written
28 agreement is to be construed according to its terms and may not be varied or contradicted by

1 extrinsic evidence. The Representative Plaintiff and Defendants had available to them the advice
2 and assistance of independent counsel. As such, neither Representative Plaintiff nor Defendants
3 may claim that any ambiguity in this Settlement Agreement should be construed against the other.

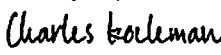
4 52. Corporate Signatories. Any person executing this Settlement Agreement or any
5 related document on behalf of a corporate signatory warrants and promises for the benefit of all
6 Parties that such person has been duly authorized by such corporation to execute this Settlement
7 Agreement or any related document.

8 53. Representation By Counsel. All of the Parties to this Settlement Agreement
9 acknowledge that they have been represented by counsel throughout all negotiations which
10 preceded the execution of this Settlement Agreement and that this Agreement has been executed
11 with the consent and advice of counsel.

12 54. Attorneys' Fees and Costs. Except as otherwise provided in this Agreement, the
13 Parties will bear responsibility for their own attorneys' fees and costs, taxable or otherwise,
14 incurred by them or arising out of this Action and will not seek reimbursement thereof from any
15 Party to this Settlement Agreement. In the event of a proven breach of this Agreement, the
16 breaching party will be required to pay the prevailing party's reasonable attorneys' fees and costs
17 incurred in enforcing this Agreement.

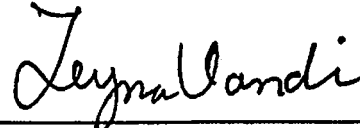
18 IT IS SO AGREED.

19 Dated: ^{7/22/2022} June __, 2022

DocuSigned by:

CHARLES KOELEMAN

22 Dated: ^{July 26, 2022} ~~JUNE XX, 2022~~

IMMEDIATE RESPONSE RESTORATION,
INC.


By: Zeyna Pournahavandi
Its: Owner

July 26, 2022
Dated: ~~June XX, 2022~~


ZEYNA POURNAHAVANDI

Dated: July 22, 2022

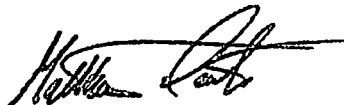
APPROVED AS TO FORM:

By: 
~~LONDON D. MESERVY (SB# 216654)~~

Attorneys for Plaintiff Charles Koeleman
as a Private Attorney General

Dated: July 22, 2022

APPROVED AS TO FORM:

By: 
MATTHEW S. DENTE (SB# 241547)

Attorneys for Plaintiff Charles Koeleman
as a Private Attorney General

gkc
July
Dated: ~~June 27~~, 2022

APPROVED AS TO FORM:

By: 
JOANNE K. LEIGHTON (SB# 165378)

Attorneys for Defendants Immediate Response
Restoration, Inc. and Zeyna Pournahavandi

EXHIBIT 1

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

CHARLES KOELEMEN, as a Private
Attorney General,

Plaintiff,

v.

IMMEDIATE RESPONSE RESTORATION,
INC., ZEYNA POURNAHAVANDI, AND
DOES 1-10, INCLUSIVE,

Defendants.

Case No. 37-2020-00022039-CU-OE-CTL

REPRESENTATIVE ACTION

**[PROPOSED] ORDER GRANTING
APPROVAL OF PAGA SETTLEMENT;
JUDGMENT**

1 Having considered the Parties' Stipulation, submissions, and all legal authorities and
2 documents submitted in support thereof, including the Stipulation and Agreement for PAGA
3 Representative Action Settlement attached hereto as Exhibit 1 (the "Settlement") and good cause
4 appearing, the Court finds, concludes, and hereby orders as follows:

5 1. All capitalized terms that are not otherwise defined shall have the same definitions as
6 set forth in the Settlement.

7 2. The Court has jurisdiction over the subject matter of this proceeding and over all
8 Parties to this proceeding, including all Aggrieved Employees.

9 3. Plaintiff provided a copy of the Settlement to the LWDA, as required by Section
10 2699(l)(2) of the California Labor Code.

11 4. Pursuant to California Labor Code § 2699(l), the Court hereby approves the terms set
12 forth in the Settlement and finds that the Settlement is in all respects adequate considering the
13 purposes and provisions of the California Labor Code Private Attorneys General Act, California
14 Labor Code § 2698, *et seq.* and directs the Parties to effectuate the Settlement according to its
15 terms. The Court finds that the Settlement has been reached as a result of informed and non-
16 collusive arm's-length negotiations. The Court further finds that the Parties were able to reasonably
17 evaluate their respective positions. The Court also finds that settlement now will avoid additional
18 and potentially substantial litigation costs, as well as delay and risks if the Parties were to continue
19 to litigate the case. The Court has reviewed the monetary recovery being provided by the
20 Settlement and recognizes the value accorded to the State of California and Aggrieved Employees.

21 5. The Settlement does not constitute an admission by Defendants of liability to Plaintiff
22 or any Aggrieved Employee, nor does this Order constitute a finding by the Court of the validity of
23 any of the claims alleged in this Action, or any liability of Defendants or any of the Released
24 Parties.

25 6. The Court appoints Phoenix Settlement Administrators as Settlement Administrator
26 and approves payment of Settlement Administration Expenses of \$1,750 to Phoenix Settlement
27 Administrators as set forth in the Settlement. The payment authorized by this paragraph shall be
28 made in accordance with the terms of the Settlement.

1 7. The Court approves payment of Litigation Costs totaling \$_____ and Attorneys'
2 Fees totaling \$15,000.00 to Meservy Law, P.C. and Dente Law, P.C. The payments authorized by
3 this paragraph shall be made in accordance with the terms of the Settlement.

4 8. The Court approves disposition of the Net Settlement Amount to the LWDA and
5 Aggrieved Employees in accordance with the terms of the Settlement.

6 9. Upon the Effective Date, the Released Claims in the Settlement are deemed to have
7 been conclusively released by all Aggrieved Employees against the Released Parties.

8 10. If the Settlement does not become final and effective in accordance with its terms,
9 this Order and all orders entered in connection herewith, including the Judgment on this Order,
10 shall be vacated and shall have no further force or effect.

11 11. Judgment is hereby entered in accordance with this Order and the terms of the
12 Settlement. Without affecting the finality of the Settlement or this Judgment in any way, the Court
13 shall retain jurisdiction over the Parties for purposes of enforcing and interpreting the Settlement,
14 this Order, and this Judgment.

15 **IT IS SO ORDERED.**

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17 Dated: _____

18 Hon. Ronald F. Frazier
19 Judge of the Superior Court
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NOTICE OF SETTLEMENT

For Civil Penalties in a Representative Action Brought Under the California Labor Code Private Attorneys General Act Of 2004

Dear [REDACTED]:

By order of the Superior Court of California, County of San Diego, in *Charles Koeleman v. Immediate Response Restoration, Inc., et al.*, Case No. 37-2020-00022039-CU-OE-CTL, (the “Action”) entered on [REDACTED], 2022 [insert approval date], you are hereby notified that a settlement has been reached between the parties in the Action and approved by the Court entitling you to compensation.

You have received this Notice because records of Immediate Response Restoration, Inc. (“IRR”) indicate that you were employed by IRR in California in the position of Estimator at some time between June 25, 2019 and December 17, 2021 (an “Aggrieved Employee”) and, therefore, you are receiving compensation in the settlement described in this Notice.

Pursuant to the terms of the Court-approved settlement, your individual settlement payment is set forth in the attached check. This settlement is for civil penalties only.

I. BACKGROUND OF THE CASE

On June 25, 2020, Plaintiff Charles Koeleman (“Plaintiff”) filed the Action in a representative capacity for recovery of *civil penalties only* under the California Labor Code Private Attorneys General Act of 2004, California Labor Code § 2698, et seq. (the “PAGA”). Plaintiff’s complaint alleged that IRR violated the California Labor Code by: (1) failing to provide accurate wage statements in violation of Labor Code § 226; (2) failing to pay minimum wage in violation of Labor Code §§ 1182 et seq., 1197, 1197.1 and 1194; (3) failing to provide terminated employees with all wages due at the time of termination in violation of Labor Code §§ 201, 202 and 203; (4) failing to pay overtime wages in violation of Labor Code § 510; (5) failing to pay overtime wages in violation of Labor Code § 512; (6) failing to provide rest breaks to non-exempt employees in violation of Labor Code § 226.7; and (7) failing to pay overtime wages, pay minimum wages, and provide meal and rest periods in violation of Labor Code §§ 558 and 1198. After conducting a thorough investigation of Plaintiff’s and the Aggrieved Employees’ claims and IRR’s policies and financial condition, the Parties negotiated at arms’ length and ultimately agreed upon the Settlement which has been approved by the Court.

Nothing in the settlement is intended or should be construed as an admission by IRR as to the merit of the claims in the Action.

II. SUMMARY OF THE SETTLEMENT

Calculation of Settlement Payments: The Gross Settlement Amount is Fifty Thousand Dollars (\$30,000). The Net Settlement Amount, (\$INSERT), was determined by deducting attorneys’ fees and costs totaling (\$INSERT) and settlement administration costs totaling (\$INSERT) from the Gross Settlement Amount. Per the terms of the PAGA, 75% of the Net Settlement Amount was paid to the California Labor & Workforce Development Agency (“LWDA”) and the

remaining 25% of the Net Settlement Amount was paid to Aggrieved Employees on a *pro rata* basis based upon the number of pay periods each Aggrieved Employee worked during the applicable time period.

Claims Released by the Settlement: The settlement only releases claims for civil penalties belonging to the State of California. The settlement releases all claims for civil penalties under the PAGA for alleged violations California Labor Code §§ 201, 202, 203, 226(a), 226.8, 400-410, 510, 512, 558, 1198, 226.7, 1182 *et seq.*, 1197, 1197.1, 1194, and 2802 from June 25, 2019 through December 17, 2021 for pay periods in which the Aggrieved Employees worked for IRR as an Estimator. The Settlement does not release any individual claims belonging to the Aggrieved Employees, such as claims for unpaid wages or statutory penalties.

III. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed “Stipulation And Agreement For PAGA Representative Action Settlement” which is on file with the Clerk of the Court. The pleadings and other records in the Action may be examined at any time during regular business hours at the Office of the Clerk of the Superior Court of California, County of San Diego, Hall of Justice, 330 West Broadway, San Diego, CA 92101.

If you have questions about the settlement, you may contact Plaintiff’s counsel:

London D. Meservy, Esq.
Meservy Law P.C.
P.O. Box 8121
Rancho Santa Fe, California 92067
(858) 779-1276
london@meservylawpc.com

Matthew S. Dente, Esq.
Dente Law P.C.
5040 Shoreham Place
San Diego, CA 92122
(619) 550-3475
matt@dentelaw.com

PLEASE DO NOT TELEPHONE THE COURT, THE OFFICE OF THE CLERK, OR IRR’S COUNSEL FOR INFORMATION REGARDING THIS SETTLEMENT.

BY ORDER OF THE COURT