

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

Patty Ruvalcaba v. EM KMR LLC

(San Bernardino Superior Court Case Number CIVDS2008937)

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 entitled *Patty Ruvalcaba v. EM KMR LLC* (San Bernardino Superior Court, Case Number CIVDS2008937) (the “Action”) shall be memorialized by 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 Plaintiff PATTY RUVALCABA (“Plaintiff”), for herself and on behalf of the State of California, and EM KMR LLC, (“Defendant”) (Plaintiff and Defendant as defined herein, are sometimes collectively referred to as the “Parties.”) Subject to the Court’s approval of the Settlement, this Agreement shall be effective once fully executed by the Parties and approved by the Court (“Effective date”).

The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and concluded by agreement of Defendant EM KMR LLC to pay the sum of One Hundred Seventy-Five Thousand Dollars And Zero Cents (\$175,000.00), for settlement of the Private Attorneys General Act (“PAGA”) claim asserted in the Action, and additional consideration provided below, which shall be inclusive of Plaintiff’s Counsel’s attorneys’ fees and costs (the “PAGA Settlement”).

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” is defined to include all non-exempt employees who worked in non-administrative positions for Defendant in California from March 17, 2019 through the date that the Court grants approval of the settlement.
- (b) “Court” means the Superior Court for the State of California, County of San Bernardino.
- (c) “Counsel for Defendant” are:

FISHER & PHILLIPS LLP
Lonnie D. Giamela Esq. (SBN 228435)
Bingxi Sun, Esq. (SBN 312785)
444 South Flower Street, Suite 1500
Los Angeles, California 90071
Telephone: (213) 330-4454
Facsimile: (213) 330-4501
Email: lgiamela@fisherphillips.com
Email: bsun@fisherphillips.com

- (d) “Effective Date” means the date the Court enters the order approving the PAGA Settlement as described in this Agreement.
- (e) “Gross Settlement Amount” refers to the One Hundred Seventy-Five Thousand Dollars And Zero Cents (\$175,000), which shall be paid by Defendant EM KMR LLC to fund the PAGA Settlement, and from which all settlement payments for the Net Settlement Amount and Court approved attorneys’ fees and costs shall be paid. This is a non-reversionary, all-in settlement. No part of the Gross Settlement Amount shall revert back to Defendant.
- (f) “Net Settlement Amount” means the total sum available for payment of PAGA penalties to the Aggrieved Employees and California’s Labor & Workforce Development Agency (the “LWDA”) after deducting Plaintiff’s attorney fees and costs, representative award and administration fees, collectively referenced in Section 3.01(d) from the \$175,000 Gross Settlement Amount.

(g) “Plaintiff’s Counsel” is:

LAW OFFICE OF SCOTT ERNEST WHEELER
Scott Ernest Wheeler, Esq. (SBN 187998)
250 West First Street, Suite 216
Claremont, California 91711
Telephone: (909) 621-4988
Facsimile: (909) 621-4622
Email: sew@scottwheelerlawoffice.com

- (h) “Release Period” means March 17, 2019, to the date of the Court orders approval of this Agreement.
- (i) “PAGA Released Claims” mean any and all claims relating to any and all facts and claims asserted in the Action or any other claims, under PAGA, that could have been asserted in the Action based on the facts alleged, including but not limited to any and all claims, causes of action, damages, benefits, expenses, penalties, interest, debts, liabilities, demands, obligations, attorneys’ fees, costs, and any other form of relief or remedy in law, equity, or whatever kind or nature that were asserted or could have been asserted pursuant to Labor Code Section 2698, et seq. based on the facts alleged in the operative complaint in this Action, including but not limited to claims for PAGA penalties for violations of the California *Labor Code*. In particular, this release includes PAGA claims under California Labor Code Sections 201-203, 204, 210, 226, 226.3, 226.7, 246, 510, 512, 558, 1024.5, 1174, 1194, 1198, and 2810.5 only. This Release only extends to the Released Claims, as described above, for any and all time periods where Plaintiff and/or the Aggrieved Employees worked for Defendant during the Release Period.
- (j) “Released Parties” means Defendant EM KMR LLC (“EM KMR”) and each of its respective, owners, parents, subsidiaries, successors, trusts, estates, related entities, officers, directors, franchisors, shareholders, persons, employees, agents, servants, representatives, members, attorneys, insurers, re-insurers, assigns, and affiliates and any and all other persons and entities with whom they have been, are now, or may hereafter be affiliated (collectively “Releasees”).

- (k) "Settlement Administrator" refers to Phoenix Settlement Administrators which shall be paid from the Net Settlement Amount to administer the PAGA Settlement.
- (l) The "PAGA Settlement" or "Agreement" refers to the settlement of the PAGA claims reached by the Parties in the Action.

Article II.

Background.

Section 2.01 Background.

- (a) On March 17, 2020, Plaintiff filed notice with the LWDA for alleged violations of PAGA;
- (b) On May 29, 2020, Plaintiff filed the Action in the Superior Court of the State of California for the County of San Bernardino.
- (c) Subsequently, the Parties engaged in an extensive investigation by conducting informal discovery. The parties also attended mediation session with the highly experienced mediator, Todd Smith, Esq. where they reached the PAGA Settlement.

Article III.

Approval and Implementation of Settlement.

Section 3.01 Allocation of the Gross Settlement Amount.

The Gross Settlement Amount is \$175,000. This is a non-reversionary, all-in settlement. No part of the Gross Settlement Amount shall revert back to Defendant. Defendant's maximum total liability under this settlement shall not exceed the Gross Settlement Amount of \$175,000.00.

The Parties will cooperate in obtaining through an unopposed motion requesting an Order from the Court approving the PAGA settlement and payment of the Gross Settlement Amount as follows:

- (a) **Plaintiff's Counsel's Fees.**

Plaintiff's Counsel may request and be paid up to Fifty-Eight Thousand and Two Hundred and Seventy-Five Dollars and Zero Cents (\$58,275.00) or thirty-three and one third percent (33 1/3) percent for attorneys' fees ("Attorneys' Fees") from the

total Gross Settlement Amount. If Plaintiff's Counsel's request for Attorneys' Fees is not approved and/or is reduced by the Court, any amount not approved and/or reduced by the Court will be included in the Net Settlement Amount to be paid to the Aggrieved Employees. Defendant agrees not to oppose the fee request by Plaintiff's counsel in the amount described above.

(b) Plaintiff's Counsel's Litigation Costs.

Plaintiff's Counsel may request up to \$15,000.00 ("Litigation Costs") of the Gross Settlement Amount as reimbursement for expenses incurred in the Action. If Plaintiff's counsel's request for Litigation Costs is not approved and/or is reduced by the Court, any amount not approved and/or reduced by the Court will be included in the Net Settlement Amount to be paid to Aggrieved Employees. Defendant agrees not to oppose Plaintiff's request for reimbursement of Litigation Costs in the amount described above.

(c) Settlement Administration Costs

The settlement administration costs shall be paid from the Gross Settlement amount. The estimated costs from Phoenix total \$2,580.00.

(d) Service Award

The representative award to the named Plaintiff, Patty Ruvalcaba in the amount of \$5,000.00 subject to Court approval. If the requested amount is not approved and/or reduced by the Court, any amount not approved and/or reduced by the Court will be included in the Net Settlement Amount to be paid to the Aggrieved Employees.

(d) Net Settlement Amount

The Net Settlement Amount shall be determined by deducting Plaintiff's Counsel's Attorneys' Fees, Plaintiff's Counsel's Litigation Costs and the Settlement

Administration Costs as set forth in section 3.01(a), (b) and (c) from the \$175,000 Gross Settlement Amount. The Net Settlement Amount is estimated approximately \$93,750 and shall be characterized as 100% civil penalties. The Net Settlement Amount shall be distributed as set forth below in section 3.04(b).

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 and 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 Settlement as described in this Agreement.

Section 3.02 Court Approval.

Plaintiff and Plaintiff's Counsel will seek the Court's approval of the PAGA Settlement and the payment of penalties as described in this Agreement by way of noticed motion to be filed by Plaintiff's Counsel. Plaintiff's Counsel will submit this Agreement with the Court for approval. Pursuant to Labor Code section 2699(1)(2), Plaintiff will also submit a copy of this Agreement to the LWDA prior to submission to the Court. The Court's approval of the payment of the Gross Settlement Amount as described in this Agreement shall be embodied in a written judgment.

Section 3.03 Notice to Aggrieved Employees and Settlement Administration Procedures.

(a) Notice/Settlement Administration Procedures.

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

- (1) Within fourteen (14) calendar days of a Court order approving this settlement, Defendant shall provide the Settlement Administrator, which shall be formatted as a Microsoft Excel spreadsheet or Microsoft Word Document, with the following information for each Aggrieved Employee: his/her full name; social

security number; last known address; last known telephone number; and number of compensable workweeks/pay periods for each Aggrieved Employee.

(2) Notice to the Aggrieved Employees from the Settlement Administrator shall be in English only. A copy of the proposed Notice to the Aggrieved Employees is attached hereto, incorporated herein by this reference, and marked as **Exhibit A**.

(3) The Settlement Administrator will skip trace and re-mail all returned, undelivered mail within ten (10) days of receiving notice that a notice was undeliverable.

Section 3.04 Settlement Payment Procedures.

(a) Deposit of Gross Settlement Amount with Settlement Administrator/Duties of Settlement Administrator

Within fourteen (14) calendar days of a Court order approving this settlement, Defendant shall: (1) transfer the full Gross Settlement Amount of \$175,000 to the Settlement Administrator, and (2) provide the Settlement Administrator, which shall be formatted as a Microsoft Excel spreadsheet or Microsoft Word Document, with the following information for each Aggrieved Employee: his/her full name; social security number; last known address; last known telephone number; and number of Compensable Workweeks/Pay Period for each Aggrieved Employee.

(b) PAGA Penalties Payment Distribution

Within fourteen (14) calendar days of receiving the Gross Settlement Amount and this information, the Settlement Administrator will make all payments provided under this settlement including: (1) payment of attorneys' fees and costs to Plaintiff's counsel, (2) payment

of a service award to Plaintiff, (3) payment to the LWDA for PAGA penalties, and (4) payment to Aggrieved Employees. With respect to payments to Aggrieved Employees, the Settlement Administrator shall send by first-class mail, at their last known address, the court-approved notice of this settlement, and their payment. The Settlement Administrator will skip trace and re-mail all returned, undelivered mail within ten (10) days of receiving notice that a notice was undeliverable.

The total sum available for payment of PAGA penalties is the Net Settlement Amount. The Settlement Administrator shall pay seventy-five percent (75%) of the Net Settlement Amount to the LWDA. The remaining twenty-five percent (25%) of the Net Settlement Amount (the "Employee Net Settlement Amount") shall be paid to Plaintiff and the Aggrieved Employees based on the following formula:

The actual amount of each individual PAGA Payment paid will be calculated as follows: The Employee Net Settlement Amount will be divided by the total number of workweeks worked by Aggrieved Employees during the Released Period, and then the workweek amount will be multiplied by the number of workweeks worked by the individual aggrieved employee as determined by the Settlement Administrator. All Aggrieved Employees who cash their settlement check may receive an IRS Form 1099 for 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.

The Settlement Administrator shall mail one (1) check cashing reminder postcard to those Aggrieved Employees who have not negotiated their settlement checks within eighty (80) days of mailing. Thereafter, all unclaimed funds shall be redistributed to the Aggrieved Employees based upon the formula provided in Section 3.04(b).

Section 3.05 Order Approving PAGA Settlement and Judgment.

Plaintiff will submit, with the motion asking the Court to approve the PAGA Settlement and this Agreement, an order and judgment based on the PAGA Settlement to be entered by the Court granting approval of the PAGA Settlement and penalties under PAGA, having the force and effect of precluding any and all claims by the Aggrieved Employees relating to any and all facts and claims asserted in the Action or any other claims, under PAGA, that could have been asserted in the Action based on the facts alleged and retaining jurisdiction over all matters relating to the administration, consummation, enforcement, and interpretation of the terms of this Agreement and closing the case after submission of proof by the administrator of the payment of all funds enumerated in the PAGA Settlement. A copy of the proposed Order and Judgment Approving Private Attorneys General Act of 2004 ("PAGA") Settlement is attached hereto, incorporated herein by this reference, and marked as **Exhibit B**. Defendant shall not oppose this request.

Article IV.

Limitations On Use Of This Settlement.

Section 4.01 No Admission.

Defendant denies liability for any claims alleged by Plaintiff on her own behalf or on behalf of the State of California and any of its agencies, including but not limited to the Department of Industrial Relations, Division of Labor Standards Enforcement, and the LWDA, and the Aggrieved Employees upon any claim or cause of action. This Agreement does not constitute, and is not intended to constitute, an admission by Defendant as to the merits, validity, or accuracy of any of the allegations or claims made against it in the Action.

Nothing in this Agreement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the negotiations leading to this Agreement, is intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible in any

way in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. The Parties themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding, as purported evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity, or for any other purpose. Notwithstanding the foregoing, this Agreement may be used in any proceeding before the Court that has as its purpose the interpretation, implementation, or enforcement of this Agreement or any orders or judgments of the Court entered in connection with the Agreement.

None of the documents produced or created by Plaintiff or the Aggrieved Employees in connection with the claims procedures or claims resolution procedures constitute, and they are not intended to constitute, an admission by Defendant of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.

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 Action 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 bar released claims, enforce, construe, or finalize this Agreement and to secure its approval by the Court.

Section 4.03 Nullification.

- (a) If the Court should for any reason refuse 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) Defendant provided Plaintiff with an estimate that Aggrieved Employees had worked 5,784 Compensable Workweeks up until the date specified in the disclosure. Defendant shall provide Plaintiff with the total number of Aggrieved Employees, and the total number of Compensable Workweeks worked by them, ten (10) calendar days before the date that Plaintiff informs Defendant that Plaintiff will file a motion for approval of this settlement. If more than 6,300 Compensable Workweeks are identified at that time, as having been worked as of the date specified in the disclosure, the Gross Settlement Amount will be increased on a pro rata basis according to the number of additional Compensable Workweeks identified (i.e., all Compensable Workweeks beyond 6,300).
- (c) If the Court does not approve the payment of PAGA penalties as described in this Agreement, the Parties agree to meet and confer to address the Court's concerns. If the Parties are unable to agree on a resolution, the Parties agree to seek the assistance of mediator Todd Smith to resolve any disputes.
- (d) Invalidity 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 of All PAGA Claims Relating to the Action.

Upon the final approval by the Court of this Settlement, Plaintiff and each Aggrieved Employee, shall, for the Release Period, fully release and forever discharge Released Parties from the Released Claims that arose during the Release Period.

Section 5.02 Aggrieved Employees' Released Claims.

Plaintiff and each Aggrieved Employee release the Released Parties and Releasees as defined in 1.01(j) above, from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action contingent or accrued for, during the time period of March 17, 2019 through the date that the Court grants approval of the settlement and files the Order and Final Judgment, arising out of the PAGA claim specifically relating to California Labor Code §§ 201-203, 204, 210, 226, 226.3, 226.7, 246, 510, 512, 558, 1024.5, 1174, 1194, 1198, and 2810.5 only, as defined in 1.01(i) above. This release does not relate to claims that cannot be waived such as Worker's Compensation claims or unemployment compensation benefits.

Section 5.03 Plaintiff's Released Claims.

Plaintiff individually agrees to further release the Released Parties and Releasees from any and all claims, demands, rights, liabilities, and/or causes, of any form whatsoever, arising under federal, state or local laws, rules, or regulations including wage hour laws, whether known or unknown, unforeseen, unanticipated, unsuspected or latent, that have been or could have been asserted by Plaintiff, or the heirs, successors and/or assigns of Plaintiff, whether directly, indirectly, representatively, derivatively or in any other capacity, arising at any time prior to the date that the court grants approval of the settlement including but not limited to those arising out of or in connection with any claims, demand, charges, or complaints, arising out of or in connection with her employment, the cessation thereof or any other interaction or relations with Releasees. This release includes, without limiting the generality of the foregoing: any and all claims, demands, causes of actions, obligations, charges, liabilities, fees including attorneys' fees, fines, penalties, costs, actual, compensatory and punitive damages, and all claims for any other type of relief relating to, arising out of, or based upon: all claims of harassment, discrimination, and/or retaliation in violation of State or Federal law; all claims for

failure to prevent harassment, discrimination, and/or retaliation; all claims of violation of public policy, including a claim for wrongful and/or constructive termination of employment; all claims based on tort and/or breach of contract, whether written or oral, express or implied, and any covenant of good faith and fair dealing; all claims for fraud, intentional and/or negligent misrepresentation; all claims for unpaid commissions, wages, or other benefits, including minimum wage, overtime, double time, vacation, associated penalties and/or premiums, and expense reimbursement; all claims for rest or meal periods and associated penalties and/or premiums; any claim for unlawful or unfair business practices; any and all claims for violations of the California Labor Code (including, but not limited to, California Labor Code section 132a); all claims for emotional distress; any and all claims which were or could have been asserted by Plaintiff; and all claims generally relating to Plaintiff's employment and the cessation thereof, including any alleged violation of any federal, state or other governmental statute, regulation, ordinance, or executive order, including without limitation:

- (1) The Civil Rights Acts of 1866, 1964, and 1991, as amended;
- (2) 42 U.S.C. § 1981;
- (3) The California Fair Employment and Housing Act;
- (4) Section 503 of the Rehabilitation Act of 1973;
- (5) The Fair Labor Standards Act (including the Equal Pay Act);
- (6) The California and United States Constitutions;
- (7) The California Labor Code, specifically including, but not limited to the Private Attorney General Act pursuant to Labor Code § 2699, et seq.;
- (8) The California Business and Professions Code, specifically including, but not limited to Business & Professions Code § 17200;

- (9) The Employee Retirement Income Security Act, as amended;
- (10) The California Family Rights Act;
- (11) The Americans with Disabilities Act;
- (12) The Family Medical Leave Act;
- (13) The California Pregnancy Discrimination Act;
- (14) The California Wage Orders;
- (15) The National Labor Relations Act;
- (16) The Immigration Reform and Control Act;
- (17) The Worker Adjustment and Retraining Notification Act;
- (18) California's Occupational Safety and Health Act, or the Federal equivalent; and
- (19) Any class, group, representative or collective claims.

This release expressly excludes any workers' compensation claim that Plaintiff may have. As to the Plaintiff's Released Claims only, Plaintiff expressly waives all rights and benefits under the terms of section 1542 of the California Civil Code. Section 1542 reads 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.

Notwithstanding the provisions of section 1542, and for the purpose of implementing a full and complete release and discharge of all of their Released Claims, Plaintiff expressly acknowledges that this Settlement is intended to include in its effect, without limitation, all Released Claims which Plaintiff does not know or suspects to exist in her favor at the time of

execution hereof, and that the Settlement contemplates the extinguishment of all such Released Claims.

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 and Defendant 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 Defendant's 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 she 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 and the Memorandum of Understanding fully executed by the Parties on January 21, 2021, incorporated by reference herein, contains the entire understanding of the Parties hereto in respect of the subject matter contained herein. These Agreements supersede all prior agreements and understandings among the Parties hereto with respect to the settlement of the Action.

Section 6.06 Waiver of Compliance.

Any failure of any Party, 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. A scanned or faxed signature shall be valid as an original signature. 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 Dispute(s).

Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, Plaintiff's counsel and Defendant's counsel

shall meet and confer in an attempt to reach a resolution. If the Parties are unable to reach a resolution, they agree to submit any such dispute(s) to the Court. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other written or oral representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary or contradict its terms. In entering into this Agreement, the Parties agree that this Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and enforced under the laws of the State of California, both in its procedural and substantive aspects, without regard to its conflict of laws provisions. Any claim arising out of or relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior Court of the State of California for the County of San Bernardino. The foregoing is only limited to disputes concerning this Agreement and in no way limits or negates the enforceability and effect of the underlying arbitration agreements signed by employees of Defendant obligating them to arbitrate any and all claims on an individual (and not on a class or collective) basis. Plaintiff, on her own behalf and on behalf of the Aggrieved Employees, and Defendant participated in the negotiation and drafting of this Agreement and had available to them the advice and assistance of independent counsel. As such, neither Plaintiff nor Defendant may claim that any ambiguity in this Agreement should be construed against the other.

Section 6.09 Fair Settlement

Plaintiff, Defendant, Plaintiff's Counsel, and Defendant's Counsel believe that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiation, taking into account all relevant factors, current and potential, and is consistent with public policy, and fully complies with applicable provisions of law.

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 Waiver of Appeals.

The Parties waive all appeals from the Court's approval of the PAGA penalties, unless the Court materially modifies the settlement and/or the PAGA penalties.

Section 6.12 Continuing Jurisdiction.

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 obligations of this Agreement.

Article VII.

Confidentiality

Section 7.01 Confidentiality.

Plaintiff and Plaintiff's Counsel agree that they have not and will not publish the Agreement except as required by the laws of the State of California. In response to any inquiries Plaintiff will state that "the case was resolved and it was resolved confidentially." Plaintiff's Counsel shall not report the Agreement or its content in any medium or in any publication, shall not post or report anything regarding the claims of Plaintiff or the Aggrieved Employees on his website, and shall not contact any reporters or media regarding the Agreement or its content. However, Plaintiff is authorized to release information regarding the filing and settlement of this case, without disclosing the specific monetary amount, in his resume or in a declaration in a future unrelated court proceeding. Plaintiff's attorney is authorized to make a limited disclosure to the Court and the LWDA for the purposes of obtaining the approval of the PAGA Settlement, including but not limited to, the settlement amount and breakdown of fees and costs. This

disclosure is limited to court filings and electronic submission of settlement documents to the LWDA and neither Plaintiff nor her counsel or representatives are permitted to disseminate or publish, distribute, or discuss the information provided to the Court in those filings outside the filings themselves and any hearing held on those filings, unless ordered otherwise by the Court.

IN WITNESS WHEREOF, the Parties have executed this PAGA Settlement Agreement on the date set forth below.

APPROVED AND ACCEPTED:

Dated: _____

By: _____
PATTY RUVALCABA

Dated: _____

EM KMR LLC

By: _____
(INSERT NAME)
PRESIDENT

APPROVED AS TO FORM ONLY:

DATED: February 18 2021

LAW OFFICE OF SCOTT E. WHEELER

By: 
SCOTT ERNEST WHEELER
Attorney for Plaintiff and the other Aggrieved Employees

DATED: February __, 2021

FISHER PHILLIPS, LLP

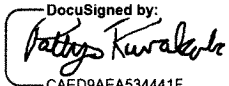
By: _____
LONNIE D. GIAMELA
Attorneys for Defendant

disclosure is limited to court filings and electronic submission of settlement documents to the LWDA and neither Plaintiff nor her counsel or representatives are permitted to disseminate or publish, distribute, or discuss the information provided to the Court in those filings outside the filings themselves and any hearing held on those filings, unless ordered otherwise by the Court.

IN WITNESS WHEREOF, the Parties have executed this PAGA Settlement Agreement on the date set forth below.

APPROVED AND ACCEPTED:

Dated: 2/18/2021

By: 
PATTY RUVALCABA

Dated: _____

EM KMR LLC

By: _____
(INSERT NAME)
PRESIDENT

APPROVED AS TO FORM ONLY:

DATED: February ___, 2021

LAW OFFICE OF SCOTT E. WHEELER

By: _____
SCOTT ERNEST WHEELER
Attorney for Plaintiff and the other Aggrieved Employees

DATED: February ___, 2021

FISHER PHILLIPS, LLP

By: _____
LONNIE D. GIAMELA
Attorneys for Defendant

disclosure is limited to court filings and electronic submission of settlement documents to the LWDA and neither Plaintiff nor her counsel or representatives are permitted to disseminate or publish, distribute, or discuss the information provided to the Court in those filings outside the filings themselves and any hearing held on those filings, unless ordered otherwise by the Court.

IN WITNESS WHEREOF, the Parties have executed this PAGA Settlement Agreement on the date set forth below.

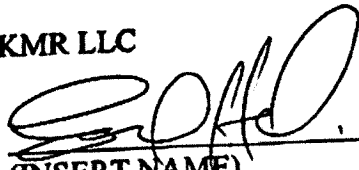
APPROVED AND ACCEPTED:

Dated: _____

By: _____
PATTY RUVALCABA

Dated: 2/6/2021

EM KMR LLC

By: 
(INSERT NAME)
PRESIDENT

APPROVED AS TO FORM ONLY:

DATED: February __, 2021

LAW OFFICE OF SCOTT E. WHEELER

By: _____
SCOTT ERNEST WHEELER
Attorney for Plaintiff and the other Aggrieved Employees

DATED: February 18, 2021

FISHER PHILLIPS, LLP

By: 
LONNIE D. GIAMELA
Attorneys for Defendant

EXHIBIT A

Notice of PAGA Settlement and Release of Claims

Patty Ruvalcaba v. EM KMR LLC

(San Bernardino Superior Court, Case Number CIVDS2008937)

<<< Employee Name >>>

<<< Address >>>

<<< City, State Zip >>>

I. NOTICE OF PAGA SETTLEMENT

The San Bernardino Superior Court Superior Court (the “Court”) has approved a settlement in the above-captioned action filed by Patty Ruvalcaba (collectively “Plaintiff”) on behalf of herself and all other aggrieved employees.

In this lawsuit, Plaintiff claims penalties pursuant to the Private Attorneys General Act of 2004 (“PAGA”), for violation of Labor Code Sections 201-203, 204, 210, 226, 226.3, 226.7, 246, 510, 512, 558, 1024.5, 1174, 1194, 1198, and 2810.5 only.

Plaintiff is solely seeking civil penalties on behalf of the California Labor and Workforce Development Agency (“LWDA”) and other aggrieved employees under the PAGA. The Court has not made a determination about Plaintiff’s allegations.

This Notice is not to be understood as an expression of any opinion by the Court as to the merits of the claim. Defendant, EM KMR LLC, maintains that it was in compliance with the California Labor Code at all times and enters into this Settlement with no admission of liability and solely for the purposes of compromising and settling the action to avoid the cost and operational burden of continued litigation.

You are receiving this Notice because you are in the group of employees referred to as “Aggrieved Employees,” which is defined as: all current and former non-exempt employees of Defendant, EM KMR LLC in the State of California from March 17, 2019 through the date upon which the Court approved this PAGA Settlement and files the Order and Judgment.

II. CALCULATION OF INDIVIDUAL PAGA PAYMENT

The total sum available for payment of PAGA penalties is the Net Settlement Amount or \$XXXXXXX. The Settlement Administrator shall pay seventy-five percent (75%) of the Net Settlement Amount to the LWDA (which is estimated at \$XXXXXX), no later than twenty-four (24) calendar days after the date the Court files the Order approving the PAGA settlement.

The remaining twenty-five percent (25%) of the Net Settlement Amount (which is estimated at \$XXXXXX) (the “Employee Net Settlement Amount”) shall be paid to Plaintiff and the Aggrieved Employees based on the following formula: The Employee Net Settlement Amount will be divided by the total number of workweeks worked by Aggrieved Employees during the Released Period, and then the workweek amount will be multiplied by the number of workweeks worked by the individual aggrieved employee as determined by the Settlement Administrator. All Aggrieved Employees who cash their settlement check may receive an IRS Form 1099 for their portion of the settlement, if deemed required by the Settlement Administrator (in compliance with IRS guidelines).

III. RELEASED CLAIMS:

Released Claims mean any and all claims relating to any and all facts and claims asserted in this action or any other claims, under PAGA, that could have been asserted in the Action based on the facts alleged, including but not limited to any and all claims, causes of action, damages, benefits, expenses, penalties, interest, debts, liabilities, demands, obligations, attorneys' fees, costs, and any other form of relief or remedy in law, equity, or whatever kind or nature that were asserted or could have been asserted pursuant to Labor Code Section 2698, et seq. based on the facts alleged in the operative complaint in this Action, specifically requesting PAGA penalties for violations of the California Labor Code Sections 201-203, 204, 210, 226, 226.3, 226.7, 246, 510, 512, 558, 1024.5, 1174, 1194, 1198, and 2810.5 only.

This Release only extends to the Released Claims, as described above, for any and all time periods where Plaintiff and/or the aggrieved employees worked for Defendant, EM KMR LLC. This release does not relate to claims that cannot be waived such as Worker's Compensation claims or unemployment benefits.

IV. SETTLEMENT ADMINISTRATOR PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

You may call the Settlement Administrator, Phoenix toll free at (XXX) XXX-XXX with any questions. You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment. Settlement checks will be null and void 180 days after issuance if not deposited or cashed. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement. Any uncashed checks will be redistributed to the Aggrieved Employees who cash their check based upon the formula provided in Paragraph II.

EXHIBIT B

1 **LAW OFFICE OF SCOTT ERNEST WHEELER**

2 Scott Ernest Wheeler (SBN 187998)
3 250 West First Street, Suite 216
4 Claremont, California 91711
5 Telephone: (909) 621-4988
6 Facsimile: (909) 621-4622
7 Email: sew@scottwheelerlawoffice.com

8 *Attorney for Plaintiff and the other*
9 *Aggrieved Employees*

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN BERNARDINO**

12
13 PATTY RUVALCABA, individually, and
14 on behalf of all other aggrieved employees,

15 Plaintiff,

16 v.

17 EM KMR LLC, a California limited liability
18 corporation; and DOES 1 through 50,
19 inclusive,

20 Defendants.

Case No.: CIVDS 2008937

[Hon. David Cohn, Dept. S-26]

**[PROPOSED] ORDER AND JUDGMENT
FOR APPROVAL OF PRIVATE
ATTORNEYS GENERAL ACT OF 2004
("PAGA") SETTLEMENT**

1 **[PROPOSED] ORDER AND JUDGMENT APPROVING SETTLEMENT PURSUANT**
2 **TO PRIVATE ATTORNEY GENERALS ACT ("PAGA")**

3 Plaintiff now seeks an Order granting approval of a Private Attorneys General Act (Labor
4 Code §2699 Et. Seq.) Settlement Agreement ("PAGA"), as follows:

5 Plaintiff filed an unopposed Motion for Approval of the Settlement Agreement Pursuant to
6 the Private Attorneys General Act ("PAGA") Labor Code § 2698, et seq., and supporting
7 documents. The Court, having considered the proposed Settlement Agreement, as well as all
8 papers filed in support of Plaintiff's Motion for Approval of Settlement Pursuant to the Private
9 Attorneys General Act ("PAGA"), hereby ORDERS, ADJUDGES, AND DECREES AS
10 FOLLOWS:

11 1. This Court has jurisdiction over the subject matter of the action and over all Parties
12 to the action, including the aggrieved employees.

13 2. The Settlement is in all respects fair, reasonable, and adequate, and it is hereby
14 approved.

15 3. The PAGA period, defined as "All non-exempt employees who worked for
16 Defendant in the State of California from March 17, 2019 through the date of this order is approved
17 for settlement purposes and filed with the Court.

18 4. The Notice that will be provided to the aggrieved employees with the California
19 and United States Constitutions, and any other applicable law, and constitutes the best notice
20 practicable under the circumstances, by providing individual notice to all aggrieved employees
21 who could be identified through reasonable effort, and by providing due and adequate notice of
22 the proceedings and of the matters set forth therein to the aggrieved employees. The Notice fully
23 satisfies the requirements of due process.

24 5. The Court finds the Settlement was entered into in good faith, that the Settlement
25 is fair, reasonable, and adequate.

26 6. As set forth in the Declaration of Scott Ernest Wheeler, as counsel for Plaintiff,
27 notice of the Private Attorneys General Act (Labor Code §2698, et seq.) Settlement Agreement
28 has been submitted to the California Labor and Workforce Development Agency as provided by

1 law.

2 7. Upon entry of this Order, compensation to the aggrieved employees shall be
3 effected pursuant to the terms of the Settlement Agreement.

4 8. In addition to any recovery that Plaintiff may receive as an aggrieved employee
5 under the Settlement, and in recognition of Plaintiff's efforts on behalf of the PAGA Settlement,
6 the Court hereby approves the payment of a representative enhancement award to Plaintiff, Patty
7 Ruvalcaba in the amount of \$5,000 for her services as the representative, and Settlement
8 Administrator shall cause this sum to be paid to Plaintiff in accordance with the terms of the
9 Settlement Agreement.

10 9. The Court finds that PAGA Counsel's requested itemized litigation expenses in the
11 amount of \$ _____ are reasonable and are hereby approved by the Court.

12 10. The Court finds that the requested attorneys' fees are reasonable under the
13 percentage of the fund method. *See Laffitte v. Robert Half Internat, Inc.* (2016) 1 Cal.5th 480, 503.
14 Specifically, the Gross Settlement Fund of \$175,000.00 represents a true common fund, as there
15 is no claims process and no money under the Settlement will revert to Defendant. The Court finds
16 that thirty-three and 1/3 percent of the common fund, or \$58,275, is fair, reasonable and
17 appropriate. The Court has also reviewed the Declaration of Scott Ernest Wheeler and finds that
18 PAGA Counsel has incurred a lodestar of \$ _____. The Court finds that the hours PAGA Counsel
19 dedicated to litigating this case, and his requested hourly rates, are fair, reasonable and appropriate.
20 Accordingly, the Court finds that that PAGA Counsel has incurred a lodestar of \$ _____. Thus,
21 the requested attorneys' fees of \$ _____ re also reasonable under the lodestar method
22 with a ____ multiplier of approximately _____, or nearly a ____% reduction to PAGA Counsel's
23 lodestar.

24 11. The Court approves the payment of attorney's fees to PAGA Counsel in the amount
25 of \$ _____ and reimbursement of reasonable litigation expenses in the amount of
26 \$ _____, and Defendant shall cause these sums to be paid to PAGA Counsel in accordance with
27 the terms of the Settlement Agreement.

28 12. The Court appoints Phoenix Settlement Administrators ("Phoenix") as the PAGA

1 Settlement Administrator, and the payment of actual settlement administration costs in the amount
2 of \$2,585.00 to Phoenix is approved, and Defendant shall cause this sum to be paid to Phoenix in
3 accordance with the terms of the Settlement Agreement.

4 13. The Court approves and orders payment in the amount of \$_____ (which
5 represents 75% of the \$_____ allocated for the PAGA payment after subtracting the attorney's
6 fees and costs, representative award and settlement administration costs) to the California Labor
7 and Workforce Development Agency ("LWDA"), which represents a fair and equitable sum for
8 resolution of claims raised pursuant to California Labor Code section 2698 *et seq.*, and Defendant
9 shall cause this sum to be paid to the LWDA in accordance with the terms of the Settlement
10 Agreement.

11 14. The Court approves and orders payment in the amount of \$_____ (which
12 represents 25% of the \$_____ allocated for the PAGA payment after subtracting the attorney's
13 fees and costs, representative award and settlement administration costs) to Plaintiff and the other
14 aggrieved employees, which represents a fair and equitable sum for resolution of claims raised
15 pursuant to California Labor Code section 2698 *et seq.*, and Defendant shall cause this sum to be
16 paid to the aggrieved employees in accordance with the terms of the Settlement Agreement.

17 15. The Gross Settlement Fund, the Net Settlement Fund, and the methodology used to
18 calculate and pay each aggrieved employees individual settlement payment are fair and reasonable,
19 and the Court authorizes the Settlement Administrator to issue individual settlement payments to
20 each aggrieved employee in accordance with the terms of the Settlement Agreement.

21 16. Upon the Effective Date, the date of which the Court files this Order and Final
22 Judgment, Plaintiff and the aggrieved employees, shall have, by operation of this Order and the
23 accompanying Judgment, fully, finally, and forever released, relinquished, and discharged
24 Defendant from all Released Claims as defined by the terms of the Settlement.

25 17. Judgment in this matter is entered in accordance with the terms of the Settlement
26 Agreement, and this Order and Final Judgment against Defendant in favor of Plaintiff and the
27 aggrieved employees. This Judgment is intended to be a final disposition of the above captioned
28 action in its entirety, and is intended to be immediately appealable.

18. This Court shall retain jurisdiction with respect to all matters related to the administration and consummation of the Settlement, to enforce the terms of the judgment, and any and all claims, asserted in, arising out of, or related to the subject matter of the lawsuit, including but not limited to all matters related to the Settlement and the determination of all controversies relating thereto.

19. An OSC re: compliance with the terms of the Settlement is set for _____ at _____ a.m. / p.m. in Department S26. A report from Phoenix re: distribution of the Settlement funds shall be filed by on or before _____.

20. Plaintiff's Motion for Approval of the Private Attorneys General Act (Labor Code § 2698, et seq.) Settlement Agreement is hereby granted and the Court directs that a judgment shall be entered in accordance with the terms of this Order.

21. This document shall constitute a Judgment for purposes of California Rule of Court 3.769(h).

IT IS SO ORDERED, ADJUDGED AND DECREED.

DATED: _____

HONORABLE DAVID COHN
JUDGE OF THE SUPERIOR COURT