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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF LOS ANGELES**

11 BRENDA PANTOJA, an individual;
12 LYANNE LARES, an individual; JANET
TORRES, an individual, and CYDNEY ROSS;
13 an individual; JACLYN MORENO, an
individual; and ADRIANA DE LA CRUZ, an
14 individual; on behalf of the State of California,
as a private attorney general, and on behalf of
15 all others similarly situated,

16 Plaintiffs,

17 v.

18 ISM MANAGEMENT COMPANY LLC, a
California Limited Liability Company;
19 STEPHANIE DONER, an individual; and
DOES 1 to 50, inclusive,

20 Defendants.
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CASE NO.: 20STCV14551

*Assigned to Hon. Elaine Mandel
Dept. P*

**JOINT STIPULATION REQUESTING
APPROVAL OF SETTLEMENT PURSUANT
TO THE PRIVATE ATTORNEY GENERAL
ACT OF 2004 ("PAGA"); [PROPOSED]
ORDER THEREON**

Complaint Filed: April 2, 2020

Trial Date: None Set

1 **KLEIN, HOCKEL, IEZZA & PATEL P.C.**

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6 *Attorneys for Defendants*

7 *ISM Management Company LLC and Stephanie Doner*

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1 Plaintiffs Brenda Pantoja, Lyanne Lares, Janet Torres, Cydney Ross, Jaclyn Moreno, and
2 Adriana De La Cruz, (“Plaintiffs”) and Defendants ISM Management Company LLC (“ISM”) and
3 Stephanie Doner (“Defendants”) (collectively, the “Parties”) hereby stipulate and agree as follows:

4 **WHEREAS**, on March 3, 2020, Plaintiffs Pantoja, Lares, Torres, and Ross¹ submitted a
5 letter to the California Labor and Workforce Development Agency (“LWDA”) to notify the LWDA
6 pursuant to the Private Attorneys General Act of 2004, Labor Code section 2698, *et seq.* (“PAGA”) of Plaintiffs intent to seek civil penalties under PAGA for violations of Labor Code §§ 201-204,
7 210, 226, 226.3, 226.7, 510, 512, 558, 1102.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802,
8 as well as IWC Wage Order 5-2001.

10 **WHEREAS**, on April 15, 2020, Plaintiffs filed a Complaint in the Superior Court of
11 California, Los Angeles alleging individual claims and a PAGA cause of action, as follows: (1)
12 Failure to Pay Minimum Wage for All Hours Worked; (2) Failure to Provide Meal Periods or Pay
13 Premiums in Lieu Thereof; (3) Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof;
14 (4) Failure to Pay Overtime; (5) Failure to Pay Wages Timely; (6) Failure to Reimburse Necessary
15 Business Expenses; (7) Failure to Provide Accurate Itemized Wage Statements; (8) Waiting Time
16 Penalties; (9) Violation of Labor Code § 1102.5; (10) Discrimination on the Basis of National
17 Origin/Ancestry under FEHA; (11) Harassment on the Basis of National Origin under FEHA; (12)
18 Retaliation for Engaging in Protected Activity under FEHA; (13) Failure to Prevent Discrimination,
19 Harassment, and Retaliation under FEHA; (14) Unfair Competition (Business and Professions Code
20 §§ 17200 et seq.); and (15) Penalties Pursuant to Labor Code § 2698 et seq. for violations of Labor
21 Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1102.5, 1194, 1194.2, 1197,
22 1197.1, 1198, 1199, 2802, and IWC Wage Order 5-2001.

23 **WHEREAS**, on April 27, 2020, Plaintiffs filed a First Amended Complaint with the same
24 claims identified but added Plaintiffs Moreno and De La Cruz.

25 **WHEREAS**, Plaintiffs stipulated to bring their individual claims in arbitration and were so
26 ordered to arbitration by this Court on September 17, 2020.

27
28 ¹ Plaintiffs Moreno and De La Cruz joined the lawsuit shortly thereafter.

1 **WHEREAS**, claims 1-14 are hereinafter referred to as the “Individual Claims” and claim 15
2 is hereinafter referred to as the “PAGA Claim” (the Individual Claims and PAGA Claim are
3 collectively, the “Action”)

4 **WHEREAS**, the Parties in the Action agreed to participate in a global mediation. In
5 preparation for mediation, the Parties exchanged various documents and information that allowed
6 both sides to evaluate the potential exposure and potential risk, such as a review of employee
7 policies and procedures related to the claims alleged in Plaintiffs’ Complaint, and Plaintiffs’ time
8 and pay records. During this process, Plaintiffs’ counsel analyzed, researched, and investigated the
9 potential issues, including matters related to the calculation of PAGA damages, interviews of
10 Plaintiffs and other Aggrieved Employees, trial management, and appellate issues and risks.

11 **WHEREAS**, on November 16, 2020, the Parties attended an all-day mediation via Zoom
12 with experienced mediator and Hon. Howard Broadman (ret.). Although the parties did not settle on
13 the day of mediation, they continued arm’s-length negotiations with the assistance of Mediator
14 Broadman and ultimately reached an agreement to resolve the Action on the basis of a confidential
15 settlement of the Individual Claims and settlement of the PAGA Claim.

16 **WHEREAS**, the Parties concluded that there were benefits associated with settling the
17 Action, and concluded, after taking into account the sharply disputed factual and legal issues
18 involved in this litigation, the risks associated with further prosecution, the substantial benefits to be
19 received pursuant to the compromise and settlement of the Individual Claims and PAGA Claim,
20 and that settlement on the terms set forth therein is in the best interest of the Plaintiffs, the LWDA,
21 the Aggrieved Employees covered by PAGA, and Defendant, and is fair and reasonable.

22 **WHEREAS**, Defendants deny any liability or wrongdoing of any kind associated with the
23 claims alleged in the Action; ISM further denies that this Action is appropriate for PAGA
24 representative treatment because the claims require individualized inquires; Defendants contend,
25 that they have complied at all times with the California Labor Code, the related California Wage
26 Orders, and the California Business & Professions Code, all other state wage laws, and further
27 contend that both Actions are without merit; Defendants have denied and continue to deny each and
28 every material factual allegation and alleged claim asserted against it in the Actions and denies that

1 Plaintiffs or any other alleged Aggrieved Employee has been harmed based on the allegations raised
2 by Plaintiffs;

3 **WHEREAS**, the Parties reached a settlement of the Individual Claims and by the
4 confidential settlement, Plaintiff has agreed to release all individual claims against Defendants.

5 **WHEREAS**, the Parties have reached a settlement of the PAGA Claim of the Alleged
6 Aggrieved Employees who are defined as: *all current and former hourly-paid or non-exempt*
7 *employees who worked for ISM in the State of California during the PAGA Period, i.e., from March*
8 *3, 2019 through the date on which the Court grants approval of the settlement, or February 1,*
9 *2021, whichever comes first.* Defendants represent that there are 67 total hourly nonexempt
10 Aggrieved Employees at this time, 4 of whom are Plaintiffs. Defendants represent that there are
11 approximately 2200 pay periods at issue.

12 **WHEREAS**, the Parties negotiated and finalized the confidential terms of a settlement
13 memorialized in a long-form Confidential Settlement Agreement that agrees to release all
14 individual claims and dismiss the PAGA claim. The Parties are willing to provide the Court access
15 to this document or answer any questions *in camera* to support this settlement approval process
16 without invalidating the confidentiality term in the Confidential Settlement Agreement.

17 **WHEREAS**, any settlement of a PAGA Claim brought by an aggrieved employee must be
18 approved by the court. Lab. Code § 2699(1)(2); in 2009, the California Supreme Court held that
19 an aggrieved employee's representative action brought on behalf of the state and other aggrieved
20 employees against an employer for PAGA violations *does not* need to meet the requirements for
21 class certification nor does there need to be notice to the other employees. *Arias v. Superior Court*,
22 46 Cal.4th 969, 975; thus, the Court simply reviews the settlement and approves it if it is deemed
23 to be fair and reasonable. *See Gutilla v. Aerotek, Inc.*, 2017 WL 2729864, at *3 (E.D. Cal. Mar.
24 2017) (“the court will approve a settlement of PAGA claims upon a showing that the settlement
25 terms (1) meet the statutory requirements set forth by PAGA, and (2) are fundamentally fair,
26 reasonable, and adequate in view of PAGA’s public policy goals.”); *see also Rincon v. W. Coast*
27 *Tomato Growers, LLC*, 2018 WL 828104, at *2 (S.D. Cal. 2018) (same).

28 **WHEREAS**, the Parties hereby seek to obtain the Court’s approval of the PAGA settlement

1 and resolve this matter with a dismissal with prejudice of the PAGA claim in the most efficient
2 manner possible;

3 **WHEREAS**, for the reasons set forth in the supporting declaration of Martin Sullivan, the
4 PAGA settlement obtained here, including a gross PAGA settlement amount of \$10,000 with no
5 fees or costs subtracted therefrom, is fair and reasonable.

6 **WHEREAS**, based on the information and documents obtained through informal discovery
7 and during mediation, Plaintiffs assess the realistic value of the PAGA claims (without stacking) to
8 be approximately \$12,000.

9 **WHEREAS**, based on their robust experience litigation representative actions, counsel for
10 the parties believe the settlement here is fair and reasonable and warrants approval by the Court.

11 **THEREFORE, IT IS HEREBY STIPULATED AND PROPOSED BY THE PARTIES**
12 **HERETO AS FOLLOWS:**

13 The Parties stipulate and jointly request that the Court approve the following terms of the
14 fully-executed Confidential Settlement Agreement which includes the following key terms:

- 15 a. **Alleged Aggrieved Employees.** For purposes of this Settlement, the Alleged
16 Aggrieved Employees are defined as: *all current and former hourly-paid or non-*
17 *exempt employees who worked for ISM in the State of California during the PAGA*
18 *Period, i.e., from March 3, 2019 through the date on which the Court grants*
19 *approval of the settlement, or February 1, 2021, whichever comes first.* Defendants
20 represent that there are just sixty-seven (67) alleged Aggrieved Employees at this
21 time and approximately 2,200 pay periods at issue.
- 22 b. **Total Settlement Amount.** Defendants agree to pay the total sum of \$10,000.00
23 (Ten Thousand Dollars) (the “Maximum Gross Sum”) in full settlement of the PAGA
24 Claim. The Maximum Gross Sum will be allocated as follows:
- 25 i. PAGA Counsel requests no attorney fee award from the Settlement Payment;
26 ii. PAGA Counsel requests no award of costs from the Settlement Payment;
27 iii. Administration costs shall be borne by Defendants, who agree to administer
28 the PAGA settlement process;

1 iv. PAGA Counsel requests no enhancement award on behalf of Plaintiffs;
2 v. Thus, the Total Settlement Payment is also the “Net Settlement Amount”,
3 after deducting \$0.00 for each of the items (i-iv), which shall be designated as
4 PAGA Penalties to be allocated between the LWDA and the Alleged
5 Aggrieved Employees pursuant to Labor Code section 2699(i) with 75% paid
6 to the LWDA and 25% paid to the Aggrieved Employees on a pro-rata basis.
7 Thus, the average PAGA award shall be: \$37.31 for each Aggrieved
8 Employee after ISM submits \$7,500 to the LWDA.

9 c. **No Ability to Object or Opt-Out.** The Alleged Aggrieved Employees are not
10 permitted to opt-out or object to the Settlement Agreement. *See Robinson v. Southern*
11 *Counties Oil Co.* (August 13, 2020), First Appellate Dist. A158791.

12 d. **Allocation of the PAGA Penalties.** Seventy-Five Percent (75%) of the Net Settlement
13 Amount shall be distributed to the LWDA consistent with the Confidential Settlement
14 Agreement. Per the Confidential Settlement Agreement, the PAGA payment shall be
15 allocated equally amongst all Aggrieved Employees, which is equitable given the
16 PAGA Period, number of Aggrieved Employees and shared circumstances of each
17 Aggrieved Employee. The resulting amount shall be the Alleged Aggrieved
18 Employee’s Individual Settlement Share.

19 e. **Tax Treatment of Settlement Amounts.** The Alleged Aggrieved Employee’s
20 Individual Settlement Share shall be for penalties, and thus not taxed as wages.

21 f. **PAGA Payment Procedure.**

22 i. Defendant ISM shall bear all costs of administering the settlement.

23 ii. Defendant ISM shall distribute the Employee Payments and the LWDA
24 Payment within (30) days after receipt of the order approving PAGA
25 settlement. All payments provided for by this Confidential Settlement
26 Agreement shall be made in accordance with this Confidential Settlement
27 Agreement and the Court’s order approving this settlement.

28 iii. Aggrieved Employees currently employed by ISM may receive their Employee

1 Payment at the same time as their normal paycheck/payroll or as a separate
2 check, and former employees will be issued one check for their Employee
3 Payment which will expire one hundred and eighty (180) calendar days from
4 the date the checks are issued. After the 180 day-period, ISM shall cancel all
5 checks that have not been cashed or deposited and remit funds associated with
6 such canceled checks to the State Controller's Office, Unclaimed Property
7 Division in the name associated with each Aggrieved Employee whose
8 Employee Payment checks are canceled.

9 g. **Notice to the LWDA.**

- 10 i. Plaintiff has provided notice to the LWDA of this settlement as set forth in the
11 declaration of Martin Sullivan filed concurrently herewith.

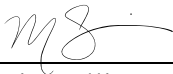
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14 DATED: December 16, 2020

KLEIN, HOCKEL, IEZZA & PATEL P.C.

15 
16 By: _____
17 Sweta Patel
18 Attorneys for Defendants

19 DATED: December 16, 2020

MELMED LAW GROUP P.C.

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22 By: _____
23 Martin Sullivan, Esq.
24 Jonathan Melmed, Esq.
25 for Plaintiffs and the Aggrieved Employees
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1 **[PROPOSED] ORDER**

2 Pursuant to Stipulation by the parties and good cause appearing:

3 Having considered the Parties' submissions, and all legal authorities and documents
4 submitted in support thereof, and good cause appearing, **IT IS HEREBY ORDERED THAT**
5 **THE PARTIES' REQUEST IS GRANTED**, subject to the following findings and orders:

6 a) The Court hereby approves the terms of the PAGA Settlement and finds that the
7 material terms of the Confidential Settlement Agreement, as forth in the Joint Stipulation
8 Requesting Approval Of Settlement Pursuant To The Private Attorney General Act Of 2004
9 ("PAGA"), are, in all respects, fair, adequate, and reasonable and directs the Parties to effectuate
10 those material terms of the Confidential Settlement Agreement. The Court finds that the
11 Confidential Settlement Agreement has been reached as a result of informed and non-collusive
12 arm's-length negotiations. The Court further finds that the Parties were able to reasonably
13 evaluate their respective positions. The Court also finds that settlement now will avoid
14 additional and potentially substantial litigation costs, as well as delay and risks if the Parties
15 were to continue to litigate the case. The Court has reviewed the monetary recovery being
16 provided as part of the Settlement and recognizes the value accorded to the Aggrieved
17 Employees, who are defined as: *all current and former hourly-paid or non-exempt employees who*
18 *worked for ISM in the State of California during the PAGA Period, i.e., from March 3, 2019*
19 *through the date on which the Court grants approval of the settlement, or February 1, 2021,*
20 *whichever comes first.*

21 b) The Confidential Settlement Agreement is not an admission by Defendants or by
22 any other Released Party, nor is this Order a finding of the validity of any allegations or of any
23 wrongdoing by any Defendants or any other Released Party. Neither this Order, the Confidential
24 Settlement Agreement, nor any document referred to herein, nor any action taken to carry out the
25 Confidential Settlement Agreement, may be construed as, or may be used as, an admission of
26 any fault, wrongdoing, omission, concession, or liability whatsoever by or against Defendants or
27 any of the other Released Parties.
28

1 c) Pursuant to the procedure described in the Joint Stipulation Requesting Approval Of
2 Settlement Pursuant To The Private Attorney General Act Of 2004 ("PAGA"), Defendant shall
3 pay the total sum of \$10,000.00 (Ten Thousand Dollars) in full settlement of the PAGA Claim.
4 Defendants shall pay the California Labor and Workforce Development Agency ("LWDA") and
5 the Aggrieved Employees the PAGA settlement sum pursuant to the procedure described in the
6 Joint Stipulation Requesting Approval Of Settlement Pursuant To The Private Attorney General
7 Act Of 2004 ("PAGA").

8 d) The Court hereby confirms Martin Sullivan of Melmed Law Group P.C. as PAGA
9 Counsel.

10 e) Defendants and the other Released Parties shall have no liability for costs,
11 expenses, interest, attorneys' fees, or for any other charge, expense, or liability, except as
12 provided in the Confidential Settlement Agreement.

13 f) The Court further orders, adjudges and decrees that upon the Effective Date, which
14 is the date the Court approves this settlement, Plaintiffs and Aggrieved Employees, individually
15 and on behalf of their heirs, executors, administrators, representatives, attorneys, successors and
16 assigns, and the State of California, on behalf of itself and its administrators, representatives, and
17 assigns, will be deemed to have knowingly and voluntarily released and forever discharged
18 Defendants and their past, present, and future officers, directors, employees, board members,
19 shareholders, relatives, attorneys, insurers, reinsurers, customers, partners, investors, members,
20 representatives, predecessors, parent companies, subsidiaries, affiliates, divisions, successors,
21 agents and principals, and its and their members, heirs, estates, executors, administrators, servants,
22 insurers, attorneys, and assigns (collectively, the "Released Parties"), to the full extent permitted
23 by law, of and from any and all claims, debts, liabilities, demands, obligations, guarantees,
24 damages, wages, benefits, penalties, interest, attorney's fees, costs, expenses, action or causes of
25 action, in law or equity, whether known or unknown, which have been or could have asserted by
26 each of the Plaintiffs and/or any member of the Aggrieved Employees that could have been
27 assessed upon and collected from the Released Parties under PAGA, based on the factual
28 allegations in the Complaint and First Amended Complaint, including, but not limited to,

1 purported violations of California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7,
2 510, 512, 558, 1102.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802 and IWC Wage Order
3 No. 5.

4 g) This Action is hereby dismissed in its entirety with prejudice.

5 h) Upon entry of this Order, the Parties shall effectuate all terms of the Settlement
6 based on the provisions and timelines set forth in the Confidential Settlement Agreement.

7 **IT IS SO ORDERED.**

8
9 DATED: _____

JUDGE OF THE SUPERIOR COURT