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8 Attorneys for Plaintiff Gabriella Crivello

9 SUPERIOR COURT OF CALIFORNIA

10 IN AND FOR THE COUNTY OF CONTRA COSTA

11 GABRIELLA CRIVELLO, an individual,

12 Plaintiff,

13 vs.

14 NEW DIRECTIONS FOR YOUNG ADULTS,
15 INC., a corporation; and DOES 1-100, inclusive,

16 Defendants.

Case No.: C20-00909

STIPULATION OF SETTLEMENT FOR CIVIL
PENALTIES UNDER PRIVATE ATTORNEYS
GENERAL ACT OF 2004; [PROPOSED] ORDER

17 The Parties hereto, Plaintiff Gabriella Crivello ("Plaintiff"), as a proxy for the California
18 Labor and Workforce Development Agency ("LWDA"), and Defendant New Directions for Young
19 Adults California, Inc. ("Defendant"), by and through their respective counsel of record, hereby
20 stipulate as follows:

21 1. WHEREAS, on April 13, 2020, counsel for Plaintiff sent a letter to the California
22 Labor and Workforce Development Agency ("LWDA") and Defendant alleging violations of
23 Labor Code alleged to have occurred during Plaintiff's employment with Defendant on behalf of
24 Plaintiff and other purported aggrieved employees ("LWDA Letter");

25 2. WHEREAS, on August 17, 2020, Plaintiff filed a First Amended Complaint (the
26 "Action"), adding a claim under the Private Attorneys General Act ("PAGA"), premised on alleged
27 failure to pay minimum and overtime wages, to provide meal and rest periods, to pay all wages due

1 upon cessation of employment, to provide accurate wage statements, and to reimburse for business
2 expenses;

3 3. WHEREAS, subsequent to the filing of the First Amended Complaint, the Parties
4 engaged in an informal information exchange regarding the number of California employees
5 believed to have been affected by the alleged violations, and other information relevant to the
6 potential number of alleged violations;

7 4. WHEREAS, Defendant vigorously disputes and denies all claim and allegations
8 made by Plaintiff, both on factual and legal bases, including Plaintiff's and the Aggrieved
9 Employees' claim for civil penalties pursuant to PAGA. Neither this Agreement, nor any
10 document referred to or contemplated herein, nor any action taken to carry out this Agreement, is,
11 may be construed as, or may be used as an admission, concession, or indication by or against
12 Defendant of any fault, wrongdoing, or liability whatsoever;

13 5. WHEREAS, on September 18, 2020, the Parties attended mediation with Cynthia
14 Remmers, a well-renowned mediator of employment cases, including class actions and
15 representative actions under the PAGA;

16 6. WHEREAS, the Parties were represented at mediation through their respective
17 attorneys: John P. Briscoe, a shareholder of Mayall Hurley P.C. and a member of that firm's
18 employment litigation group; and Aaron Olsen, a partner at Fisher Phillips LLP, both experienced
19 litigators with knowledge of employment law and the PAGA;

20 7. WHEREAS, the Parties have reached agreement on the terms of settlement
21 regarding the Action, and the PAGA claim;

22 8. WHEREAS, Labor Code section 2699(l) requires that the court review and approve
23 any proposed settlement agreement pursuant to PAGA;

24 9. WHEREAS, Plaintiff and Plaintiff's counsel concluded—after taking into account
25 the sharply disputed factual and legal issues involved in the Action, the risks attending further
26 prosecution, the investigation conducted to date, and the substantial benefits received and to be
27 received pursuant to the compromise and settlement of the Action, the nature of the claimed

1 violations and the wide discretion of the Court to reduce civil penalties imposed—that settlement
2 on the terms herein set forth is in the best interest of all interested parties, including the LWDA and
3 that the settlement adequately serves the deterrent purposes of the PAGA;

4 10. WHEREAS, Plaintiff and Plaintiff's counsel have balanced their evaluation of the
5 validity and strength of the asserted claims against the problems of proof and the legal standards
6 governing the claims alleged. Based on this evaluation, Plaintiff's counsel believes that the
7 settlement reached satisfies the public policies of PAGA to punish past violations and deter future
8 violations of the Labor Code;

9 11. WHEREAS, Similarly, Defendant and Defendant's counsel concluded there were
10 benefits associated with settling. Although Defendant disputes the various allegations and causes
11 of action in the Action, Defendant took into account the sharply disputed factual and legal issues
12 involved in the Action, the risk attending further defense, the expense, time, and burden of
13 protracted litigation, and the desire to put the controversy to rest, and based on these factors
14 Defendant and Defendant's counsel agreed to this settlement without any admission of fault or
15 liability;

16 12. WHEREAS, the parties have entered into a settlement of the PAGA claim at issue
17 in the Action for a total payment of \$8,000.00. A true and correct copy of the Settlement and
18 PAGA Release Agreement is attached hereto as **Exhibit A** and incorporated by reference as though
19 fully set forth herein.;

20 13. The Parties jointly request that the Court approve the penalties sought as part of the
21 PAGA Settlement.

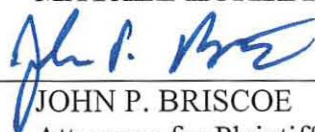
22 **IT IS SO STIPULATED.**

23 ///

24 **DATED:** September 30, 2020

MAYALL HURLEY P.C.

25 By _____

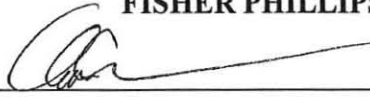

JOHN P. BRISCOE
Attorneys for Plaintiff

GABRIELLA CRIVELLO

1 **DATED:** September 28, 2020

FISHER PHILLIPS LLP

2 By



3 AARON OLSEN

4 Attorneys for Defendant

5 NEW DIRECTIONS FOR YOUNG ADULTS
6 CALIFORNIA, INC.

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ORDER

Having reviewed the terms of the parties' above stipulation, and for good cause showing, IT
IS HEREBY ORDERED that the Settlement and PAGA Release Agreement (submitted as Exhibit
A to the aforementioned stipulation), is hereby approved pursuant to Labor Code section 2699(l).

IT IS SO ORDERED.

DATED: _____
JUDGE OF THE SUPERIOR COURT

Exhibit A

SETTLEMENT AND PAGA RELEASE AGREEMENT

THIS SETTLEMENT AND PAGA RELEASE AGREEMENT (the "PAGA Settlement Agreement") is made and entered into by and between Gabriella Crivello as proxy for the Labor Workforce Development Agency ("Plaintiff" or "Crivello") and New Directions for Young Adults, California, Inc. (the "Defendant" or "NDFYA") (collectively, the "Parties").

WHEREAS, Crivello was an employee of NDFYA;

WHEREAS, on or about May 22, 2020, Crivello filed a Complaint in the Contra Costa County Superior Court entitled *Gabriella Crivello, an individual v. New Directions for Young Adults, Inc., a corporation, and DOES 1 – 100, inclusive*; Case No. C20-00909 (the "Action");

WHEREAS, on or about August 17, 2020, Crivello filed a First Amended Complaint adding a cause of action under the Private Attorneys General Act of 2004 ("PAGA") and revising Defendant's legal entity name to "New Directions for Young Adults, California, Inc.";

WHEREAS, NDFYA denies Crivello's allegations and denies liability for the Action;

WHEREAS, Plaintiff alleges that she and other employees were misclassified as exempt employees because they did not earn enough to meet the salary basis test.

WHEREAS, the total amount of allegedly "Aggrieved Employees" affected by this settlement is 10.

WHEREAS, concurrently with the entering into this PAGA Settlement Agreement, the Parties are also entering into a Confidential Settlement and Individual Release Agreement;

WHEREAS, Labor Code section 2699(l) requires that the court review and approve any proposed settlement agreement pursuant to PAGA;

WHEREAS, Plaintiff and Plaintiff's counsel have balanced their evaluation of the validity and strength of the asserted claims against the problems of proof and the legal standards governing the claims alleged. Based on this evaluation, Plaintiff's counsel believes that the settlement reached satisfies the public policies of PAGA to punish past violations and deter future violations of the Labor Code.

WHEREAS, the Parties desire to fully and finally compromise, settle and discharge all claims, controversies, demands, actions or causes of action, including all claims for attorneys' fees and/or damages, penalties and/or interests, which Crivello may have or claim to have against NDFYA or any individuals or entities which are in any way related to Crivello's employment with and separation of employment from NDFYA;

WHEREAS, the parties have entered into a settlement of the PAGA Claims at issue in the Action ("the PAGA Settlement") for a total payment of \$8,000.00.

NOW THEREFORE, in consideration of and exchange for the promises, covenants, and releases contained herein, the Parties mutually agree as follows:

Crivello Initials 

AGREEMENT

1. Consideration. Within fifteen (15) days of court approval of this PAGA Settlement Agreement, NDFYA shall cause to be paid the total sum of Eight Thousand Dollars and Zero Cents (\$8,000.00) (the "Gross Settlement Amount"), to compensate Plaintiff and Other Aggrieved Employees for any alleged penalties to which she claims entitlement whether alleged in the Action or otherwise as against Released Parties, for Plaintiff's claim for PAGA penalties. NDFYA shall be solely responsible for paying the Gross Settlement Amount in its entirety. The Settlement Payment shall be allocated as follows:

- a) Plaintiff's Attorney's Fees. Plaintiff's Counsel shall request and be paid up to 33.33% of the Gross Settlement Amount or Two Thousand Six Hundred and Forty Dollars and Zero Cents (\$2,640.00) for attorneys' fees ("Plaintiff's Attorney's Fees.") If Plaintiff's counsel's request for 33.33% of the Gross Settlement Amount 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. Defendants agree not to oppose a fee request by Plaintiff's Counsel in the foregoing amount. Plaintiff's Attorney's Fees shall be made payable to "Mayall Hurley P.C." and shall be delivered to John P. Briscoe, 2453 Grand Canal Blvd., Stockton, CA 95207.
- b) Litigation Costs. Plaintiff's Counsel shall request up to Seventy-Five Dollars and Zero Cents (\$75.00) of the Gross Settlement Amount as reimbursement for expenses incurred in the Actions ("Litigation Costs.") If Plaintiff's Counsel's request for reimbursement of 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. Defendants agree not to oppose a request for reimbursement of Litigation Costs not exceeding the foregoing amount.
- c) Net Settlement Amount. The Net Settlement Amount shall be determined by deducting Plaintiff's Attorney's Fees and Litigation Costs as set forth in 1(a) and 1(b) above from the Gross Settlement Amount. The Net Settlement Amount shall be distributed as follows: 75% of the payment will be paid to the LWDA and 25% will be paid to Aggrieved Employees. "Aggrieved Employees" includes Plaintiff, and means all person who are or were employed by Defendant in the States of California classified as exempt by Defendant but did not meet the salary basis test (i.e., paid a flat salary that was, for all pay periods from June 13, 2019 through the date that the Court approves the PAGA Settlement Agreement, equal to or more than twice the required California minimum wage for an employee with 25 or fewer employees) between June 13, 2019 through the date that the Court approves the PAGA Settlement Agreement. The Twenty-Five Percent of the Net Settlement Amount paid to the Aggrieved Employees shall be divided by the total pay periods worked for Defendants by all Aggrieved Employees during the Release Period to yield the "Employee Settlement Share Value." Each Aggrieved Employee shall be paid their individual total pay periods worked for Defendants during the Release Period multiplied by the Employee Settlement Share Value.

Crivello Initials 

2. Payments. Until this PAGA Settlement Agreement is approved, Plaintiff and the Aggrieved Employees will not be entitled to receive any payments or benefits under this PAGA Settlement Agreement. On the condition that the Court approves the Stipulation Defendant shall be responsible for distributing the PAGA Settlement Sum to the appropriate persons and/or entities in the appropriate amounts. With regard to the Other Aggrieved Employees with the exception of Plaintiff, their Individual Settlement Payments shall be sent to each other Aggrieved Employee by U.S. First Class mail to the other Aggrieved Employee's address. It will be conclusively presumed that an Aggrieved Employee's check was received if the payment check has not been returned within thirty (30) days of the original mailing of the payment check. Settlement checks shall remain valid and negotiable for one hundred twenty (120) calendar days from the date of their issuance. If there are uncashed checks following this period, the Defendant will ensure that uncashed funds shall be forwarded to the LWDA in the name of the Aggrieved Employee who did not cash his or Individual Settlement Payment.

3. Cooperation. The Parties will cooperate in obtaining, though written stipulation or unopposed motion or *ex parte* application, if required, an Order from the Court approving the payment of the Gross Settlement Amount.

4. General Release. In return for the consideration provided in Paragraph 1 of this PAGA Settlement Agreement, Crivello and Aggrieved Employees' unconditionally release, discharges and hold NDFYA and all parents, subsidiaries, predecessors and affiliated corporations, (including, but not limited to New Directions For Young Adults, Inc.) partnerships, divisions and joint ventures, as well as all of their current and former owners, officers, directors, shareholders, partners, employees, agents, attorneys (including Fisher & Phillips LLP), insurers successors or assigns (hereinafter referred to as "Released Parties") harmless from, and covenants not to sue upon, each and every action, claim, right, liability, charge or demand of any kind or nature that Crivello and Aggrieved Employees had, has now or might hereafter claim to have against Released Parties as of the date of execution of this PAGA Settlement Agreement regarding any and all penalties under the California Private Attorneys General Act (with all of the foregoing collectively referred to as "Claim(s)"), and which are premised upon an alleged failure to pay minimum wage, pay overtime wages, provide rest and meal breaks, to pay all wages due upon termination, to reimburse for business expenses, or to provide accurate and complete itemized wage statements.

5. Notices. Plaintiff's Counsel will notify the Labor and Workforce Development Agency of the proposed settlement pursuant to Labor Code § 2699.

6. Binding Nature. This PAGA Settlement Agreement, and all of the terms and provisions contained herein, shall bind the heirs, personal representatives, successors and assigns of Crivello, and inure to the benefit of NDFYA, its agents, directors, officers, employees, servants, successors, and assigns.

7. Construction. This PAGA Settlement Agreement shall not be construed in favor of one party or against the other.

8. Partial Invalidity. Should any portion, word, clause, phrase, sentence or

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paragraph of this PAGA Settlement Agreement be declared void or unenforceable, such portion shall be considered independent and severable from the remainder, the validity of which shall remain unaffected.

9. Compliance with Terms. The failure to insist upon compliance with any term, covenant or condition contained in this PAGA Settlement Agreement shall not be deemed a waiver of that term, covenant or condition, nor shall any waiver or relinquishment of any right or power contained in this PAGA Settlement Agreement at any one time or more times be deemed a waiver or relinquishment of any right or power at any other time or times.

10. Governing Law and Jurisdiction. The validity, interpretation and performance of this PAGA Settlement Agreement shall be construed and interpreted according to the laws of the state of California. All of the provisions contained in this PAGA Settlement Agreement are material and enforceable pursuant to California Code of Civil Procedure § 664.6. The Parties expressly agree that the Contra Costa County Superior Court has jurisdiction to enforce the terms of this PAGA Settlement Agreement and any litigation arising out of this PAGA Settlement Agreement.

11. Section Headings. The section and paragraph headings contained in this PAGA Settlement Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this PAGA Settlement Agreement.

12. Counterparts. This PAGA Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, all of which together shall constitute one and the same instrument.

13. Facsimile or Electronic Signatures and Copies. A signature transmitted by facsimile or electronic mail shall be as valid as an original signature and binding upon the individual whose signature is contained thereon. A copy of this PAGA Settlement Agreement shall be valid and binding as an original. An electronic signature of this PAGA Settlement Agreement shall be as valid as a physical signature and binding upon the individual whose signature is contained thereon.

14. No Admissions. It is understood and agreed by the parties that this PAGA Settlement Agreement shall not be construed to be an admission of any liability or obligation by either party to the other party or any other person.

15. Voluntary and Knowing. This PAGA Settlement Agreement is executed voluntarily and without any duress or undue influence on the part or behalf of the parties hereto. Crivello has carefully read this entire PAGA Settlement Agreement. Crivello acknowledges that she has been given the opportunity to consult with legal counsel with respect to the matters referenced in this PAGA Settlement Agreement, such that Crivello voluntarily and freely entered into this PAGA Settlement Agreement.

IN WITNESS WHEREOF, the parties have executed this PAGA Settlement Agreement on the respective dates set forth below.

Crivello Initials 

Dated: 9/18/2020 _____

DocuSigned by:
Andrew Rubin
0124FB151A6B4C6...

Company Representative
New Directions for Young Adults, California, Inc.

Dated: 9/18/2020 _____

DocuSigned by:
Gabriella Crivello
D810114A338F4E4...

Gabriella Crivello

FISHER & PHILLIPS LLP

Dated: 9/18/2020 _____

DocuSigned by:
Aaron Olsen
42791AFD0810414...

By: _____
Aaron F. Olsen, Esq.
Counsel for Defendant
New Directions for Young Adults, California, Inc.

MAYALL HURLEY P.C.

Dated: 9/18/2020 _____

DocuSigned by:
John P. Briscoe
F1C173D29750461...

By: _____
John P. Briscoe
Counsel for Plaintiff
Gabriella Crivello

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Crivello Initials _____

