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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

MENCHILA VILLARUBIA WOODALL,
as an individual and on behalf of all others
similarly situated,

Plaintiffs,

vs.

VASONA MANAGEMENT, INC., an
California corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 20CV366143

(Assigned to the Honorable Patricia M. Lucas,
Dept. 3)

**DECLARATION OF NICHOLAS
ROSENTHAL IN SUPPORT OF
PLAINTIFF'S MOTION TO APPROVE
SETTLEMENT AGREEMENT PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT**

Date: June 16, 2021

Time: 1:30 p.m.

Dept.: 3

Complaint Filed: April 20, 2020

FAC Filed: July 16, 2020

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1. I am an attorney at law, duly licensed to practice before all Courts in the State of California, and am with the law firm Diversity Law Group, counsel of record for Named Plaintiff Mila Villarubia Woodall (“Plaintiff”). I have personal knowledge of the facts set forth and if called to testify I could and would do so competently.

... of the case, Plaintiff's counsel has zealously represented the
... rees.

4. On April 20, 2020, Plaintiff filed a putative class and representative action complaint against Defendant in the Superior Court of California, County of Santa Clara, alleging causes of action for violation of Labor Code §§ 226 and 2698, *et seq.* (the “Action”). Specifically, the Complaint asserted a claim for based on a failure to list the pay period start date on wage statements under Labor Code § 226(a)(6) and failure to list the overtime rate of pay under Labor Code § 226(a)(9).

6. On or about May 19, 2020, Plaintiff submitted a response to Defendant's notice asserting that, among other issues, violation of Labor Code § 226(a)(9) cannot be "cured." On

June 5, 2020, the LWDA issued its decision that Defendant cured the violation of Labor Code § 226(a)(6) but did not cure the violation of Labor Code § 226(a)(9).

7. Subsequently, Defendant informed Plaintiff that it intended to enforce the arbitration agreement entered into by the parties, which would effectively prevent Plaintiff from pursuing any class claims.

8. On July 16, 2020, Plaintiff filed a First Amended Complaint alleging a single cause of action for violation of Labor Code § 2698, *et seq.*, predicated on an underlying violation of Labor Code § 226(a)(9). The First Amended Complaint is the operative complaint (“Complaint”).

9. After Plaintiff filed the amended complaint, the Parties met and conferred regarding the possibility of conducting an early mediation.

MEDIATION

10. Throughout the course of this litigation, the Parties have been working on informal resolution of this matter. The Parties engaged in robust meet and confer efforts regarding the underlying merits of the case and subsequently agreed to participate in mediation.

11. In connection with the Parties’ mediation efforts, Defendant provided Plaintiff with the number of Aggrieved Employees and the number of pay periods worked by the Aggrieved Employees in total. The data allowed Plaintiff’s counsel to perform a comprehensive damage analysis in preparation for the mediation.

12. On December 1, 2020, the Parties participated in an all-day mediation with mediator Mark C. Peters, Esq. During the mediation, the Parties spoke at length about the strengths and weaknesses of each side’s claims and defenses, and the scope of Defendant’s liability. After a full day of negotiation, the Parties were able to reach an agreement in principle and signed a memorandum of understanding. Following further arm’s length negotiations and discussions, the Parties finalized the settlement terms in the concurrently filed Joint Stipulation of PAGA Action Settlement and Release (“Settlement” or “Settlement Agreement”).

SUMMARY OF THE PROPOSED SETTLEMENT

13. As set forth in the Settlement, attached hereto as **Exhibit A**, the aggrieved

employees are defined as “all current and former non-exempt employees of Defendant in California who were paid overtime wages at any time during the PAGA Period” (“PAGA Group Members” or “PAGA Group”). (Joint Stipulation, ¶ B.2.) Based upon Defendant’s records, there are 182 PAGA Group Members during the PAGA Period. (*Id.*, ¶ B.2.)

14. The Settlement Agreement requires Defendant to pay the gross amount of One Hundred Thirty Thousand Dollars (\$130,000.00) (the “Settlement Amount”). (*Id.* ¶ B.9.) This is an allocation of the PAGA Settlement Amount for the release of PAGA claims by PAGA Group Members and the Individual Settlement Payment to Plaintiff for the general release of his individual claims. (*Id.* ¶¶ E.6., E.8.) The balance of the PAGA Settlement Amount remaining after deduction of the approved Attorneys’ Fees, Attorneys’ Expenses, Enhancement Award to Plaintiff, and Settlement Administration Costs (the “Net PAGA Payment”), will be available for distribution to the LWDA and PAGA Group Members. (*Id.* ¶ C.4.) Seventy-five percent of the Net PAGA Payment, or approximately \$47,188.71 will be paid to the LWDA for PAGA penalties. The remaining twenty-five percent, or approximately \$15,729.57, will be distributed to PAGA Group Members. (*Id.*)

15. The portion of the Net PAGA Payment distributed to PAGA Group Members (“PAGA Group Recovery”) will be distributed on a pro rata basis, based on the number of pay periods each individual PAGA Group Member earned overtime and/or doubletime compensation during the PAGA Period. (*Id.*, ¶ C.5.)

16. Based on the number of PAGA Group Members, employees will be entitled to recover, on average, \$86.42 each. The amount any particular PAGA Group Member will be entitled to recover will be greater or lower than this average depending on the number of pay periods during which he or she received overtime and/or doubletime pay. This is fair, as it directly allocates greater penalties to individual PAGA Group Members who have allegedly suffered greater harm.

17. As part of the Settlement Agreement, Defendant does not object to Plaintiff’s Counsel’s request for attorneys’ fees of one-third of the PAGA Settlement Amount, *i.e.* Forty Three Thousand Three Hundred Thirty Three Dollars and Thirty Three Cents (\$43,333.33), plus

1 reimbursement of documented litigation costs, subject to the Court approving this Settlement.
2 (Joint Stipulation ¶ C.9.) Also, as part of the Settlement Agreement, Defendant does not object to
3 Plaintiff's request for an Enhancement Award of Fifteen Thousand Dollars (\$15,000.00). (Joint
4 Stipulation ¶ C.7.)

5 18. Finally, the Settlement Agreement provides for the payment of the fees and
6 expenses reasonably incurred by the Settlement Administrator. (*Id.*, ¶ C.10.) The Parties have
7 agreed to utilize Phoenix Settlement Administrators to administer the Settlement, with the
8 administration costs estimated to be \$2,250.00. (*Id.*)

9 **POTENTIAL CIVIL PENALTIES**

10 19. Using the data provided by Defendant, I performed a comprehensive damages
11 analysis. Pursuant to Labor Code § 226.3, \$250 is the maximum PAGA penalty available per pay
12 period. Applying a civil penalty of \$250 for each of the 2,365 pay periods at issue, Defendant's
13 maximum exposure for penalties equals \$591,250.00 (\$250 x 2,365).

14 20. The maximum penalty calculation assumes that Plaintiff will prevail on the
15 merits. While Plaintiff maintains that there does not exist any reason for reducing PAGA
16 penalties. Plaintiff asserts that her representative PAGA claim is based on the allegation that
17 Defendant failed to provide accurate itemized wage statements that identified the correct hourly
18 rate of pay and/or number of hours worked when overtime wages were paid, Plaintiff is aware
19 that Defendant could make a compelling argument to the contrary. Firstly, Defendant has
20 maintained throughout this litigation that the wage statements were compliant with the law and
21 has denied violation of any applicable laws and liability for any claims asserted in the Action.
22 Defendant has also argued that even if the Court ultimately found the wage statements violative
23 of Labor Code § 226, the alleged violation is a technical one and the Court has discretion under
24 PAGA to reduce the maximum allowable PAGA penalties at its discretion. Defendant may have
25 sought summary judgment on this issue or proceeded to trial. Should Defendant have prevailed,
26 the State of California and aggrieved employees would have been left with zero recovery.

27 21. Assuming that Plaintiff prevailed on liability, under the facts of this case, I
28 appreciate the substantial risk that Defendant could present a persuasive argument to reduce the

1 amount of PAGA penalties at trial. Defendant could argue that even if the Court ultimately found
2 that the wage statements violate Labor Code section 226, the alleged violation is a technical one
3 as there is no allegation of actual unpaid wages. The Court has discretion under PAGA to reduce
4 the maximum allowable PAGA penalties or to decide not to award PAGA penalties at all.
5 Defendant may have sought summary judgment on this issue or proceeded to trial. Should
6 Defendant have prevailed, the State of California and Aggrieved Employees would have been
7 left with zero recovery.

8 22. I am also aware that Courts routinely award far less than the statutory maximum
9 amount of civil penalties, even where an underlying violation of the Labor Code is found. For
10 example, as shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp.*, while the
11 plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA
12 penalty amount by 90%, citing the employer's good faith attempt at complying with the law. 30
13 Cal.App.5th 504, 517 (2018). Similarly, in the matter of *Magadia v. Wal-Mart Assocs. et al.*,
14 2019 U.S. Dist. Lexis 91792, while the trial court imposed substantial PAGA penalties upon the
15 defendant, such amount still represented reductions of 67% and 80% of the potential PAGA
16 penalties at issue. *Id.* at *87-*100. Moreover, this was only after the plaintiff in *Magadia* had
17 prevailed after trial.

18 23. I strongly believe that Plaintiff can prevail at trial. However, after taking into
19 account sharply disputed factual and legal issues involved in this litigation, the risks attending
20 further prosecution, including the still-developing law under PAGA, and the substantial benefits
21 to be received pursuant to the compromise and settlement of the litigation, I have concluded that
22 settlement on the terms set forth in the Settlement Agreement is appropriate and in the best
23 interests of Plaintiff and the aggrieved employees (or PAGA Group Members).

24 24. Moreover, as a result of this lawsuit and Plaintiff's PAGA Notice, Defendant
25 revised its payroll system on May 5, 2020, such that the alleged defect at issue in this case no
26 longer exists.

27 **ATTORNEY EXPERIENCE**

28 25. My firm has a great deal of experience in wage and hour class action litigation

1 and has been approved as class counsel in a number of class actions.

2 26. My qualifications are as follows: I received my *Juris Doctorate* degree from
3 USC Gould Law School in 2009. Upon graduation, I was employed as an associate for
4 approximately 4 years at Seyfarth Shaw LLP, a national employment defense law firm. While at
5 Seyfarth my practice was exclusively labor & employment defense and I represented numerous
6 corporations in large employment class actions.

7 27. I have been certified as class counsel in a number of cases, including *Diller v.*
8 *Under Armour Retail, Inc.*, Santa Clara County Superior Court Case No. 114-CV-265729, *Dall*
9 *v. Post Alarm Systems*, Los Angeles County Superior Court Case No. BC598528, *Lopez v.*
10 *Imperial Body Shop, Inc.*, Orange County Superior Court Case No. Case No. 30-2015-00816193-
11 CU-OE-CXC, *Hughes v. Lincare, Inc., et al.*, Monterey County Superior Court Case No.
12 M124764, *Pittman v. Martinez Steel Corporation*, San Bernardino County Superior Court Case
13 No. CIVDS1823132, *Della Maggiora v. Watsonville Community Hospital*, Santa Cruz County
14 Superior Court Case No. 18CV00191, *Randolph v. Pacific Racing Association*, Alameda County
15 Superior Court Case No. RG18908139, *Morones v. Bimbo Bakeries USA, Inc.*, Sacramento
16 County Superior Court Case No. 34-2018-00245481-CU-OE-GDS, *Chavez v. Converse, Inc.*,
17 United States District Court – Northern District of California Case No. 15-cv-03746-NC, and
18 *Rodriguez v. Nike Retail Services, Inc.*, United States District Court – Northern District of
19 California Case No. 5:14-CV-1508 BLF.

20 28. To date, I have incurred approximately 33.2 hours in connection with the
21 litigation of this lawsuit. Attached hereto as **Exhibit B** is a summary of the hours I have incurred
22 to date. I also anticipate spending an additional 5 hours on this case responding to inquiries from
23 Aggrieved Employees and addressing any administrative matters that may come up.

24 29. The total lodestar for my hours will be approximately \$24,830 based on an hourly
25 rate of \$650.00 per hour. I have been approved at this rate by various courts, including: *Foaad*
26 *Hanna v. Equinix, LLC*, Santa Clara County Superior Court Case No. 18CV339365; *Alicia*
27 *Harris v. 24 Seven LLC*, Los Angeles County Superior Court Case No. BC720144; *Mary Della*
28 *Maggiora v. Watsonville Community Hospital*, Santa Cruz County Superior Court Case No.

1 18CV00191; *Pittman v. Martinez Steel Corporation*, San Bernardino County Superior Court
2 Case No.CIVDS1823132; *Michael Randolph v. Pacific Racing Association*, Alameda County
3 Superior Court Case No. RG18908139; *Markham v. Quik Stop Markets, Inc.*, Santa Clara
4 Superior Court Case No.19CV341582; *Siron v. Raypak, Inc.*, Ventura Superior Court Case No.
5 56-2019-005279959-CU-OE-VTA; *Carter v. Kline Services, Inc.*, San Bernardino Superior
6 Court Case No. CIVDS1828867, and *Prexxie Pascual and Arturo Fonseca v. Satellite*
7 *Healthcare, Inc.*, Santa Clara County Superior Court Case No. 19CV345211.

8 30. Concurrent with the filing of the Motion to Approve PAGA Settlement, my office
9 uploaded the Motion, Settlement Agreement, and proposed order to the LWDA's website.

10 I declare under penalty of perjury under the laws of the State of California that the
11 foregoing is true and correct.

12 Executed on this 24th day of May 2021, at Los Angeles, California.

13 

14 _____
Nicholas Rosenthal

EXHIBIT A

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Attorneys for Defendant Vasona Management, Inc.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SANTA CLARA**

MENCHILA VILLARUBIA WOODALL,
 as an individual and on behalf of all others
 similarly situated,

Plaintiffs,

vs.

VASONA MANAGEMENT, INC., an
 California corporation; and DOES 1
 through 50, inclusive,

Defendants.

Case No.: 20CV366143

(Assigned to the Honorable Patricia M. Lucas,
 Dept. 3)

**JOINT STIPULATION OF SETTLEMENT
 AND RELEASE UNDER THE PRIVATE
 ATTORNEYS GENERAL ACT,
 CALIFORNIA LABOR CODE § 2698, ET
 SEQ.**

Complaint Filed: April 20, 2020
 FAC Filed: July 16, 2020

1 This Joint Stipulation of Settlement and Release (“Agreement” or “Settlement”) under the
2 Private Attorneys General Act, California Labor Code section 2698 *et seq.* (“PAGA”), is made by
3 and between Menchila Villarubia Woodall (“Woodall” or “Plaintiff”), individually and as
4 representative on behalf of Aggrieved Employees as further defined herein and the State of
5 California, and Vasona Management, Inc. (the “Company” or “Defendant”). Woodall and
6 Defendant are collectively referred to herein as the “Parties” and may be individually referred to
7 as a “Party.”

8 **A. FACTUAL BACKGROUND**

9 1. This Settlement is made and entered into by and between Plaintiff and Defendant,
10 and is subject to the terms and conditions hereof, and to the Court’s approval. The Parties expressly
11 acknowledge that this Agreement is entered into solely for the purpose of compromising
12 significantly disputed claims and that nothing herein is an admission of liability or wrongdoing by
13 Defendant. Defendant denies that the Company is liable to Plaintiff or the Aggrieved Employees
14 and denies that the Company has violated any law.

15 2. On April 4, 2020, Plaintiff filed a notice with the California Labor & Workforce
16 Development Agency (“LWDA”) alleging that Defendant violated Labor Code section 226(a)(2)
17 and (6) pursuant to Labor Code section 2699.

18 3. On April 20, 2020, Plaintiff initiated this Action in the Superior Court of California,
19 County of Santa Clara. The complaint alleges causes of action for violation of Labor Code section
20 226 (a)(2 and (6) and violation of Labor Code section 2698, *et seq.* (“PAGA”). Plaintiff amended
21 her complaint on July 16, 2020, to allege a single cause of action for violation of PAGA. The First
22 Amended Complaint (“Complaint”) is the operative complaint.

23 4. On May 8, 2020, Defendant served a Notice of Cure of Violations to LWDA,
24 informing that Defendant had corrected the alleged deficiencies under Labor Code Section 226(a)(2)
25 and (6). On June 5, 2020, the LWDA issued its Decision on the Cure dispute, concluding that
26 Defendant had cured the alleged violation as to Labor Code Section 226(a)(2) only.

27 5. As alleged in the Complaint, Plaintiff contends that Defendant failed in their
28 affirmative obligation to provide accurate itemized wage statements to Aggrieved Employees

1 according to the terms of Labor Code section 226. Specifically, Plaintiff alleges that Defendant,
2 as a matter of policy and practice, failed to identify accurate hourly rates of pay for overtime wages
3 pursuant to Labor Code section 226(a)(9), the sole remaining claim.

4 6. On August 14, 2020, Defendant filed an Answer denying all allegations in the
5 Action and all claims of any wrongdoing whatsoever by any of the Company's parents,
6 subsidiaries, affiliates, divisions, agents, servants, or employees for any claims.

7 7. Shortly after the filing of the Complaint, the Parties agreed to explore the possibility
8 of settlement and engage in mediation before a third-party neutral. In connection therewith,
9 Defendant produced data relating to the number of Aggrieved Employees and wage statements
10 issued to each Aggrieved Employee, which allowed Plaintiff's counsel to conduct a full damage
11 analysis. After extended negotiations conducted at arm's length, Plaintiff and Defendant reached
12 the present settlement. The Parties recognize the risk, expense, and delay in continuing the Action,
13 and therefore believe the Settlement to be fair, reasonable, and adequate.

14 **B. DEFINITIONS**

15 1. "Action" means *Menchila Villarubia Woodall v. Vasona Management, Inc.*, filed
16 on April 20, 2020 in the Superior Court of California, County of Santa Clara, Case No.
17 20CV366143.

18 2. "Aggrieved Employees" means all current and former non-exempt employees of
19 Defendant in California who were paid overtime wages at any time during the PAGA Period.
20 Defendant has determined that there are 182 Aggrieved Employees. Defendant has further
21 determined that Aggrieved Employees received 2,365 wage statements reflecting the payment of
22 overtime wages during the PAGA Period.

23 3. "Plaintiff's Counsel" means Diversity Law Group, P.C. and Polaris Law Group
24 LLP.

25 4. "Complaint" means the First Amended Complaint filed by Plaintiff in this Action.

26 5. "Defendant" or the "Company" means Vasona Management, Inc.

27 6. "Effective Date" means five calendar days after the Superior Court or any party
28 hereto serves notice of the Superior Court's order and judgment approving the PAGA Settlement.

7. "Enhancement Payment" means the amount that the Court authorizes to be paid to Plaintiff, in addition to her Individual Settlement Payment, in recognition of her efforts and risks in assisting with the prosecution of the Action. Subject to the Court granting approval of the Settlement, the Parties agree that Plaintiff shall be paid up to Fifteen Thousand Dollars (\$15,000.00) from the Maximum Settlement Amount. It is understood by Plaintiff that the Court has final discretion in any Enhancement Payment.

8. "Individual Settlement Payment" means the amount payable from the Net PAGA Payment to each Aggrieved Employee.

9. "Maximum Settlement Amount" means the maximum settlement amount of One Hundred Thirty Thousand Dollars (\$130,000.00) to be paid by Defendant as a result of this Agreement. The Maximum Settlement Amount includes all Individual Settlement Payments to Aggrieved Employees, payment to the LWDA, the Enhancement Payment to Plaintiff, Settlement Administration Costs, and Attorneys Fees and Costs.

10. "PAGA Penalties Fund" means the balance of the Maximum Settlement Amount remaining after deduction of the approved Enhancement Payment to Plaintiff, Attorneys' Fees and Costs, and Settlement Administration Costs.

11. "PAGA Period" means the period of April 1, 2019 through May 4, 2020.

12. "Parties" means Plaintiff and Defendant, together.

13. "Plaintiff" means Menchila Villarubia Woodall.

14. "Released Parties" means Defendant and/or any other entity or individual which could be liable for the acts or omissions of Defendant in relation to the Released Claims.

15. "Released Claims" means all claims for penalties under the California Private Attorneys General Act, including costs and attorneys' fees related thereto, predicated on the violation of Labor Code section 226, based on the facts as alleged in the Complaint, that accrued during the PAGA Period. It is understood and agreed that this Agreement neither releases the Released Parties from liability, if any, to Aggrieved Employees for violations of any predicate statutes other than PAGA, nor effects a waiver of claims by Aggrieved Employees against the Released Parties for any individual wage and hour claims, except for settlement of any and all of

Plaintiff's claims, known and unknown, whether alleged or not in the Action, which claims are completely resolved by way of the settlement of this Action.

16. "Settlement Administration Costs" means the fees and expenses reasonably incurred by the Settlement Administrator as a result of the procedures and processes expressly required by this Agreement, which are estimated at Two Thousand Two Hundred and Fifty Dollars (\$2,250.00). Any portion of the Settlement Administration Costs not used or approved by the Court shall be added to the PAGA Penalties Fund.

17. "Settlement Administrator" means Phoenix Settlement Administrators.

C. PAYMENT OF CONSIDERATION

1. Settlement Consideration. Defendant shall pay the sum of the Maximum Settlement Amount as specified in this Agreement, which shall be used to pay: (1) Individual Settlement Payments; (2) Attorneys' Fees and Costs; (3) Enhancement Payment; (4) Settlement Administration Costs; and (5) payment to the LWDA. The Parties agree that this is a non-reversionary Settlement and that no portion of the Maximum Settlement Amount shall revert to Defendant.

2. Escalator Clause. The Maximum Settlement Amount was calculated with, and is premised on, Defendants' representation that there are 182 Aggrieved Employees, and that said Aggrieved Employees received 2,365 wage statements reflecting the payment of wages during the PAGA Period. If during the PAGA Period there are more than 182 Aggrieved Employees and/or Defendant issued more than 2,365 wage statements reflecting the payment of overtime wages to the Aggrieved Employees, the amount of the settlement shall increase in proportion to the increase in the number of employees and/or wage statements. Defendant shall also be responsible for the settlement administration costs of this additional payment, which will not be taken out of the additional payment but will be separately paid.

3. Funding of the Maximum Settlement Amount. Within fifteen (15) business days of the Effective Date, Defendant shall deposit the Maximum Settlement Amount into a Qualified Settlement Fund ("QSF") to be established by the Settlement Administrator.

The QSF shall be an interest-bearing account at a federally insured bank that is established

by the Settlement Administrator. The QSF shall be an interest-bearing account at a federally insured bank that is mutually acceptable to the Parties and the Settlement Administrator. The funds in the QSF shall be invested either in short-term U.S. Treasury securities with maturity dates of less than 90 days at the time of deposit, or in an SEC-registered money market fund investing exclusively in U.S. Treasury securities with average maturities of less than 90 days and rated AAA by Standard & Poor's. The Parties agree that the QSF is intended to be a "Qualified Settlement Fund" under Section 468B of the Internal Revenue Code and Treas. Reg. § 1.468B-1, 26 C.F.R. § 1.468B-1, *et seq.*, and will be administered by the Settlement Administrator as such. With respect to the QSF, the Settlement Administrator shall: (1) open and administer the Settlement Account in such a manner as to qualify and maintain the qualification of the QSF as a "Qualified Settlement Fund" under Section 468B of the Internal Revenue Code and Treas. Reg. § 1.468B-1; (2) satisfy all federal, state and local and income and other tax reporting, return, and filing requirements with respect to the QSF and any interest or other income earned by the QSF, and (3) satisfy out of the QSF all (i) taxes (including any estimated taxes, interest, or penalties) with respect to the interest or other interest earned by the QSF, and (ii) fees, expenses and costs incurred in connection with the opening and administration of the QSF and the performance of its duties and functions as described in this Agreement. The aforementioned taxes, fees, costs and expenses shall be treated as and included in the costs of administering the QSF and as Claims Administration Expenses. The Parties and the Settlement Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1(j)(2)(i), and such election statement shall be attached to the appropriate returns as required by 26 C.F.R. § 1.468B-1(j)(e)(ii). The Parties agree to cooperate with the Settlement Administrator and one another to the extent reasonably necessary to carry out the provisions of this Section.

4. Allocation of the PAGA Penalties Fund. The PAGA Penalties Fund shall be used to satisfy Individual Settlement Payments to Aggrieved Employees and payment to the LWDA in accordance with the terms of this Agreement. The PAGA Penalties Fund is the maximum amount that will be available for distribution to the LWDA and Aggrieved Employees in full satisfaction of all Released Claims. Pursuant to PAGA, seventy-five percent (75%) of the PAGA Penalties

Fund will be paid to the LWDA, and the remaining twenty-five percent (25%), will be paid to all Aggrieved Employees ("Net PAGA Payment").

5. Calculation of Individual Settlement Payment. The Settlement Administrator shall calculate the Individual Settlement Payment by dividing the Net PAGA Amount by the total number of wage statements reflecting the payment of overtime wages issued to Aggrieved Employees during the PAGA Period. That value will then be multiplied by the number of wage statements reflecting the payment of overtime wages each respective Aggrieved Employee received during the PAGA Period. Aggrieved Employees are entitled to 100% of the Net PAGA Payment.

6. Tax Treatment of Individual Settlement Payment. All Individual Settlement Payments shall be allocated as 100% as penalties. The amount of payments shall be reported on an IRS Form 1099 by the Settlement Administrator.

7. No Credit Toward Benefit Plans. Payments to Aggrieved Employees as referenced herein will not be utilized to calculate any additional benefits under any benefit plans to which any Aggrieved Employee may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Aggrieved Employee may be entitled under any benefit plans.

8. Enhancement Payment. Defendant agrees not to oppose or impede any application or motion by Plaintiff for an Enhancement Payment of up to Fifteen Thousand Dollars (\$15,000.00) to Plaintiff. The Enhancement Payment shall be paid from the Maximum Settlement Amount, and shall be paid in addition to Plaintiff's Individual Settlement Payment as an Aggrieved Employee. It is understood by Plaintiff that the Court has final discretion in any Enhancement Payment. The Settlement Administrator shall issue an IRS Form 1099 to Plaintiff reflecting the Enhancement Payment. Plaintiff shall be solely and legally responsible for paying any and all applicable taxes on her Enhancement Payment and shall hold harmless Defendant from any claim or liability for taxes, penalties, or interest arising as a result of the Enhancement Payment. Any

portion of the Enhancement Payment not awarded to Plaintiff shall be added to the PAGA Penalties Fund and shall be distributed to Aggrieved Employees as provided in this Agreement.

9. Attorneys' Fees and Costs. In full satisfaction of all claims Plaintiff may have for attorneys' fees, litigation costs, and expenses arising out of the Action, Defendant agrees that Plaintiff's Counsel shall be paid a maximum amount of Forty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$43,333.33) in attorneys' fees and Ten Thousand Dollars (\$10,000.00) in litigation costs and expenses ("Attorneys' Fees and Costs"), which shall be paid from the Maximum Settlement Amount. The Settlement Administrator shall issue an IRS Form 1099 to Plaintiff's Counsel reflecting the awarded attorneys' fees, costs, and expenses.

10. Settlement Administration Costs. The Settlement Administrator shall be paid for the reasonable costs of administration of the Settlement from the Maximum Settlement Amount, currently estimated at Two Thousand Two Hundred and Fifty Dollars (\$2,250.00). These costs, which shall be paid from the Maximum Settlement Amount, shall include, *inter alia*, the required tax reporting on the Individual Settlement Payments, the issuing of 1099 IRS Forms, establishing a Qualified Settlement Fund, administering and distributing the Maximum Settlement Amount, and providing necessary reports and declarations. Any portion of the Settlement Administration Costs not allowed shall be added to the PAGA Penalties Fund and shall be distributed to Aggrieved Employees as provided in this Agreement.

D. ADMINISTRATION OF SETTLEMENT

1. Approval of PAGA Settlement. Plaintiff's Counsel shall request the entry of an order granting final approval, which shall include findings and orders: (i) approving the settlement; (ii) adjudging the terms to be fair, reasonable, and adequate and binding on the State of California; (iii) reciting the release terms; (iv) directing that the settlement's terms and provisions be carried out; (v) entering final judgment in accordance with this Agreement and without further fees or costs to any party except as expressly set forth in this Agreement; and (vi) retaining jurisdiction to oversee administration and enforcement of the terms of this Agreement and the Court's orders. Plaintiff's motion shall be unopposed by Defendant, unless Plaintiff's approval motion seeks relief inconsistent with or not specified by this Agreement. In such event, Defendant reserves the right

1 to address any assertions that are not contained in this Agreement.

2 2. Settlement Administration. The Parties agree to cooperate in the administration of
3 the Settlement and to make all reasonable efforts to control and minimize the costs and expenses
4 incurred in the administration of the Settlement. The Settlement Administrator shall provide the
5 following services:

- 6 a. Establish and maintain a Qualified Settlement Fund account;
- 7 b. Calculate the Individual Settlement Payments to be paid to Aggrieved
8 Employees in accordance with the terms and provisions of this Agreement;
- 9 c. Print and issue Individual Settlement Payment checks;
- 10 d. Verify the last known address for each Aggrieved Employee through a
11 generally utilized, national address update database prior to mailing the Individual Settlement
12 Payment check;
- 13 e. Disburse any awards of costs and attorneys' fees and the Enhancement
14 Payment;
- 15 f. Prepare and issue 1099 Forms; and
- 16 g. Perform such other tasks necessary to effectuate the terms of this Agreement
17 or as the Parties mutually agree or the Court orders the Parties to perform.

18 3. Delivery of the Aggrieved Employee List and Data. Within fifteen (15) calendar
19 days after the Effective Date, Defendant shall provide the Settlement Administrator with a
20 Microsoft Office Excel spreadsheet and shall include each Aggrieved Employee's: full name;
21 employee number; most recent mailing address; Social Security number; and the number of wage
22 statements reflecting the payment of overtime wages received during the PAGA Period.

23 4. Timing of Distribution. Within ten (10) calendar days after the payment of the
24 entire Maximum Settlement Amount, the Settlement Administrator will issue payments to: (a)
25 Aggrieved Employees; (b) the Labor and Workforce Development Agency; (c) Plaintiff; and (d)
26 Plaintiff's Counsel. The Settlement Administrator will issue the appropriate tax forms for all
27 payments issued under this Settlement.

28 5. Mailing of Individual Settlement Payments to Aggrieved Employees. The

1 Settlement Administrator will issue each Aggrieved Employee a check for his or her share of the
2 PAGA Penalties Fund along with an explanatory letter attached hereto as Exhibit A. Checks will
3 remain negotiable for 180 days. Any checks returned as non-deliverable on or before the check
4 cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address
5 affixed thereto. Funds represented by settlement checks returned as undeliverable and those
6 settlement checks remaining un-cashed for more than 180 days after issuance will be redistributed
7 to the LWDA.

8 **E. RELEASE OF CLAIMS**

9 6. Release of Claims by Aggrieved Employees. Upon the Effective Date, each of the
10 Aggrieved Employees, including Plaintiff, fully release and forever discharge any and all of the
11 Released Parties of and from any and all Released Claims. This Agreement solely releases PAGA
12 claims predicated on alleged violations of Labor Code section 226 during the PAGA Period.

13 7. No Right to Opt-Out. The Parties agree there is no statutory right for any Aggrieved
14 Employee to opt out or otherwise exclude himself or herself from the Settlement.

15 8. General Release and Waiver of Claims by Plaintiff. As a condition to obtaining the
16 Enhancement Payment provided for herein, Plaintiff (on behalf of herself and her spouse, heirs,
17 executors, administrators, trustees, and/or permitted assigns) also agrees to a general release of
18 any and all claims against Defendant—which shall include without limitation any and all claims
19 which in any way relate to her employment with Defendant, under State or Federal law, in tort,
20 common law, statute, contract, or equity, whether pled in the Complaint or not, including but not
21 limited to any claims under the FLSA, Title VII, ADA, FEHA, ADEA, PAGA, California Labor
22 Code, or any Industrial Welfare Commission Wage Order—now existing or arising in the future,
23 based on any act, omission, event, occurrence, or nonoccurrence from the beginning of time to the
24 date of execution hereof. Plaintiff further expressly waives and relinquishes, to the fullest extent
25 permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code,
26 which provides: “A general release does not extend to claims that the creditor or releasing
27 party does not know or suspect to exist in his or her favor at the time of executing the release
28 and that, if known by him or her, would have materially affected his or her settlement with

1 **the debtor or released party.”**

2 **F. MISCELLAENOUS**

3 1. Tax Liability. Defendant, Defendant’s counsel, the Settlement Administrator, and
4 Plaintiff’s Counsel make no representation as to the tax treatment or legal effect of the payments
5 called for hereunder, and Plaintiff and Aggrieved Employees are not relying on any statement,
6 representation, or calculation by Defendant, Defendant’s counsel, Plaintiff’s Counsel, or by the
7 Settlement Administrator in this regard. Plaintiff and Aggrieved Employees understand and agree
8 that they will be solely responsible for the payment of any and all taxes and penalties assessed on
9 their respective payments described herein and will defend, indemnify, and hold Defendant,
10 Defendant’s counsel, Plaintiff’s Counsel and the Settlement Administrator free and harmless from
11 and against any claims resulting from treatment of such payments as non-taxable
12 penalties/damages.

13 2. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
14 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY
15 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER
16 PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
17 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
18 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
19 INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE
20 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE
21 MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR
22 PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
23 EXCLUSIVELY UPON HIS OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL
24 FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT,
25 (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
26 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
27 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
28 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY

1 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
2 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
3 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
4 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
5 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
6 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
7 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
8 AGREEMENT.

9 3. No Prior Assignments. The Parties and their counsel represent, covenant, and
10 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to
11 assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,
12 action, cause of action or right herein released and discharged.

13 4. Nullification of Settlement Agreement. In the event that: (i) the Court does not
14 approve the Settlement as provided herein, or (ii) the Settlement does not become final for any
15 other reason, then this Settlement Agreement, and any documents generated to bring it into effect,
16 will be null and void, and the Parties will be returned to their original respective positions.

17 5. Continued Jurisdiction. After entry of the judgment, the Court will have continuing
18 jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms
19 of the Settlement, (ii) settlement administration matters, and (iii) such post-Court Approval matters
20 as may be appropriate under court rules or as set forth in this Settlement.

21 6. Entire Agreement. This Settlement Agreement constitutes the entirety of the
22 Parties' settlement terms. No other prior or contemporaneous written or oral agreements may be
23 deemed binding on the Parties.

24 7. Amendment or Modification. This Settlement Agreement may be amended or
25 modified only by a written instrument, signed by either the Parties or their successors-in-interest
26 or counsel for all Parties.

27 8. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant
28 and represent they are expressly authorized by the Parties whom they represent to negotiate this

1 Settlement Agreement and to take all appropriate action required or permitted to be taken by such
2 Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other
3 documents required to effectuate the terms of this Settlement Agreement. The Parties and their
4 counsel will cooperate with each other and use their best efforts to effect the implementation of
5 the Settlement. If the Parties are unable to reach agreement on the form or content of any document
6 needed to implement the Settlement, or on any supplemental provisions that may become
7 necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court
8 to resolve such disagreement.

9 9. Binding on Successors and Assigns. This Settlement Agreement will be binding
10 upon, and inure to the benefit of, the successors or assigns of the Parties hereto.

11 10. California Law Governs. All terms of this Settlement Agreement and Exhibit A will
12 be governed by and interpreted according to the laws of the State of California.

13 11. Execution and Counterparts. This Settlement Agreement is subject only to the
14 execution of all Parties. However, the Settlement Agreement may be executed in one or more
15 counterparts. All executed counterparts and each of them, including facsimile and scanned copies
16 of the signature page, will be deemed to be one and the same instrument provided that counsel for
17 the Parties will exchange among themselves original signed counterparts.

18 12. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe
19 this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have
20 arrived at this Settlement after arm's-length negotiations. The Parties further acknowledge that
21 they are each represented by competent counsel and that they have had an opportunity to consult
22 with their counsel regarding the fairness and reasonableness of this Settlement.

23 13. Invalidity of Any Provision. Before declaring any provision of this Settlement
24 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
25 extent possible consistent with applicable precedents so as to define all provisions of this
26 Settlement Agreement valid and enforceable. If any provision of this Settlement Agreement is or
27 becomes invalid or unenforceable in any respect, the validity and enforceability of the remaining
28 provisions contained herein shall not be affected.

1 14. Captions. The captions and section numbers in this Settlement Agreement are
2 inserted for the reader's convenience, and in no way define, limit, construe, or describe the scope
3 or intent of the provisions of this Settlement Agreement.

4 15. Waiver. No waiver of any condition or covenant contained in this Settlement
5 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered
6 to imply or constitute a further waiver by such party of the same or any other condition, covenant,
7 right or remedy.

8 16. Enforcement Action. In the event that one or more of the Parties institutes any legal
9 action or other proceeding against any other Party or Parties to enforce the provisions of this
10 Settlement or to declare rights and/or obligations under this Settlement, the successful Party or
11 Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees
12 and costs, including expert witness fees incurred in connection with any enforcement actions.

13 17. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
14 and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be
15 construed more strictly against one party than another merely by virtue of the fact that it may have
16 been prepared by counsel for one of the Parties, it being recognized that, because of the arms-
17 length negotiations between the Parties, all Parties have contributed to the preparation of this
18 Settlement Agreement.

19 18. Representation by Counsel. The Parties acknowledge that they have been
20 represented by counsel throughout all negotiations that preceded the execution of this Settlement
21 Agreement, and that this Settlement Agreement has been executed with the consent and advice of
22 counsel and reviewed in full.

23 19. Binding Agreement. The Parties warrant that they understand and have full
24 authority to enter into this Settlement, and further intend that this Settlement Agreement will be
25 fully enforceable and binding on all parties, and agree that it will be admissible and subject to
26 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
27 provisions that otherwise might apply under federal or state law.

28 20. Denial of Liability. The Parties expressly recognize that the making of this

1 agreement does not in any way constitute an admission or concession of wrongdoing on the part
 2 of Defendant. Nothing in this Settlement, nor any action taken in implementation thereof, nor any
 3 statements, discussions or communications, nor any materials prepared, exchanged, issued or used
 4 during the course of this Action, is intended by the Parties to, nor will any of the foregoing
 5 constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral,
 6 administrative, investigative or other forum or proceeding, as evidence of any violation of any
 7 federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation
 8 or duty at law or in equity. Notwithstanding the foregoing, this agreement may be used in any
 9 proceeding in the Court that has as its purpose the interpretation, implementation, or enforcement
 10 of the Settlement or any orders or judgments of the Court entered into in connection therewith.

11 **IN WITNESS WHEREOF**, the undersigned Settling Parties and their duly authorized
 12 representatives accept and agree to the terms of this Agreement and hereby execute it voluntarily
 13 and with a full understanding of its consequences.

14
 15 DATED: 3/5/2021

PLAINTIFF MENCHILA VILLARUBIA WOODALL

DocuSigned by:

Menchila Woodall

Menchila Villarubia Woodall

18
 19 DATED: 3/5/21

DEFENDANT VASONA MANAGEMENT, INC.

Terry Umas

TERRY UMAS

Please Print Name of Authorized Signatory

APPROVED AND ACKNOWLEDGED

1 DATED: 3/8/21

DIVERSITY LAW GROUP, P.C.



Larry W. Lee
Kristen M. Agnew
Nicholas Rosenthal
Attorneys for Plaintiff and the Aggrieved Employees

2
3
4
5
6 DATED: 3/8/2021

POLARIS LAW GROUP



William L. Marder
Attorneys for Plaintiff and the Aggrieved Employees

7
8
9 DATED: 3/18/21

PAHL & McCAY



Servando R. Sandoval
Sonia S. Shah
Attorneys for Defendant Vasona Management, Inc.

EXHIBIT A

<<DATE>>

<<FIRST NAME>> <<LAST NAME>>
<<ADDRESS>>Re: *Menchila Villarubia Woodall v. Vasona Management, Inc.*

Dear <<FIRST NAME>> <<LAST NAME>>:

Enclosed you will find a check made payable to you. This is your payment from the settlement of the lawsuit entitled *Menchila Villarubia Woodall v. Vasona Management, Inc.*, Santa Clara County Superior Court Case No. 20CV366143 (the "Action").

The Action was filed against Vasona Management, Inc. ("Defendant") pursuant to the California Private Attorneys General Act of 2004, California Labor Code section 2698 *et seq.* ("PAGA"). The claim was brought by a former employee of Defendant on behalf of the State of California and all non-exempt employees who were paid overtime wages by Defendant any time from April 1, 2019 through May 4, 2020 onward. You have been identified as one of the individuals on whose behalf the case was brought.

The plaintiff in the Action claimed that Defendant failed to provide accurate wage statements that identified the correct hourly rates of pay for overtime wages, in violation of Labor Code section 226(a)(9). Defendant denies all such allegations.

The Court has not ruled on the merits of the lawsuit, but it has approved the settlement amount the parties agreed to. A portion of the settlement amount goes to the State of California's Labor and Workforce Development Agency. Another portion of the settlement amount goes to the non-exempt employees who worked for Defendants in California and received overtime wages during the period of April 1, 2019 through May 4, 2020.

Pursuant to the settlement, enclosed is a check for your share of a portion of the civil penalties. You are not a party to this lawsuit, but you and the government will be bound by the judgment in this matter as to civil penalties.

Sincerely,

[NAME AND TITLE OF SIGNATORY]

EXHIBIT B

Menchila Villarubia Woodall v. Vasona Management, Inc.
Nicholas Rosenthal Time and Task Chart

Hours	Description of Work
2.3	Review client documents; research regarding viability of claims.
4.6	Draft Complaint and PAGA notice.
1.8	Review Defendant's PAGA "cure" notice and prepare response.
.7	Prepare amended complaint.
1.1	Communications with opposing counsel re mediation and data needed for mediation.
1.5	Analysis of data provided by Defendant prior to mediation
2.1	Prepare mediation brief
5.8	Attend mediation
1.0	Prepare and revise MOU
5.8	Prepare and edit settlement agreement
6.5	Prepare Motion for Approval
33.2	TOTAL HOURS