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and Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

MICHELLE GUTIERREZ, on behalf of herself
and all others similarly situated,

Plaintiff,

vs.

NEW HORIZONS: SERVING INDIVIDUALS
WITH SPECIAL NEEDS, a Missouri
Corporation; and DOES 1 through 100,

Defendants.

Case No. 20STCV28128

*[Assigned for all purposes to the Hon. Terry
Green; Dept. 14]*

**DECLARATION OF PAUL K.
HAINES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
APPROVAL OF SETTLEMENT OF
CLAIMS BROUGHT UNDER THE
PRIVATE ATTORNEYS'
GENERAL ACT AND
REASONABLE ATTORNEYS'
FEES, COSTS, AND
ENHANCEMENT PAYMENT**

Date: March 10, 2022
Time: 8:45 a.m.
Dept.: 14

Reservation ID: 163743327199

Complaint Filed: July 24, 2020
Trial Date: None Set

1 I, PAUL K. HAINES, declare as follows:

2 1. I am a shareholder and principal of Haines Law Group, APC, and counsel for the
3 named Plaintiff Michelle Gutierrez (“Plaintiff”) and the Aggrieved Employees in the above-
4 captioned matter. I am a member in good standing of the bar of the State of California and am
5 admitted to practice in this Court. I have personal knowledge of the facts stated in this declaration
6 and could testify competently to them if called upon to do so.

7 2. I am a 2006 graduate of Pepperdine University School of Law, where I graduated
8 *cum laude*. During law school, I worked as a law clerk for the appellate firm of Horvitz & Levy,
9 located in Encino, California. I also spent a semester in law school working as an extern for the
10 Honorable Edward Rafeedie, District Judge for the United States District Court for the Central
11 District of California.

12 3. Since graduating from law school, my practice has focused almost exclusively on
13 employment litigation. In September 2007, I began working as an associate attorney at the
14 international law firm of Littler Mendelson P.C., at its Los Angeles office, which according to
15 its website is the “largest U.S.-based law firm exclusively devoted to representing management
16 in every aspect of labor and employment law.” While at Littler Mendelson, I was primarily
17 staffed on wage and hour class actions venued in both state and federal courts, and I also worked
18 on a number of single and multi-plaintiff wage and hour matters as well.

19 4. During my employment at Littler Mendelson, I played a significant role in the
20 class actions that I was staffed on, as I was often the only associate staffed on such cases. In
21 particular, I received a wide-array of wage and hour class action experience performing the
22 following types of tasks: drafting demurrers, motions to strike and/or dismiss; removing actions
23 from state court to federal court; drafting and responding to written discovery; drafting and
24 opposing discovery related motions; arguing discovery related motions; drafting motions to
25 consolidate related matters; interviewing putative class members and obtaining declarations in
26 connection with class certification; drafting oppositions to motions for class certification;
27 drafting motions for decertification following class certification; conducting exposure analyses
28 to assess the strengths and weaknesses of asserted claims, the likelihood of prevailing at class

1 certification and potential damages resulting from such claims; drafting mediation briefs; serving
2 as the primary contact to in-house counsel; deposing named plaintiffs and putative class
3 members; deposing retained expert witnesses; and defending the depositions of corporate
4 witnesses. In short, I played an integral role in all aspects of litigation from the inception of a
5 matter through and beyond class certification. I also supervised the work of several junior
6 attorneys who were staffed on the same wage and hour class actions.

7 5. In June 2011, I voluntarily resigned from Littler Mendelson in order to accept an
8 associate attorney position with the international law firm of Morgan, Lewis & Bockius LLP, at
9 its Los Angeles office, where I began working in July 2011. During my employment at Morgan,
10 Lewis & Bockius LLP, I worked exclusively on the defense of wage and hour class and collective
11 actions. For the vast majority of these cases, I was the only associate staffed on the matter, and I
12 performed the same job duties as described in the immediately preceding paragraph. In addition
13 to working on wage and hour class actions, at Morgan, Lewis & Bockius I also worked on a
14 number of “hybrid” actions asserting nationwide wage and hour claims under the Fair Labor
15 Standards Act (“FLSA”), as well as California-specific claims under Rule 23 of the Rules of
16 Civil Procedure.

17 6. In July 2012, I transitioned into litigating wage and hour class actions from the
18 Plaintiff’s side, first as a Partner with the law firm of Boren, Osher & Luftman, LLP, and since
19 February 2016, as a Shareholder of the Haines Law Group, APC. Currently, over ninety percent
20 (90%) of my practice is dedicated exclusively to the prosecution of wage and hour class actions,
21 and my law firm is currently responsible for prosecuting over fifty (50) wage and hour class
22 actions filed in both State and Federal courts throughout California. I have been appointed as
23 Class Counsel in over seventy-five (75) wage and hour class action settlements in state and federal
24 courts within California. A few examples of the matters in which I have been appointed as Class
25 Counsel, all of which have been granted final approval, include the following: *Sanchez v. Res-*
26 *Care, Inc.*, Case No. BC526175, California Superior Court, County of Los Angeles, Honorable
27 John S. Wiley, presiding; *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW
28 (Ex), United States District Court, Central District of California, Honorable Judge John F. Walter,

1 presiding; *Tesla Motors Wage and Hour Litigation*, JCCP 4792, California Superior Court, Santa
2 Clara County, Judge Peter H. Kirwan presiding; *Bower v. Cycle Gear, Inc.*, Case No. CV14-2712
3 HSG, United States District Court, Northern District of California, Honorable Judge Haywood S.
4 Gilliam, Jr. presiding; *Longstreth v. PAQ, Inc., dba Food 4 Less*, Case No. 15CV-0206, California
5 Superior Court, County of San Luis Obispo, Honorable Judge Charles S. Crandall, presiding;
6 *Nunez v. CompuCom Systems, Inc.*, Case No. BC618385, California Superior Court, County of
7 Los Angeles, Honorable Judge John Shepard Wiley, Jr. presiding; *Mansilla v. Haeco Americas*
8 *Line Services, LLC, et al.*, Case No. BC615310, Superior Court of California, County of Los
9 Angeles, Honorable Judge Elihu M. Berle presiding. *Morales v. Caremeridian, LLC, et al.*, Case
10 No. BC593191, California Superior Court, County of Los Angeles, Judge William F. Highberger
11 presiding; *Rodrigues v. CP Kelco U.S., Inc.*, Case No. 37-2017-00004339-CU-OE-CTL,
12 California Superior Court, County of San Diego, Honorable Judge Joel R. Wohlfeil, presiding;
13 *Sandoval v. Rotational Molding, Inc.*, Case No. BC640678, Superior Court of California, County
14 of Los Angeles, Honorable Judge William F. Highberger presiding; *Gooding v. Vita-Mix Corp.,*
15 *et al.*, Case No. 2:16-cv-03898-ODW (JEMx), United States District Court for the Central District
16 of California, Honorable Judge Otis D. Wright II presiding.

17 7. I have also moved to certify and have received an order certifying a class action
18 and/or conditionally certifying a collective action, in the following cases: *Medeiros v. Vortex*
19 *Financial Management Inc.*, Case No. 30-2013-00644741-CU-OE-CXC, California Superior
20 Court, County of Orange, Honorable Judge Gail A. Andler, presiding (certifying a class of
21 employees who were misclassified as independent contractors); *Javine v. San Luis Ambulance*
22 *Service, Inc.*, Case No. CV13-07480 BRO (SSx), United States District Court, Central District
23 of California, Honorable Judge Beverly Reid O'Connell, presiding (conditionally certifying an
24 unpaid FLSA overtime wage class); *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-
25 3170 JFW (Ex), United States District Court, Central District of California, Honorable Judge
26 John F. Walter, presiding (certifying a rest period violation class and conditionally certifying an
27 FLSA unpaid overtime wage class); *Bower v. Cycle Gear, Inc.*, Case No. CV14-2712 HSG,
28 United States District Court, Northern District of California, Honorable Judge Haywood S.

1 Gilliam, Jr., presiding (conditionally certifying an unpaid FLSA overtime wage class); *Vega v.*
2 *Weatherford U.S., Limited Partnership*, Case No. CV14-1790-JLT, United States District Court,
3 Eastern District of California, Honorable Jennifer L. Thurston, presiding (conditionally certifying
4 an unpaid FLSA overtime wage class); *Galvan v. AMVAC Chemical Corporation*, Case No. 30-
5 2014-00716103-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge
6 William Claster, presiding (certifying unpaid overtime wage class and waiting time penalty
7 class); *Camacho v. Residential Fire Systems, Inc.*, Case No. 30-2015-775372-CU-OE-CXC,
8 California Superior Court, County of Orange, Honorable Glenda Sanders, presiding (certifying
9 piece rate pay plan classes, expense reimbursement class, wage statement class, and waiting time
10 penalties class); *Ontiveros v. Safelite Fulfillment, Inc.*, et al, Case No. CV 15-7118-DMG
11 (RAOx), United States District Court, Central District of California, Honorable Dolly M. Gee
12 presiding (certifying six classes of employees for rest period violations, wage statement
13 violations, meal period violations, and overtime and double-time violations); *Vazquez, et al v.*
14 *Kraft Heinz Foods Company*, Case No. 16-cv-2749-WQH-BLM, United States District Court,
15 Southern District of California, Honorable William Q. Hayes presiding (certifying six classes of
16 employees for unpaid wages, meal period violations, wage statement violations, and waiting time
17 penalties); *Caudle, et al. v. Sprint/United Management Company, et al.* Case No. C 17-06874-
18 WHA, United States District Court, Northern District of California, Honorable William H. Alsup
19 presiding (certifying three classes of employees for unlawful wage deductions, wage statement
20 violations, and waiting time violations); *Perez v. Sunbelt Rentals, Inc.* Case No. 37-2018-
21 00026405-CU-OE-CTL, California Superior Court, County of San Diego, Honorable Eddie C.
22 Sturgeon presiding (certifying class of employees for wage statement violations); *Staublein v.*
23 *Wells Fargo Bank, N.A.*, Case No. CIV DS1712267, San Bernardino Superior Court, Hon. David
24 S. Cohn presiding (certifying wage statement class); and *Bowlin-Burdick, et al v. Life Care*
25 *Centers of America, Inc.*, Case No. BC657139, Los Angeles County Superior Court, Honorable
26 Maren E. Nelson presiding (certifying four classes for meal period violations, rest period
27 violations, wage statement violations, and waiting time penalties).

1 8. Of particular relevance to this case, I served as lead or co-lead counsel for the
2 plaintiff and aggrieved employees in several PAGA-only settlements, including but not limited
3 to:

- 4 • *Pentinio v. Southern Wine and Spirits of America, Inc.*, Case No. BC570234,
5 California Superior Court, County of Los Angeles, Honorable Judge Maureen
6 Duffy-Lewis, presiding, approved by the Court on January 19, 2016;
- 7 • *Resendez v. Bridgestone Retail Operations, LLC*, Case No. BC596892, California
8 Superior Court, County of Los Angeles, Honorable Judge Marc Marmaro
9 presiding, approved by the Court on June 13, 2016;
- 10 • *Canul v. Basmat, Inc.*, Case No. BC674940, California Superior Court, County of
11 Los Angeles, Honorable Judge Teresa A. Beaudet presiding, approved by the
12 Court on August 22, 2018;
- 13 • *Silva v. CitiStaff Solutions, Inc.*, Case No. BC620115, California Superior Court,
14 County of Los Angeles, Honorable Judge David S. Cunningham III presiding,
15 approved by the Court on November 19, 2018;
- 16 • *Cruz v. Fleetwash, Inc.*, Case No. 19STCV03033, California Superior Court,
17 County of Los Angeles, Honorable Judge Stuart M. Rice presiding, approved by
18 the Court on October 7, 2019; and
- 19 • *Ibarra v. Baker Commodities, Inc.*, Case No. 19STCV06148, California Superior
20 Court, County of Los Angeles, Honorable Yolanda Orozco presiding, approved
21 by the Court on September 30, 2020.

22 9. In 2015, 2016, and 2017, Thomson Reuters recognized me as a Top Young
23 Attorney in Southern California in the annual Rising Star Edition of Super Lawyer. This is an
24 honor awarded to no more than two and a half percent of attorneys under the age of forty in
25 Southern California each year. In 2018, 2019, and 2020, Thomson Reuters recognized me as a
26 “Super Lawyer,” an honor awarded to no more than five percent of attorneys in Southern
27 California each year.

28 ///

1 10. As counsel for Plaintiff and Aggrieved Employees in this case, I have been
2 intimately involved in every aspect of this case from its inception through the present, and I
3 believe the proposed Settlement is far and adequate for the Aggrieved Employees and the State
4 of California.

5 11. New Horizons provides job training and placement, education services,
6 counselling, residential services, and various social programs to more than 1,200 individuals (age
7 16 and older) and social/recreational services to nearly 3,000 individuals throughout the greater
8 San Fernando and Santa Clarita Valleys of Southern California. Plaintiff worked for New
9 Horizons as a non-exempt “Direct Support Professional” from approximately August 2013
10 through December 2019.

11 12. On May 19, 2020, Plaintiff sent a letter by certified mail to New Horizons, and
12 online to the LWDA, describing New Horizons’ alleged Labor Code violations, as required by
13 Labor Code § 2699.3. On July 24, 2020, after the prescribed 65-day waiting period under Labor
14 Code § 2699.3(a)(2)(A), Plaintiff filed a Complaint in Los Angeles Superior Court for PAGA
15 civil penalties against New Horizons. Attached hereto as **Exhibit 2** is a true and correct copy of
16 Plaintiff’s May 19, 2020 PAGA letter.

17 13. After the case was at issue, the Parties began an informal exchange of documents
18 and information. Based on this exchange of information, the Parties agreed to mediate Plaintiff’s
19 PAGA claims. In connection with mediation, New Horizons produced timekeeping and payroll
20 records for a 10% random sampling of aggrieved employees during the PAGA Period; a
21 spreadsheet containing hire dates, termination dates, and other information for all aggrieved
22 employees; and its employee handbook and other written policies in effect during the PAGA
23 Period. This discovery allowed the Parties to assess the merits and value of Plaintiff’s PAGA
24 claim, and New Horizon’s potential defenses.

25 14. On April 29, 2021, the Parties attended mediation with Jeffrey Krivis, Esq., a
26 preeminent wage and hour mediator. During mediation, the Parties vigorously debated Plaintiff’s
27 ability to proceed on a representative basis, the legal basis for Plaintiff’s claims and New
28 Horizons’ defenses, the potential amount of penalties, and the Parties’ data analyses and

1 conclusions based thereon. Ultimately, with the assistance of Mr. Krivis, the Parties agreed in
2 principle to resolve Plaintiff's PAGA claims. Over the following months, the Parties negotiated
3 and finalized the Settlement Agreement now before the Court.

4 15. A true and correct copy of the fully-executed Settlement Agreement is attached
5 hereto as **Exhibit 1**. The proposed Explanatory Letter to be mailed to Aggrieved Employees with
6 their settlement payments is attached as **Exhibit A** to the Settlement Agreement. The Settlement
7 provides for New Horizons to pay a Gross Settlement Amount ("GSA") of \$335,000.00. After
8 deducting amounts for requested attorneys' fees, attorneys' costs, Plaintiff's Enhancement
9 Payment, and settlement administration costs, the Settlement provides for the Net Settlement
10 Amount ("NSA") to be distributed 75% to the LWDA and 25% to Aggrieved Employees,
11 pursuant to Lab. Code § 2699(i). The 25% portion to Aggrieved Employees shall be distributed
12 based on each Aggrieved Employee's proportional number of pay periods worked for New
13 Horizons in California during the PAGA Period. The settlement is non-reversionary, and does not
14 require Aggrieved Employees to submit claim forms to reap financial benefit from the Settlement.
15 Based on a GSA of \$335,000, the total amount paid to Aggrieved Employees is estimated at
16 \$50,186.71, with approximately \$150,560.13 paid to the LWDA. According to information
17 provided by New Horizons, the number of Aggrieved Employees is approximately 496. Thus, the
18 average payment to Aggrieved Employees is estimated at \$101.18.

19 16. Although she steadfastly maintains her claims are meritorious, Plaintiff
20 acknowledges her position included real risks and uncertainty. For example, with respect to
21 Plaintiff's rest period claim, Plaintiff alleged that New Horizons failed to authorize and permit
22 Plaintiff and Aggrieved Employees from taking all statutorily permitted off-duty rest periods
23 during their shifts. New Horizons contends that it has always maintained lawful written rest period
24 policies, including the number, duration, and frequency of rest periods, and that it has always
25 authorized and permitted rest periods in accordance with those policies. New Horizons further
26 contends that Plaintiff and other Aggrieved Employees often worked on their own without direct
27 supervision, and thus New Horizons contends that they had complete discretion regarding when
28 and how to take their rest breaks.

1 17. With respect to Plaintiff's meal period claim, New Horizons contends that it has
2 always maintained compliant written meal period policies, and contends that it utilized a lawful
3 on-duty meal period agreement throughout the relevant time period. New Horizons argues, and
4 Plaintiff does not dispute, that the nature of New Horizons' employees' work prevents them from
5 being relieved of all duties during their work shift. New Horizons also maintains that Plaintiff's
6 meal period claim would not be manageable on a representative basis, as individual inquiries
7 would be required to establish which Aggrieved Employees experienced non-compliant meal
8 periods, how many non-compliant meal periods each Aggrieve Employee experienced, and why
9 a particular Aggrieved Employee had a non-compliant meal period during a particular shift.

10 18. As for Plaintiff's claims that New Horizons violated its wage statement and final
11 payment obligations in violation of Labor Code §§ 226 and 203, respectively, New Horizons
12 asserts it has strong, good-faith defenses to Plaintiff's underlying claims, precluding a finding of
13 a failure to pay all final wages that would otherwise result in waiting time penalties. New
14 Horizons further contends Plaintiff's meal and rest period claims cannot support a claim for
15 violations of Labor Code §§ 226 or 203, as a Court of Appeal recently held in *Naranjo v. Spectrum*
16 *Security Servs., Inc.* With respect to Plaintiff's claim that the wage statements issued by New
17 Horizons failed to list the applicable hourly rate for "Split Shifts" and the corresponding number
18 of hours worked at the "Split Shift" rate of pay, New Horizons argues that split shift premiums
19 are not hourly rates of pay which need to be included on wage statements pursuant to Labor Code
20 § 226(a)(9).

21 19. With respect to Plaintiff's claim that New Horizons failed to reimburse Plaintiff
22 and other non-exempt employees for all necessary business expenditures, including cell phone
23 expenses and mileage, New Horizons contends that employees are not expected or required to use
24 their cell phones for work purposes. New Horizons further argues that it provided employees with
25 a method to seek reimbursement for cell phone expenses and mileage. New Horizons further
26 argues that this claim is not suitable for representative treatment as individualized inquiries would
27 be required to determine the reasonableness of any expenses incurred by the employee, whether
28 each employee was properly reimbursed for his or her expenses, and if they were under-

1 reimbursed, by how much.

2 20. New Horizons further maintains that even if the Court awarded PAGA penalties
3 for any of the alleged violations, the Court would substantially reduce the penalties based on the
4 discretionary factors listed in Labor Code § 2699(e)(2) (authorizing reduction in PAGA penalties
5 “if, based on the facts and circumstances of the particular case, to do otherwise would result in an
6 award that is unjust, arbitrary and oppressive, or confiscatory.”). Indeed, New Horizons argues,
7 many courts have reduced PAGA penalties drastically where, as here, the employer presented
8 good-faith defenses and attempted to comply with the law.

9 21. Plaintiff asserts that she would be able to seek PAGA penalties for each Aggrieved
10 Employee for each pay period in the PAGA limitations period. Based on data provided by New
11 Horizons, there were approximately 19,099 pay periods during the PAGA limitations period.
12 Assuming an initial violation rate of \$100 per pay period under Labor Code § 2699(f), Plaintiff
13 estimated a maximum potential PAGA exposure of \$1,909,900.00. However, because the Court
14 maintains discretion to reduce these penalties, and in light of New Horizons’ arguments and
15 defenses described above, Plaintiff discounted that figure by 50% for a risk of losing on the merits,
16 and by an additional 60% for risk of the Court reducing penalties, to arrive at a realistic exposure
17 of \$381,980. The proposed \$335,000.00 GSA therefore represents approximately 87.7% of
18 Plaintiff’s reasonably forecasted total recovery, while avoiding the risks of proceeding through
19 trial.

20 22. My office is requesting attorneys’ fees of one-third of the Gross Settlement
21 Amount (i.e., \$111,666.67). Based on my experience in similar wage and hour class and
22 representative actions in California state courts, fee awards in matters such as this one generally
23 equal about one-third of the gross recovery. In addition, and as explained below and in the
24 accompanying Motion, the requested fee is fair compensation for undertaking complex, risky,
25 expensive, and time-consuming litigation on a purely contingent basis. This case also involved
26 nuanced legal issues, including the legality of New Horizons’ obligations to “provide” meal
27 periods and “authorize and permit” rest periods, as well as the availability and amount of PAGA
28 civil penalties for the alleged Labor Code violations. New Horizons was also represented by

1 experienced wage-and-hour litigation counsel. Thus, the requested fee award is fair, reasonable
2 and adequate and should be approved.

3 23. My office has expended significant time and effort in this case, including but not
4 limited to: conducting extensive research regarding the merits of Plaintiff's claims, her ability to
5 recover PAGA civil penalties, and New Horizons' potential defenses; conducting significant
6 analysis of data and information produced by New Horizons, and using this data and analysis to
7 draft a comprehensive mediation brief and exposure analysis; attending a full-day mediation; and
8 preparing and negotiating the Settlement, this Motion and supporting declarations. My office will
9 also oversee the settlement administration process and work with the administrator to prepare a
10 post-disbursement declaration. Given the considerable potential for adverse outcomes in this case,
11 the contingent risk borne by Plaintiff's counsel was great.

12 24. Since undertaking representation of Plaintiff, my firm has dedicated substantial
13 resources to this litigation without receiving any compensation to date. My office is requesting
14 reimbursement of \$12,586.48 in total costs. A summary of the costs incurred by my office in
15 connection with this case is attached hereto as **Exhibit 3**. These costs include filing fees, copying
16 costs, mediation fees, expert costs, and other expenses that were all reasonably incurred in the
17 prosecution of this litigation on behalf of Plaintiff and the Aggrieved Employees.

18 25. I believe the requested \$5,000 enhancement payment to Plaintiff is reasonable
19 given Plaintiff's efforts in this case and the risks she undertook on behalf of Aggrieved
20 Employees. Plaintiff provided substantial factual information and documents to my office,
21 assisted in identifying potential witnesses, and otherwise assisted in the prosecution of this case,
22 and also undertook significant risk in the event this case were lost as well as the reputational risk
23 inherent in suing a former employer on a representative basis. Accordingly, I believe Plaintiff's
24 requested enhancement payment is reasonable.

25 I declare under penalty of perjury under the laws of the State of California that the
26 foregoing is true and correct. Executed on February 10, 2022, at El Segundo, California.

27 
28 Paul K. Haines

Exhibit 1

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement” or “Settlement”) is made and entered into between Plaintiff Michelle Gutierrez (“Plaintiff”), acting in a private attorney general capacity, on behalf of the Aggrieved Employees (as defined below), and as a proxy/agent for the California Labor Workforce Development Agency, and Defendant New Horizons: Serving Individuals with Special Needs (“Defendant” or “New Horizons”) (collectively, the “Parties”).

I. DEFINITIONS

The following terms, when used in this Settlement Agreement, shall have the following meanings:

1. “Action” means the matter titled *Michelle Gutierrez v. New Horizons: Serving Individuals with Special Needs*, Los Angeles Superior Court, Case No. 20STCV28128, and as set forth in Plaintiff’s correspondence to the California Labor and Workforce Development Agency (“LWDA Letter”) dated May 19, 2020.
2. “Aggrieved Employees” consist of all current and former non-exempt employees of Defendant who worked for Defendant in California at any time during the PAGA Period. The number of Aggrieved Employees, including Plaintiff, is estimated to be 496 individuals as of the April 29, 2021 mediation date.
3. “Settlement Administrator” means Phoenix Settlement Administrators.
4. “Complaint” means the operative complaint in the Action.
5. “Court” means the Superior Court of California for the County of Los Angeles.
6. “Defendant’s Counsel” means and refers to Alfred J. Landegger, Esq. and Evelyn Zarraga, Esq. of Landegger Verano & Davis, ALC.
7. “Individual PAGA Payment” means the amount to be paid to each Aggrieved Employee based on the formula described herein.
8. “LWDA” means the California Labor and Workforce Development Agency.
9. “Gross Settlement Amount” is the non-reversionary sum of Three Hundred Thirty-Five Thousand Dollars and Zero Cents (\$335,000.00), which represents the total amount payable under this Settlement Agreement by New Horizons, including, without limitation, payments to all Aggrieved Employees, payment to the LWDA, payment of Plaintiff’s attorneys’ fees and costs, payment of Plaintiff’s enhancement payment, and payment to the Settlement Administrator for administration costs.
10. “Net Settlement Amount” is the amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts, if approved by the Court, are subtracted from the Gross Settlement Amount: (a) Plaintiff’s attorneys’ fees up to one third of the Gross Settlement Amount; (b) Plaintiff’s costs up to \$25,000.00; (c) Plaintiff’s enhancement payment up to \$5,000.00; and (d) administration costs up to \$5,000.00.

11. “PAGA” means the California Labor Code Private Attorneys General Act, California Labor Code § 2698, *et seq.*

12. “PAGA Period” means the time period from May 19, 2019 through the date of the Court Order granting approval of the PAGA Settlement, or to the date the Cap on PAGA Pay Periods is met pursuant to Section III.3. of this Agreement, whichever is earlier.

13. “PAGA Released Claims” means any and all claims, demands, rights, liabilities and causes of action under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.*, that are based upon or arise from the factual allegations in the operative complaint filed in the Action and the LWDA Letter, arising during and/or with respect to the PAGA Period, including without limitation, claims for civil penalties under the PAGA for the alleged failure to properly pay for all overtime compensation earned, provide lawful meal periods and pay meal period premiums, authorize or permit lawful rest breaks and pay rest period premiums, reimburse necessary business expenses, provide compliant wage statements, timely pay all wages during employment and upon separation of employment, and keep requisite work records, and for civil penalties for violation of and/or based on California Labor Code §§ 201-204, 226, 226.7, 510, 512, 516, 558, 1174, 1194, 1198, 2802, 2804 and/or the IWC Wage Order(s); and claims for attorneys’ fees, costs, or interest resulting therefrom. The release of the PAGA Released Claims shall extend for the duration of the PAGA Period.

14. “Parties” means, collectively, Plaintiff and New Horizons.

15. “Plaintiff’s Counsel” means Paul K. Haines, Sean M. Blakely, and Alexandra McIntosh of Haines Law Group, APC.

16. “Released Parties” means New Horizons and its former, present and future owners, parents, and subsidiaries, and all of their current, former and future officers, directors, members, managers, partners, shareholders, joint venturers, successors, assigns, accountants, insurers, or legal representatives.

17. “Effective Date” means the earliest date, following entry by the Court of the Judgment or order approving the Settlement, upon which one of the following has occurred: (i) expiration of all potential appeal periods without a filing of a notice of appeal of the Judgment; (ii) final affirmance of the Judgment by an appellate court as a result of any appeal(s); or (iii) final dismissal or denial of all such appeals (including any petitions for review, rehearing, certiorari, etc.) such that the Judgment is no longer subject to further judicial review.

II. RECITALS

1. Plaintiff performed work for New Horizons as a non-exempt employee in California during the PAGA Period and is therefore an Aggrieved Employee (as defined herein).

2. On May 19, 2020, Plaintiff provided written notice to the LWDA and New Horizons asserting claims for civil penalties pursuant to the PAGA stemming from alleged violations of various Labor Code sections and her intent to file a civil lawsuit under the PAGA.

3. On July 24, 2020, Plaintiff filed her representative complaint titled *Michelle Gutierrez. v. New Horizons: Serving Individuals with Special Needs*, Los Angeles Superior Court,

Case No. 20STCV28128, asserting multiple claims against New Horizons for violations of the Labor Code on a representative basis.

4. In connection with mediation, New Horizons provided Plaintiff's Counsel with information and documents pertaining to Plaintiff and other Aggrieved Employees in order for Plaintiff's Counsel to investigate Plaintiff's allegations and value the claims prior to mediation.

5. On April 29, 2021, the Parties participated in mediation before mediator Jeffrey Krivis, Esq. With the assistance of Mr. Krivis, the Parties agreed to fully and finally resolve the PAGA Released Claims as to Plaintiff, the Aggrieved Employees, and the State of California.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. **Non-Admission.** Nothing in this Settlement Agreement, the existence, negotiation and execution of this Settlement Agreement, all acts performed or documents executed pursuant to or in furtherance of this Settlement Agreement, nor the settlement of the Action shall be construed to be an admission by Plaintiff that her claims do not have merit or by New Horizons or the Released Parties of any liability or wrongdoing as to Plaintiff, Aggrieved Employees or any other person, and New Horizons specifically disclaims any such liability or wrongdoing. The Parties have entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses and risks. This Settlement Agreement and any related court documents or orders are not and may not be construed as, offered, cited or admitted as evidence of liability, culpability, fault, wrongdoing, omission, concession, or damage, or of the truth of any of the factual allegations in the operative complaint in the Action. Nothing herein shall constitute an admission by Defendant that the Action was properly brought as a representative action other than for settlement purposes.

2. **Gross Settlement Amount.** New Horizons shall pay Three Hundred Thirty-Five Thousand Dollars and Zero Cents (\$335,000.00) as the non-reversionary Gross Settlement Amount. New Horizons will not pay more than the Gross Settlement Amount. New Horizons shall deposit the Gross Settlement Amount into a Qualified Settlement Account in two equal installments of One Hundred Sixty-Seven Thousand Five Hundred Dollars and Zero Cents (\$167,500). New Horizons shall deposit the first installment payment on or before March 31, 2022, and the second installment payment on or before September 30, 2023.

The Gross Settlement Amount shall be used to pay: (1) Amounts distributable to the LWDA and Aggrieved Employees; (2) Plaintiff's attorneys fees and costs; (3) Plaintiff's enhancement payment; and (4) Settlement administration costs.

3. **Cap on PAGA Pay Periods.** New Horizons represents that there are approximately 19,099 pay periods worked by Aggrieved Employees in California between May 19, 2021, and April 29, 2021. If the number of pay periods worked by Aggrieved Employees in California increases by more than 10% (i.e., by more than 1,909 pay periods) before the date of the Court Order granting approval of the PAGA Settlement, the PAGA Period will be capped as of the date the number of pay periods reach the 10% increase.

4. **Net Settlement Amount.** The Parties agree that the following amounts should be subtracted from the Gross Settlement Amount, if approved by the Court, resulting in a Net Settlement Amount to distribute to the LWDA and Aggrieved Employees:

a. **Plaintiff's Attorneys' Fees and Costs.** New Horizons will not oppose Plaintiff's request for attorneys' fees in the amount up to one third of the Gross Settlement Amount (currently estimated to be \$111,666.67) and costs up to \$25,000.00 incurred in prosecuting this Action. In the event the Court approves less than these amounts, the difference will be added to the Net Settlement Amount (although Plaintiff may appeal an order granting less than the full amount sought for attorneys' fees and costs). New Horizons, via the Settlement Administrator, will report these payments on IRS Form 1099 issued to Plaintiff's Counsel.

b. **Plaintiff's Enhancement Payment.** New Horizons will not oppose Plaintiff's request for an enhancement payment of up to \$5,000.00 for serving as the representative plaintiff in this Action. In the event the Court approves a payment of less than the requested amount, the difference will be added to the Net Settlement Amount (although Plaintiff may appeal an order granting less than the full amount sought for Plaintiff's enhancement payment). New Horizons, via the Settlement Administrator, will report this payment on IRS Form 1099 issued to Plaintiff.

c. **Administration Costs.** New Horizons will not oppose the Settlement Administrator's costs in the amount up to \$5,000.00 for administering the settlement. In the event the Court approves a payment of less than this amount, the difference will be added to the Net Settlement Amount. New Horizons, via the Settlement Administrator, will report this payment on IRS Form 1099 issued to the Settlement Administrator.

5. **Allocation of Net Settlement Amount.** One hundred percent (100%) of the Net Settlement Amount shall be designated as "civil penalties" and shall be distributed 75% to the LWDA and 25% to Aggrieved Employees, pursuant to Lab. Code § 2699(i). The 25% portion to be paid to Aggrieved Employees shall be paid to all Aggrieved Employees pro rata based on the number of pay periods worked by each Aggrieved Employee during the PAGA Period.

a. The parties agree that should the Court deny approval of the Settlement based on the allocation of the Gross Settlement Amount or the Net Settlement Amount, the parties agree to re-negotiate in good faith in an effort to obtain approval of the Settlement.

6. **PAGA Released Claims.** Plaintiff agrees that upon entry of an Order approving the Settlement, and upon the Settlement being fully funded, Plaintiff and all Aggrieved Employees will release the PAGA Released Claims against the Released Parties that arose during the PAGA Period, and the State of California shall fully release and forever discharge the Released Parties from the PAGA Released Claims that arose during the PAGA Period as they pertain to Plaintiff and all Aggrieved Employees. Upon entry of the Order approving the settlement and judgment entered thereon and the Settlement being fully funded, Plaintiff and all Aggrieved Employees will be forever barred from pursuing any and all of the PAGA Released Claims that arose during the PAGA Period against the Released Parties.

7. **Covenants and Representations by Plaintiff and Plaintiff's Counsel.**

a. Plaintiff represents and warrants that she has not assigned or transferred or purported to assign or transfer to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Settlement Agreement.

b. Plaintiff acknowledges that she has read this Settlement Agreement, that she fully understands her rights, privileges and duties under the Settlement Agreement, and enters into this Settlement Agreement freely and voluntarily. Plaintiff further acknowledges that she has had the opportunity to consult with her attorneys to explain the terms of this Settlement Agreement and the consequences of signing this Settlement Agreement.

8. **Confidentiality.** Except as provided below to the extent necessary to effectuate the settlement or as required by court or legal process, Plaintiff and Plaintiff's Counsel will keep the terms of this Settlement Agreement confidential. Neither Plaintiff nor Plaintiff's Counsel shall issue a press release, hold a press conference, publish information about the settlement on any website or through any social media or otherwise publicize the settlement or communicate its terms in public or in private, unless ordered by the Court. However, for the limited purpose of establishing adequacy of counsel in future actions, Plaintiff's counsel may reference the Action by name and case number in a declaration establishing adequacy as class or representative counsel.

To permit judicial review and approval of the Settlement, as required by Labor Code section 2698, *et seq.*, Plaintiff's Counsel will file the Settlement Agreement with the Court and submit the Settlement to the LWDA as part of the parties' seeking Court approval of the Settlement, per Labor Code § 2699(1)(2).

9. **Motion for Approval of PAGA Settlement by Plaintiff's Counsel.** The Parties recognize that Court approval is required in the event of any settlement of a PAGA action, in accordance with California Labor Code § 2699(1)(2), and that a judgment with respect to the PAGA action is binding with respect to non-party aggrieved employees upon Court approval, pursuant to California Labor Code § 2699(1) and *Arias v. Superior Ct.* (2009) 46 Cal.4th 969. The Parties further recognize that a settlement of a PAGA action is not subject to class action procedural rules, and that the Aggrieved Employees do not have the right to opt-out of or otherwise exclude themselves from the Settlement, or object to the Settlement, and upon approval of the Settlement by the Court and funding of the Settlement, all Aggrieved Employees will have released the Released Parties of and for the PAGA Released Claims and Aggrieved Employees will be entitled to receive payment, in conformity with the Settlement. Plaintiff's Counsel shall, with the assistance and cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the approval of this Settlement from the Court. Plaintiff's Counsel shall be responsible for preparing and filing the Motion for Approval of the PAGA Settlement.

10. **Termination of Settlement Agreement.** If the Court does not approve the settlement, if the Court does not enter judgment as provided for in this Settlement Agreement, or if appellate review is sought and, on such review, the Court's decision is materially modified or reversed, or if one or more of the material terms of the Settlement Agreement is not approved or is materially modified or reversed or found to be invalid, then either of the Parties shall have the right within 10 days of written notice thereof to elect to terminate the Settlement Agreement, in which case the Settlement Agreement shall have no force or effect, and the Parties shall be deemed

to have reverted to their respective status as of the date and time immediately prior to the execution of this Settlement Agreement.

11. **Judgment.** As part of the Motion to approve the Settlement, Plaintiff shall submit a proposed judgment which enters judgment in the Action in accordance with the terms of the Settlement, retains jurisdiction over the Action under Cal. Code Civ. Proc. § 664.6 for the purpose of enforcing the terms of the Settlement following approval of the Settlement, and enjoins the prosecution of any of the PAGA Released Claims against any of the Released Parties upon the judgment being entered and the Settlement being fully funded. This Settlement Agreement is expressly conditioned upon the Court entering judgment as set forth herein. The judgment will not release or bar any claims other than the PAGA Released Claims as to Plaintiff and Aggrieved Employees.

12. **Notice of Compliance.** Within fourteen (14) calendar days of receipt of the Settlement Administrator's declaration confirming New Horizons' funding of the Settlement and the disbursement of the Gross Settlement Amount, Plaintiff shall file a notice informing the court of compliance with the terms of the Settlement and satisfaction of the Judgment, and requesting formal closure of the Action.

IV. **ADMINISTRATION OF SETTLEMENT**

1. **Settlement Administrator.** The Parties agree to engage Phoenix Settlement Administrators to handle the administration of this settlement.

2. **Provision of Information for Aggrieved Employees.** Within five (5) business days after the Effective Date, New Horizons shall provide the Settlement Administrator with information for Aggrieved Employees. New Horizons will in good faith compile from its records a list of Aggrieved Employees that will be in a computer-readable format, such as a Microsoft Excel spreadsheet, and shall include each Aggrieved Employee's full name, last known mailing address, last known telephone number, number of pay periods worked during the PAGA Period ("Affected Pay Periods"), and Social Security numbers to the extent available from New Horizons' records. Because Social Security numbers are included in the list, the Settlement Administrator will maintain the list in confidence, and access shall be limited to those with a need to use the list as part of the administration of the Settlement. Within the same 5 business-day period, New Horizons shall also send Plaintiff's Counsel a redacted list of Aggrieved Employees with Affected Pay Periods information, so that Plaintiff's Counsel can determine that the Cap on PAGA Pay Periods has not been exceeded. Within 7 calendar days of receiving the Aggrieved Employees' information from New Horizons, the Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the Individual PAGA Payments to each Aggrieved Employee and the data used to calculate said payments. The Settlement Administrator shall obtain approval from all counsel of the calculations before mailing Individual PAGA Payments.

3. **Explanatory Letter and Individual PAGA Payments.** Upon receipt of the information for Aggrieved Employees, the Settlement Administrator will perform a search on the National Change of Address ("NCOA") database to update the Aggrieved Employees' addresses. Within twenty-one (21) calendar days after the Settlement has been fully funded and after receiving approval from Plaintiff's Counsel and Defendant's counsel of the payment calculations as provided above, the Settlement Administrator shall mail copies of the explanatory letter, which

has been mutually approved by the Parties and is attached hereto as **Exhibit A**, in English and Spanish, along with Individual PAGA Payments to all Aggrieved Employees via regular First-Class U.S. Mail, at the address provided by New Horizons or at the updated address located through the NCOA database search.

The Settlement Administrator will calculate the amount to be received by each Aggrieved Employee, which will be based on the formula set forth in Section III.5., *supra*. The Settlement Administrator will send each Aggrieved Employee a check for his or her Individual PAGA Payment along with the explanatory letter. Checks will remain negotiable for 180 days. Each Individual PAGA Payment shall be deemed penalties and reported using IRS Form 1099, with no withholdings taken.

4. **Undeliverable Notices.** The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Aggrieved Employee. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Aggrieved Employee.

Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace or other reputable search method using the name, address or Social Security number of the Aggrieved Employee involved, and will perform up to a single re-mailing if a new address is located.

Funds represented by checks returned as undeliverable after a re-mailing, checks for whom the Settlement Administrator could not locate an updated address after performing a skip trace, and funds represented by checks remaining un-cashed more than 180 days after issuance (collectively, "Uncashed Checks"), shall escheat to *cypres* recipient Neighborhood Legal Services of Los Angeles County, which is a 501(c)(3) organization dedicated to providing legal services to indigent residents of Los Angeles County.

5. **Distribution of Payments.** Within twenty-one (21) calendar days of the Settlement being fully funded, the Settlement Administrator shall issue payments to (1) Aggrieved Employees; (2) the LWDA; (3) Plaintiff's Counsel for Plaintiff's Counsel's Court-approved attorneys' fees and litigation costs and expenses; (4) Plaintiff for the Court-approved enhancement payment and (5) the Settlement Administrator for Court-approved Settlement administration costs incurred in connection with the Settlement. Payments made by New Horizons pursuant to this Settlement shall be held by the Settlement Administrator in an interest-bearing account until they are disbursed, with any accrued interest inuring to the benefit of the Aggrieved Employees in the form of pro rata increases to Aggrieved Employees' Individual PAGA Payments.

6. **Accounting.** Within forty-five (45) days after all payments have been made under the Settlement, the Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid from the settlement.

7. **Tax Consequences.** Neither Plaintiff nor New Horizons, nor counsel for either of the Parties, makes any representations or warranties with respect to tax consequences of any payment under this Settlement Agreement.

8. **No Effect on Employee Benefits.** The payments made to Plaintiff and the other Aggrieved Employees pursuant to this Settlement Agreement are not intended to count as earnings by Plaintiff or the Aggrieved Employees, and will not entitle Plaintiff or the Aggrieved Employees to any additional compensation and/or benefits under any retirement, benefit, bonus, incentive, pension, welfare, and/or any other plan of or sponsored by New Horizons.

V. **MISCELLANEOUS PROVISIONS**

1. **Drafting.** The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that neither Party shall be considered the "drafter" of this Settlement Agreement for purposes of having terms construed against that Party.

2. **Successors.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators and successors.

3. **Costs and Fees.** The Parties shall each bear their own costs and attorneys' fees incurred in connection with this Settlement Agreement, the Action and Plaintiff's claims, except as otherwise set forth specifically herein.

4. **Governing Law.** This Settlement Agreement shall be construed under and governed by the laws of the State of California. This Settlement Agreement shall be deemed to have been entered into in Los Angeles, California, and all questions of validity, interpretation or performance of any of its terms or of any rights or obligations of the Parties to this Settlement Agreement shall be governed by California law. If any legal or equitable action is necessary to enforce the terms of this Settlement Agreement, it shall be brought in the State of California, County of Los Angeles.

5. **Complete Agreement.** The Parties each acknowledge and represent that no promise or representation not contained in this Settlement Agreement has been made to them with respect to the subject matter of this Settlement Agreement, and acknowledge and represent that this Settlement Agreement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the PAGA claim in the Action.

6. **Nullification of Settlement Agreement.** If the Court should fail to approve the Settlement as agreed upon by the Parties, the Parties shall coordinate efforts to address the Court's questions or concerns and work jointly to make reasonable efforts to remedy the Settlement in order to obtain the Court's approval. If the Parties cannot resolve the issues identified by the Court in denying approval, the Parties shall be restored to their litigation positions and all funds returned to New Horizons. If, after the Parties make a second attempt to obtain approval of the material terms of the Settlement, unless the Parties specifically agree to continue with their coordinated efforts to obtain Court approval, the Court fails to approve the material terms of the settlement in the form agreed to by the Parties (except for the amount of Plaintiff's Attorneys' Fees and Costs requested by Plaintiff's Counsel), or if the Court's approval of this Settlement Agreement is reversed, modified, or declared or rendered void, then: (a) this Settlement Agreement shall be considered null and void; (b) neither this Settlement Agreement nor any of the related negotiations or proceedings shall be of any force or effect; and (c) all Parties to this Settlement Agreement shall

stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court. Invalidation of any material portion of this Settlement Agreement, except for the amount of Plaintiff's Attorneys' Fees and Costs, shall invalidate this Settlement Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

7. **Judgment and Continued Jurisdiction.** As noted above, after approval of this settlement, the Court will have continuing jurisdiction under Cal. Code Civ. Proc. § 664.6 for purposes of addressing: (i) the interpretation and enforcement of the terms of the settlement, (ii) settlement administration matters, and (iii) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement.

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

9. **Authorization to Enter into Settlement Agreement.** Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this settlement, the Parties may seek the assistance of the mediator Jeffrey Krivis, Esq. or the Court to resolve such disagreement.

10. **Execution and Counterparts.** This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. The counterparts may be executed and/or transmitted electronically or by facsimile. All executed counterparts, and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

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

12. **Invalidity of Any Provision.** Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Settlement Agreement valid and enforceable.

13. **Severability.** If any term or provision of this Settlement Agreement is held to be invalid or unenforceable, the remaining portions of this Settlement Agreement will continue to be

valid and will be performed, construed and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

14. **Waiver.** No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right or remedy.

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

16. **Mutual Preparation.** The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one Party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

17. **Interpretation.** Whenever possible, each provision of this Settlement Agreement shall be interpreted in such a manner as to be valid and effective under applicable law and binding on all parties to the fullest possible effect. All captions are for convenience of reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provision hereof. Whenever required by the context, as used in this Agreement, the singular number shall include the plural, the masculine gender shall include the feminine and the neuter, and the feminine gender shall include the masculine and the neuter.

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

19. **Cooperation and Execution of Necessary Documents.** All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

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

IN WITNESS THEREOF, the Parties each acknowledge that she/it has read the foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement and hereby executes it voluntarily and with full understanding of its consequences.

Dated: Dec 13, 2021



Michelle Gutierrez (Dec 13, 2021 12:15 PST)
Michelle Gutierrez, Plaintiff

**NEW HORIZONS: SERVING INDIVIDUALS
WITH SPECIAL NEEDS**

Dated: _____, 2021

By:
Its:

APPROVED AS TO FORM:

Dated: December 13, 2021

HAINES LAW GROUP, APC

By: 

Paul K. Haines
Attorneys for Plaintiff

Dated: _____, 2021

LANDEGGER VERRANO & DAVIS, APC

By: _____
Alfred J. Landegger
Evelyn Zarraga
Attorneys for Defendant

IN WITNESS THEREOF, the Parties each acknowledge that she/it has read the foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement and hereby executes it voluntarily and with full understanding of its consequences.

Dated: _____, 2021

Michelle Gutierrez, Plaintiff

**NEW HORIZONS: SERVING INDIVIDUALS
WITH SPECIAL NEEDS**

Dated: Oct 6, 2021

By: _____
Its: President & CEO

APPROVED AS TO FORM:

Dated: _____, 2021

HAINES LAW GROUP, APC

By: _____
Paul K. Haines
Attorneys for Plaintiff

Dated: Oct. 6, 2021

LANDEGGER VERRANO & DAVIS, APC

By: _____
Alfred J. Landegger
Evelyn Zarraga
Attorneys for Defendant

EXHIBIT A

Re: **Payment from Michelle Gutierrez v. New Horizons: Serving Individuals With Special Needs**
Superior Court of California for the County of Los Angeles

Date: __/__/2021

SIMID
Name
Address

Dear Name:

Enclosed, please find a check made payable to you. This is your payment from the settlement of the lawsuit titled *Michelle Gutierrez v. New Horizons: Serving Individuals With Special Needs*, Case No. 20STCV28128, pending in the Superior Court of the State of California for the County of Los Angeles (the "Action").

The Action was filed against New Horizons: Serving Individuals With Special Needs ("New Horizons") and includes a claim pursuant to the California Labor Code Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* ("PAGA"). The Action was brought by Plaintiff Michelle Gutierrez ("Plaintiff"), a New Horizons employee, on behalf of the State of California and other alleged aggrieved employees. You have been identified as one of the employees on whose behalf the case was brought.

Plaintiff claimed that New Horizons owed civil penalties under PAGA for alleged violations of the California Labor Code. The parties have reached a settlement of Plaintiff's claims, and on [DATE], the Court approved the settlement, including the amount of civil penalties to be paid under the settlement. A portion of the civil penalty settlement amount goes to the State of California's Labor and Workforce Development Agency. Another portion of the civil penalty settlement amount goes to employees of New Horizons who were allegedly affected by the alleged violations of the Labor Code. In agreeing to this settlement, New Horizons does not admit that it is liable in any way to current or former employees for any violations of the California Labor Code or any penalties. The Court has not decided the merits of Plaintiff's claims.

Pursuant to the settlement, enclosed is a check for your share of a portion of the civil penalties. This check will remain valid for 180 days from the date of issuance. If you do not cash your check within 180 days of issuance, the funds will be deposited by the Settlement Administrator with Neighborhood Legal Services of Los Angeles County, which is a 501(c)(3) organization dedicated to providing legal services to indigent residents of Los Angeles County. If you are still employed by New Horizons, your decision to cash the check will not affect your employment.

While you were not a party to the Action, you and the State of California have been bound by the settlement entered in this matter and approved by the Court, including the release contained in the settlement. The release pertains to civil penalties under PAGA only. The release includes all claims under the PAGA that were alleged in Plaintiff's complaint in the Action, including claims for civil penalties, attorneys' fees, costs, or interest under the PAGA based on New Horizons' alleged violations of Labor Code sections 201-204, 226, 226.7, 510, 512, 516, 558, 1174, 1194, 1198, 2802, 2804, and related alleged violations of the California Industrial Commission Wage Orders, during the time period May 19, 2019 through <<END PAGA PERIOD>> (the "PAGA Period").

If you have any questions, you can contact Phoenix Settlement Administrators, the Settlement Administrator, at 1-____-_____.

Questions? Call toll-free (____) ____-_____.

Exhibit 2

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

May 19, 2020

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

Re: *Michelle Gutierrez v. New Horizons: Serving Individuals with Special Needs*

To Whom It May Concern:

Please be advised that this law firm represents Michelle Gutierrez in claims arising from her employment with New Horizons: Serving Individuals with Special Needs and Does 1 through 100 (collectively “New Horizons”). Ms. Gutierrez is an “aggrieved employee” as defined by Labor Code Section 2699, *et seq.* due to New Horizons’ numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated.

New Horizons provides various services for developmentally disabled adults throughout the San Fernando Valley. New Horizons operates residential homes in which New Horizons provides continuing 24-hour a day support to assist its clients with daily life activities such as meal planning, budgeting, and bathing. New Horizons also operates a center in the San Fernando Valley where it operates day programs and/or class instruction to assist its clients with social skill development, cooking and computer skills, as well as arts and crafts and other recreational activities. New Horizons also provides a variety of community-based programs in which New Horizons facilitates volunteer and work opportunities for its clients in the community.

Ms. Gutierrez was employed by New Horizons in the position of “Direct Support Professional” from approximately August 2014 until August 2019. The “aggrieved employees” whom Ms. Gutierrez seeks to represent are all current and former non-exempt employees of New Horizons who performed work for New Horizons in the State of California during the one year immediately preceding the date of this letter through the present.

Ms. Gutierrez and other aggrieved employees sometimes worked in excess of eight hours per workday and/or forty hours per workweek, however, New Horizons has failed to pay them overtime compensation equal to one and one-half times their regular rate of

pay for all overtime hours worked. Specifically, Ms. Gutierrez and other aggrieved employees often received free meals that were provided by New Horizons, and other forms of pay, including an hourly bonus or premium payment when they worked one-on-one with a client, that cannot legally be excluded from the regular rate of pay (hereinafter collectively referred to as “Incentive Pay.”). As a result of New Horizons’ payment of Incentive Pay to Ms. Gutierrez and other aggrieved employees, New Horizons did not properly calculate the “regular rate” of pay for purposes of calculating overtime wages owed, resulting in an underpayment of overtime wages.

New Horizons’ meal period policies/practices failed to provide Ms. Gutierrez and other aggrieved employees with legally compliant meal periods. Specifically, New Horizons failed to relieve Ms. Gutierrez and other aggrieved employees of all work-duties during meal periods and required Ms. Gutierrez and other aggrieved employees to enter into on-duty meal period agreements. Assuming, *arguendo*, that Ms. Gutierrez and New Horizons entered into lawful on-duty meal period agreements, such agreements inherently concede that the nature of Ms. Gutierrez’s and other aggrieved employees’ work precluded lawful rest periods. On those occasions when Ms. Gutierrez and other aggrieved employees were not provided with all the legally-compliant meal periods to which they were entitled, New Horizons failed to compensate Ms. Gutierrez and other aggrieved employees with the required meal period premium(s) for each workday there was a meal period violation as mandated by Labor Code § 226.7. Upon information and belief, during at least a portion of the relevant time period, New Horizons maintained no mechanism for the payment of meal period premium payments as required by Labor Code § 226.7, in the event that a legally compliant meal period was not provided to their non-exempt employees.

In addition, Ms. Gutierrez and other aggrieved employees were unable to take off-duty rest periods as required under California law due to New Horizons’ chronic understaffing, the need to maintain constant supervision of its clients, and the purported on-duty nature of Ms. Gutierrez’s and other aggrieved employees’ work. On those occasions when Ms. Gutierrez and other aggrieved employees were not authorized and permitted to take all legally-compliant rest periods to which they were entitled, New Horizons failed to compensate Ms. Gutierrez and other aggrieved employees with the required rest period premium premiums(s) for each workday in which they experienced a rest period violation as mandated by Cal. Labor Code § 226.7. Upon information and belief, during at least a portion of the relevant time period, New Horizons maintained no mechanism for the payment of rest period premiums as required by Labor Code § 226.7, in the event that a legally compliant rest period was not authorized and permitted to their non-exempt employees.

New Horizons also failed to reimburse Ms. Gutierrez and other aggrieved employees for all reasonable and necessary work expenditures, including, but not limited to, the use of personal cell phones to communicate with management and co-workers for work-related purposes. Although New Horizons required Ms. Gutierrez and other aggrieved employees to use her personal cell phone for work-related purposes (for

example, to check in with management regarding the status of a client), New Horizons failed to reimburse Ms. Gutierrez and other aggrieved employees for a reasonable portion of their monthly cell phone bill, in violation of California law. *See Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (2014). In addition, Ms. Gutierrez and other aggrieved employees were required to use their personal vehicle to, among other things, transport clients to appointments or outings, but New Horizons failed to reimburse Ms. Gutierrez and other aggrieved employees for all mileage expenses incurred.

During Ms. Gutierrez's employment with New Horizons, New Horizons has issued facially noncompliant wage statements to Ms. Gutierrez and other aggrieved employees because, among other things, the wage statements have failed to list the applicable hourly rates for "Split Shift" in effect during the pay period and the corresponding number of hours worked at the "Split Shift" rate, in violation of Labor Code Section 226(a)(9). In addition, as a result of New Horizons' failure to pay all overtime wages and failure to pay all meal and rest period premiums, New Horizons maintained inaccurate payroll records and issued inaccurate wage statements to Ms. Gutierrez and other aggrieved employees, and failed to pay all wages owed to Ms. Gutierrez and other aggrieved employees upon their separation of employment from New Horizons.

As described above, New Horizons committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 5 ("Wage order 5"):

Overtime Wage Violations

New Horizons was required to pay Ms. Gutierrez and other aggrieved employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 1194(a) and 1198; Wage Order 5, § 3. According to Labor Code § 510(a), "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." This Section further provides, "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee." As alleged above, New Horizons failed to include Ms. Gutierrez's and other aggrieved employees' Incentive Pay in their regular rate of pay when Ms. Gutierrez and other aggrieved employees worked overtime during the corresponding pay periods in which they earned Incentive Pay, thereby depriving Ms. Gutierrez and other aggrieved employees of all earned and required overtime wages.

Meal Period Violations

As alleged above, New Horizons failed to provide Ms. Gutierrez and other aggrieved employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 5, § 11. As a result, Ms. Gutierrez and other aggrieved

employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest period is not provided.”)

Rest Period Violations

As alleged above, New Horizons also failed to authorize and permit Ms. Gutierrez and other aggrieved employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 5, § 12. Specifically, Ms. Gutierrez and other aggrieved employees were unable to take off-duty rest periods because of chronic understaffing, the need to maintain constant supervision of clients, and the purported on-duty nature of their work. As a result, Ms. Gutierrez and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest period is not provided.”)

Wage Statement Violations

New Horizons failed to furnish Ms. Gutierrez and other aggrieved employees with complete and accurate wage statements with respect to the applicable hourly rates for “Split Shift” in effect during the pay period and the corresponding number of hours worked at the “Split Shift” rate, in violation of Labor Code § 226. In addition, and as a result of New Horizons’ failure to pay all overtime wages and failure to pay all required meal and rest period premium wages, New Horizons maintained inaccurate payroll records and issued inaccurate wage statements to Ms. Gutierrez and other aggrieved employees in violation of Labor Code § 226. New Horizons’ failures in furnishing Ms. Gutierrez and other aggrieved employees with complete and accurate itemized wage statements resulted in injury, as said failures led deprived them of the information necessary to identify the discrepancies in New Horizons’ reported data.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. New Horizons failed to timely pay Ms. Gutierrez and other aggrieved employees all of their final wages at the time of separation, which included all overtime wages and all meal and rest period premium wages. Pursuant to Labor Code § 203, New Horizons’ failure to pay all final wages due to Ms. Gutierrez and other aggrieved employees was willful and, consequently, entitles Ms. Gutierrez and other aggrieved employees to waiting time penalties equal to one day of wages at their

standard hourly rate for each day New Horizons failed to pay their final wages after their separation, up to a maximum of thirty days.

Failure to Reimburse Employees for Necessary Expenditures

New Horizons failed to reimburse Ms. Gutierrez and other aggrieved employees for necessary expenditures, including, but not limited to, expenses related to the use of personal cell phones to communicate with management and co-workers for work-related purposes, and mileage expenses incurred in the use of personal vehicles. New Horizons' policy of not providing reimbursement for necessary work-related expenses is in violation of Wage Order 5, § 9, and Labor Code §§ 2802 and 2804 ("An employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer."). Ms. Gutierrez and other aggrieved employees are therefore entitled to reimbursement of such unpaid necessary expenditures with interest.

Ms. Gutierrez is informed and believes, and based thereon alleges, that the violations alleged herein are continuing to the present. As an "aggrieved employee," Ms. Gutierrez will initiate a civil action on behalf of herself, other aggrieved employees, and the State of California to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Ms. Gutierrez's own investigation, and on information and belief, New Horizons has committed and continues to commit the following Labor Code violations:

- a. New Horizons violated Labor Code §§ 204, 510, 558, 1194 and 1198 by failing to pay Ms. Gutierrez and other aggrieved employees all overtime compensation earned;
- b. New Horizons violated Labor Code §§ 226.7, 512, 558, and 1198 by failing to provide Ms. Gutierrez and other aggrieved employees with all required meal periods and failing to pay meal period premiums to Ms. Gutierrez and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;
- c. New Horizons violated Labor Code §§ 226.7, 516, 558, and 1198 by failing to authorize and permit Ms. Gutierrez and other aggrieved employees all required rest periods and failing to pay rest period premiums to Ms. Gutierrez and other aggrieved employees at these employees' respective regular rates of compensation for rest period violations;
- d. New Horizons violated Labor Code §§ 1198, 2802, and 2804 by failing to reimburse Ms. Gutierrez and other aggrieved employees for all necessary business expenditures incurred;

- e. New Horizons violated Labor Code § 226 by failing to furnish Ms. Gutierrez and other aggrieved employees with accurate and compliant itemized wage statements;
- f. New Horizons violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Ms. Gutierrez and other aggrieved employees;
- g. New Horizons violated Labor Code § 204 by failing to pay Ms. Gutierrez and other aggrieved employees all wages earned at least twice during each calendar month; and
- h. New Horizons violated Labor Code §§ 558, 1174, and 1198 by failing to maintain accurate records on behalf of Ms. Gutierrez and other aggrieved employees.

Pursuant to Labor Code Section 2699.3, please notify us and New Horizons if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC



Paul K. Haines

cc: New Horizons: Serving Individuals with Special Needs c/o Joel Simon, Agent for Service of Process (via certified mail)

7019 2280 0000 7680 2893

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Domestic Mail Only

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New Horizons: Serving Individuals
with Special Needs
c/o Joel Simon
15760 Ventura Blvd.
Encino, CA 91436 (AC)

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

New Horizons: Serving Individuals
with Special Needs
c/o Joel Simon
15760 Ventura Blvd.
Encino, CA 91436



9590 9402 5738 0003 7919 04

2. Article Number (Transfer from service label)

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A. Signature

X

Joel Simon

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

CIA R+3

C. Date of Delivery

5-21

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

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PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

Exhibit 3

Haines Law Group, APC

Expense Summary
Michelle Gutierrez v. New Horizons

EXPENSE	AMOUNT
Mediation Costs	\$8,000.00
Expert Costs	\$3,477.50
Filing, Service, and Messenger Fees	\$926.13
Copying and Postage Costs	\$182.85
TOTAL:	\$12,586.48