

JOINT STIPULATION AND PAGA SETTLEMENT AGREEMENT

Subject to final approval by the San Luis Obispo County Superior Court, this Settlement Agreement is between Plaintiff Jesse McCauley (“Plaintiff”), acting in a Private Attorney General capacity, and Defendants Mt. Mullahey, Inc., Michael J. Mullahey, and Timothy J. Mullahey (collectively “Defendants”). Plaintiff and Defendants collectively are referred to in this Agreement as the “Parties.”

I. DEFINITIONS

In addition to the other terms defined in this Agreement, the terms below have the following meaning:

- A. **Action:** *Jesse McCauley v. Mt. Mullahey, Inc, et al.*, San Luis Obispo County Superior Court, Case No. 21CV-0001.
- B. **Administration Costs:** The costs incurred by the Settlement Administrator to administer this Settlement, which shall not exceed \$7,500. All Administration Costs shall be paid from the Gross Settlement Amount. Any amount not awarded will become part of the Net Settlement Amount for distribution to Aggrieved Employees and LWDA on a pro-rata basis.
- C. **Aggrieved Employees:** All current and former non-exempt, hourly paid, commissioned, and/or piece rate employees employed by Defendants in California during the PAGA Period.
- D. **Agreement, Settlement Agreement, Joint Stipulation, or Settlement:** The settlement agreement reflected in this document, titled “Joint Stipulation and PAGA Settlement Agreement.”
- E. **Attorney Fee Award:** The attorneys’ fees approved by the Court for Plaintiff’s Counsel’s fees incurred in investigation, litigation, and resolution of the Action, and administration of the Settlement, including anticipated fees incurred through Approval and disbursement of payments under this Settlement Agreement and obtaining entry of the judgment terminating the Action, and which shall not exceed one third (1/3) of the Gross Settlement Amount, i.e. \$45,833.33. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Aggrieved Employees and LWDA on a pro-rata basis.
- F. **Cost Award:** The costs of litigation approved by the Court for Plaintiff’s Counsel’s costs incurred in investigation, litigation, and resolution of the Action, and administration of the Settlement, including anticipated costs incurred through Approval and disbursement of payments under this Settlement Agreement and obtaining entry of the judgment terminating the Action, which shall be an amount up to \$15,000. If the Court awards less than the amount

requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Aggrieved Employees and LWDA on a pro-rata basis.

- G. **Counsel for Defendants:** Nicole Golob and Victoria Shin of Fisher & Phillips, LLP.
- H. **Court:** San Luis Obispo County Superior Court.
- I. **Defendants:** Mt. Mullahey, Inc., Michael J. Mullahey and Timothy J. Mullahey.
- J. **Effective Date:** The date by which the final judgment becomes final. For purposes of this Settlement Agreement, the final judgment “becomes final” only after the Court grants the motion for approval of the Settlement and upon the latter of (i) the period for filing any appeal, writ, or other appellate proceeding challenging or opposing the Settlement (i.e., 60 days following entry of judgment) has elapsed without any appeal, writ, or other appellate proceeding having been filed; (ii) any appeal, writ or other appellate proceeding challenging or opposing the Settlement has been dismissed finally and conclusively with no right to pursue further remedies or relief; or (iii) any appeal, writ or other appellate proceeding has upheld the Court’s final order with no right to pursue further remedies or relief. In this regard, it is the intention of the Parties that the Settlement shall not become effective, and Defendants will not be obligated to fund this Settlement, until the Court’s order approving the Settlement is completely final, final judgment is entered, and there is no further recourse by an appellant, objector, or intervenor who seeks to contest the Settlement.
- K. **Employee List:** The list of all Aggrieved Employees included in the Settlement that Defendants will diligently and in good faith compile from their records to accurately reflect those persons’ names, last known mailing address, telephone number, Social Security number, and pay periods (or data from which such information can be calculated) worked during the PAGA Period. The Employee List shall be based on Mt. Mullahey, Inc.’s payroll, personnel, and other business records.
- L. **Final Judgment:** The final order entered by the Court approving the Settlement Agreement.
- M. **Gross Settlement Amount:** The total value of the Settlement is a non-reversionary One Hundred Thirty-Seven Thousand and Five Hundred Dollars (\$137,500). This is the gross amount Defendants can be required to pay under this Settlement Agreement. The Gross Settlement Amount includes: (1) the Net Settlement Amount to be paid to LWDA and the Aggrieved Employees; (2) the Attorney Fee Award and Cost Award to Plaintiff’s Counsel for attorneys’ fees

and costs, as approved by the Court; (3) the PAGA Representative Enhancement Award paid to the Plaintiff/PAGA Representative, as approved by the Court; and (4) the Administration Costs, as approved by the Court. No portion of the Gross Settlement Amount will revert to Defendants for any reason.

- N. **Individual Pay Periods:** The number of pay periods during which each Aggrieved Employee worked for Defendants during the PAGA Period.
- O. **Individual PAGA Payment(s):** The amount payable to each Aggrieved Employee under the terms of this Agreement.
- P. **LWDA:** California Labor and Workforce Development Agency.
- Q. **Net Settlement Amount:** The portion of the Gross Settlement Amount remaining after deduction of Plaintiff's Counsel's attorneys' fees and costs, the PAGA Representative Enhancement Award, and Administration Costs that is allocated to pay the LWDA and Aggrieved Employees, as part of the resolution of the claims in the Action. Seventy-five percent (75%) of the Net Settlement Amount will be distributed to the LWDA and twenty-five percent (25%) will be distributed to Aggrieved Employees.
- R. **PAGA:** The California Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698 *et seq.*).
- S. **PAGA Settlement Notice:** The Notice of PAGA Settlement, substantially similar to the form attached hereto as **Exhibit A**, subject to Court approval, which will accompany each Individual Settlement Share check.
- T. **PAGA Period:** The period beginning October 31, 2019 through (1) August 25, 2022; or (2) the date on which the total pay periods in the PAGA Period reaches 2,400, whichever occurs first.
- U. **PAGA Representative Enhancement Award:** The amount the Court awards to Plaintiff for conferring a benefit upon the State and Aggrieved Employees, which will not exceed \$7,500. This payment shall be paid from the Gross Settlement Amount and will not be opposed by Defendants and is being offered in consideration for Plaintiff's efforts in litigating the Action. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Aggrieved Employees and LWDA on a pro-rata basis.
- V. **PAGA Representative or Plaintiff:** Plaintiff Jesse McCauley.
- W. **Parties:** Plaintiff Jesse McCauley and Defendants Mt. Mullahey, Inc., Michael J. Mullahey and Timothy J. Mullahey.

- X. **Plaintiff's Counsel:** Michael Crosner, Zachary Crosner, Blake Jones, and Nikki Trenner of Crosner Legal, PC.
- Y. **Released Claims:** Plaintiff, the State of California, and the Aggrieved Employees will release any and all claims for violation of the PAGA ("PAGA claims") as alleged in the Lawsuit and any PAGA letter sent to the LWDA by Plaintiff that arose during the PAGA Period, including claims premised upon alleged violations of California Labor Code sections 201, 202, 203, 204, 216, 221, 222, 223, 225.5, 226, 226.2, 226.3, 226.7, 226.8, 233, 234, 245-248.5, 256, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1199, 2699, et seq., 2751, 2802, 2810 and 2810.5.
- Z. **Released Parties:** Defendants Mt. Mullahey, Inc., Michael J. Mullahey, Timothy J. Mullahey and their respective officers, directors, shareholders, partners, members, agents and employees, all parent, subsidiary, and affiliated entities, any successors, assigns or legal representatives.
- AA. **Settlement Administrator:** The third party administrator agreed upon by Parties to administer this Settlement is ILYM Group, Inc., Settlement Administration Experts.

II. **RECITALS**

- A. On May 18, 2020, by and through his counsel, Plaintiff submitted a PAGA notice to the Labor Workforce Development Agency ("LWDA") on behalf of himself and all aggrieved non-exempt employees of Defendants.
- B. The Action was filed by Plaintiff Jesse McCauley in the San Luis Obispo Superior Court on January 4, 2021. The complaint alleges a single cause of action on behalf of Plaintiff and those similarly situated aggrieved employees for penalties under the Private Attorneys General Act ("PAGA").
- C. Defendant Mt. Mullahey, Inc. answered the Complaint on March 1, 2021. Individual Defendants Michael J. Mullahey and Timothy J. Mullahey answered the Complaint on March 15, 2021. In their answer Defendants affirmatively denied generally and specifically all claims raised in the complaint.
- D. Plaintiff propounded two sets of special interrogatories and one set of requests for production of documents to Defendant Mt. Mullahey, Inc., to which Defendant Mt. Mullahey, Inc. responded.
- E. In addition, Plaintiff reviewed a substantial amount of data and documents relating to the Aggrieved Employees that permitted an evaluation of Plaintiff's claims.

- F. The Parties attended mediation with the Todd A. Smith of The Law Office of Todd A. Smith on January 27, 2022. After a full day of mediation, the Parties were able to reach an agreement in principle to settle the case, the terms of which are reflected herein.
- G. **Benefits of Settlement to State of California and the Aggrieved Employees.** Plaintiff and Plaintiff's Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendants through trial and through any possible appeals. Plaintiff and Plaintiff's Counsel also have taken into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. Plaintiff and Plaintiff's Counsel have conducted extensive settlement negotiations. Based on the foregoing, Plaintiff and Plaintiff's Counsel believe the settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the State of California and Aggrieved Employees.
- H. **Defendants' Reasons for Settlement.** Defendants recognize that the defense of the Action will be protracted and expensive. Substantial amounts of time, energy, and resources of Defendants have been and, unless this settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff. Defendants, therefore, have agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Released Claims.
- I. **Defendants' Denial of Wrongdoing.** Defendants generally and specifically deny any and all liability or wrongdoing of any sort with regard to any of the claims alleged, makes no concessions or admissions of liability of any sort. Defendants assert a number of defenses to the claims, and have denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Action. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendants or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. There has been no final determination by any court as to the merits of the claims asserted by Plaintiff against Defendants.
- J. **Plaintiff's Claims.** Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this Agreement is, may be construed as, or may be used as an admission, concession or indication by or against Plaintiff, Plaintiff's Counsel, the State of California, or the Aggrieved Employees as to the merits of any claims or defenses asserted, or lack thereof, in the Action.

III. **SETTLEMENT TERMS AND CONDITIONS**

- A. **Gross Settlement Amount.** The Gross Settlement Amount includes: (1) the Net Settlement Amount to the LWDA and the Aggrieved Employees; (2) Plaintiff's Counsel's Attorneys' Fee Award and Cost Award, as approved by the Court; (3) the PAGA Representative Enhancement Award paid to the PAGA Representative, as approved by the Court; and (4) the Administration Costs, as approved by the Court. The Gross Settlement Amount is inclusive of attorneys' fees, costs, and expenses directly related to the Action.

1. **Deductions.**

- a. **To the Plaintiff:** In addition to Plaintiff's Individual PAGA Payment, and subject to the Court's approval, Plaintiff will seek PAGA Representative Enhancement Award of \$7,500 to Plaintiff, which will be consideration for Plaintiff's efforts in the Action. The Settlement Administrator will pay the PAGA Representative Enhancement Award out of the Gross Settlement Amount. Payroll tax withholdings and deductions will not be taken from the PAGA Representative Enhancement Award. IRS Form 1099 will be issued to Plaintiff with respect to the PAGA Representative Enhancement Award.
 - b. **To Plaintiff's Counsel:** Plaintiff's Counsel will apply to the Court for, and Defendants agree not to oppose, a total Attorneys' Fee Award not to exceed one-third (1/3) of the Gross Settlement Amount, or \$45,833.33 and a Cost Award not to exceed \$15,000. The Settlement Administrator will pay the court-approved amounts for the Attorney Fee Award and Cost Award out of the Gross Settlement Amount. Payroll tax withholding and deductions will not be taken from the Attorney Fee Award or the Cost Award. IRS Forms 1099 will be issued to Plaintiff's Counsel with respect to the Attorney Fee Award. Any unused portion of the attorneys' fees and/or costs shall be distributed to the Aggrieved Employees and LWDA on a pro-rata basis.
 - c. **To the Settlement Administrator.** Administration Costs incurred by the Settlement Administrator, not to exceed \$7,500, in administering this Settlement shall be deducted from the Gross Settlement Amount, subject to the Court's approval. Any amount not awarded by the Court or needed by the Settlement Administrator will be distributed to the Aggrieved Employees and LWDA on a pro-rata basis.
 - d. The remainder of the Gross Settlement Amount after deducting the items (a), (b), and (c) herein shall be designated as the Net Settlement Amount to be allocated between the LWDA and the Aggrieved Employees pursuant to Labor Code section 2699(i) with 75% paid to the LWDA and 25% paid to the Aggrieved Employees on a pro-rata basis.
- B. **Net Settlement Amount.** The Net Settlement Amount shall consist of the Gross Settlement Amount minus the Administration Costs, PAGA Representative

Enhancement Award, and Attorneys' Fees and Costs as described herein. Pursuant to the PAGA, seventy-five percent (75%) of the Net Settlement Amount will be paid to the LWDA and the remaining twenty-five (25%) of the Net Settlement Amount will be paid to the Aggrieved Employees pursuant to the calculation method set forth below.

1. **Individual PAGA Payments.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual PAGA Payment from the Net Settlement Amount to each Aggrieved Employee.

- a. **Individual PAGA Payment Calculation.** All Aggrieved Employees, including Plaintiff, will receive an Individual PAGA Payment. The amount of each Aggrieved Employee's Individual PAGA Payment will be calculated based upon the total number of pay periods each Aggrieved Employee worked for Defendant Mt. Mullahey, Inc. during the PAGA Period. To determine each Aggrieved Employee's portion of the Net Settlement Amount, the Settlement Administrator the Settlement Administrator will calculate and issue individual settlement payments based on the following formula: $\text{Aggrieved Employee's Individual Settlement Payment} = \text{Net Settlement Amount} \times 25\% \times \text{Aggrieved Employee's Individual Pay Periods during the PAGA Period} \div \text{the total number of pay periods worked by all Aggrieved Employees during the PAGA Period}.$
- b. **Tax Withholdings.** One hundred percent (100%) of each Individual PAGA Payment shall be allocated as miscellaneous income for which an IRS Form 1099 will be issued by the Settlement Administrator, if and to the extent required by law.

- C. **Appointment of Settlement Administrator.** Solely for the purposes of this Settlement, the Parties stipulate and agree to the appointment of the Settlement Administrator. The Settlement Administrator shall be responsible for performing skip traces and NCOA searches on Aggrieved Employees' addresses; preparing and mailing PAGA Settlement Notices and Individual PAGA Payment checks to Aggrieved Employees; calculating each Aggrieved Employee's Individual PAGA Payment; providing a declaration for submission to the Court prior to the Settlement Approval hearing; calculating and mailing the LWDA's portion of the PAGA Settlement Fund to the LWDA; distributing the Attorney Fee Award and Cost Award to Plaintiff's Counsel; calculating and paying amounts owed, if any, to the appropriate tax authorities; printing and providing Aggrieved Employees and Plaintiff with 1099 forms as required under this Agreement and applicable law; providing a due diligence/post-disbursement declaration for submission to the Court upon the completion of the Settlement; providing any funds remaining as a result of uncashed checks to the State Controller's Unclaimed Property Fund in the Aggrieved Employee's name, and for such other tasks as the Parties mutually agree.

The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

D. Procedure for Approving Settlement.

1. Motion for Settlement Approval.

- a. Plaintiff will move for an order granting approval of the Settlement.
- b. The Settlement Agreement shall be submitted by Plaintiff to the LWDA within the time limits prescribed by law.
- c. At the Settlement Approval hearing, the Plaintiff will appear, support the granting of the motion, and submit a proposed order granting approval of the Settlement.
- d. **Effect of Denial of Settlement Approval.** Should the Court decline to approve all material aspects of the Settlement, the Settlement will be null and void, and the Parties will have no further obligations under it. Provided, however, that the amounts of the Attorney Fee Award, Cost Award, Administration Costs, and PAGA Representative Enhancement Award shall be determined by the Court, and the Court's determination on these amounts shall be final and binding, and that the Court's approval or denial of any amount requested for these items are not conditions of this Settlement Agreement, and are to be considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement. Any order or proceeding relating to an application for the Attorney Fee Award, Cost Award, Administration Costs, and PAGA Representative Enhancement Award shall not operate to terminate or cancel this Settlement Agreement. Nothing in this Agreement shall limit Plaintiff's or Plaintiff's Counsel's ability to appeal any decision by the Court to award less than the requested Attorney Fee Award, Cost Award, Administration Costs, and PAGA Representative Enhancement Award.
- e. **Proposed Order and Judgment.** Upon Approval of the Settlement, the Parties shall present to the Court a proposed Approval Order, approving of the Settlement and entering Judgment in accordance therewith. After entry of Judgment, the Court shall have continuing jurisdiction over the Action for purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration matters; and (3) addressing

such post-Judgment matters as may be appropriate under Court rules and applicable law.

2. PAGA Settlement Notice and Disbursement to Aggrieved Employees.

After the Court enters its Approval Order, every Aggrieved Employee will be provided with a PAGA Settlement Notice (attached as Exhibit A) accompanying his or her Individual PAGA Payment check in accordance with the following procedure:

- a. **Employee List.** Within ten (10) business days after entry of the Approval Order, Defendants shall deliver to the Settlement Administrator the Employee List. If any or all of this information is unavailable to Defendants, Defendants will so inform Plaintiff's Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the unavailable information. The Settlement Administrator will conduct a skip trace for the address of all Aggrieved Employees who are former employees of Defendants and an NCOA search on all addresses.
- b. **Funding the Settlement.** Defendants shall wire to the Settlement Administrator the Gross Settlement Amount within seven (7) business days of the Effective Date.
- c. **Settlement Administrator's Disbursement Duties.** Subject to the Court approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Court's Approval Order and Judgment. The Settlement Administrator shall keep Defendants' Counsel and Plaintiff's Counsel apprised of all distributions from the Gross Settlement Amount. The Settlement Administrator shall respond to questions from Defendants' Counsel and Plaintiff's Counsel.
- d. **Disbursement.** Fourteen (14) business days after the Effective Date, the Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to the LWDA and Aggrieved Employees; (2) the Attorney Fee Award and Cost Award to Plaintiff's Counsel for attorneys' fees and costs, as approved by the Court; (3) the PAGA Representative Enhancement Award paid to the PAGA Representative, as approved by the Court; and (4) the Administration Costs, as approved by the Court;. No person shall have any claim against Defendants, Defendants' Counsel, Plaintiff, Plaintiff's Counsel, or the Settlement Administrator based on the distributions and payments made in accordance with this Agreement.

- e. **Returned PAGA Settlement Notices and Checks.** If a PAGA Settlement Notice and Individual PAGA Payment are returned because of an incorrect address, within five (5) business days from receipt of the returned PAGA Settlement Notice, the Settlement Administrator will conduct a search for a more current address for the Aggrieved Employee and re-mail the PAGA Settlement Notice and Individual PAGA Payment check to the Aggrieved Employee. The Settlement Administrator will use the NCOA and skip traces to attempt to find the current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Aggrieved Employee for whom a PAGA Settlement Notice and Individual PAGA Payment check is returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Aggrieved Employees for whom new addresses are found. If the PAGA Settlement Notice is re-mailed, the Settlement Administrator will note for its own records the date and address of each re-mailing.
- 3. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, then the Parties and their respective counsel waive any and all rights to appeal from the Judgment, including, but not limited to, all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate or set aside judgment, and any extraordinary writ, and the Judgment will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceeding, or post-judgment proceeding.
- 4. **Vacating, Reversing, or Modifying Judgment on Appeal.** If, after a notice of appeal, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then this Settlement will become null and void and the Parties will have no further obligations under it. A material modification would include, but not necessarily be limited to, any alteration of the Gross Settlement Amount, an alteration in the calculation of the Net Settlement Amount, and any change to the calculation of the Individual Settlement Shares.
- 5. **Final Report by Settlement Administrator.** Within ten (10) business days after the disbursement of all funds, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds.

6. **Uncashed Checks.** Aggrieved Employees must cash or deposit their Individual PAGA Payment checks within one hundred and eighty (180) calendar days after the checks are issued.

a. **Reminder Postcard.** If any checks are not cashed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced.

b. If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder postcard, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, cancel the checks. All funds associated with the Individual PAGA Payment checks returned as undeliverable and funds associated with those Individual PAGA Payment checks remaining un-cashed, shall be distributed to the State Controller's Unclaimed Property Fund in the Aggrieved Employee's name.

7. **Defendants' Legal Fees.** Defendants are responsible for paying for all of Defendants' own legal fees, costs, and expenses incurred in this Action outside of the Gross Settlement Amount.

E. **Release of Claims.** As of the date Defendants fund the Gross Settlement Amount, Plaintiff and the Aggrieved Employees will release the Released Parties from the Released Claims that arose during the PAGA Period. Aggrieved Employees agree not to sue or otherwise make a claim against any of the Released Parties for any of the Released Claims during the PAGA Period. The express purpose of this settlement is to forever bar Plaintiff, the LWDA, and any Aggrieved Employees from acting on behalf of or purporting to act on behalf of the LWDA from asserting any of the Released Claims for the PAGA Period in any future litigation. It is the intent of the Parties that, to the greatest extent provided by law, including under the holding of *Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009), the ability of Plaintiff, the State of California or any Aggrieved to bring a PAGA claim on behalf of the LWDA arising from the allegations occurring during the PAGA Period is completely and forever foreclosed. Any Party to this Settlement Agreement may use the Settlement Agreement to assert that this settlement and the judgment entered by the Court following approval bars any later-filed action asserting the Released Claims against any of the Released Parties during the PAGA Period.

F. **Plaintiff's Release of Claims and General Release.** As of the date Defendants fully fund the Gross Settlement Amount, Plaintiff shall give the following general release of claims for himself and his respective spouse, heirs, successors and assigns, forever release the Released Parties from any and all charges, complaints,

claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses arising out of, based upon, or relating to his employment with Defendants, from the beginning of time through the date of his signature on this Agreement, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or otherwise, for violation of any federal, state or local statute, rule, ordinance or regulation. Plaintiff's Release of Claims also includes a waiver of California Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

This release excludes any release of any claims not permitted to be released by law.

G. Miscellaneous Terms.

1. **No Effect on Employee Benefits.** The PAGA Representative Enhancement Award and/or Individual PAGA Payments paid to Plaintiff and Aggrieved Employees shall not be deemed to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g., vacation, holiday pay, retirement plans, etc.) of Plaintiff or the Aggrieved Employees. The Parties agree that any PAGA Representative Enhancement Award and/or Individual PAGA Payment paid to Plaintiff or the Aggrieved Employees under the terms of this Agreement do not represent any modification of Plaintiff's or the Aggrieved Employees' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendants. Further, any PAGA Representative Enhancement Award shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by Defendants.
2. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
3. **Privacy of Documents and Information.** Plaintiff and Plaintiff's Counsel agree that none of the documents and information provided to them by

Defendants shall be used for any purpose (including in any other litigation) other than settlement of the Action.

4. **Authorization to Enter Into Settlement Agreement.** Plaintiff's Counsel and Defendants' Counsel warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.
5. **Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.
6. **Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Action in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Settlement Approval hearing to be conducted by the Court.
7. **Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.
8. **Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.
9. **No Prior Assignment.** Plaintiff hereby represents, covenants, and warrants that he has not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.

- 10. Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
- 11. Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
- 12. No Tax or Legal Advice.** The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that Aggrieved Employees will assume any such tax obligations or consequences that may arise from this Agreement, and that Aggrieved Employees shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any Aggrieved Employee, such Aggrieved Employee assumes all responsibility for the payment of such taxes.
- 13. Jurisdiction of the Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.
- 14. Invalidity of Any Provision; Severability.** Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.
- 15. Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 16. Execution in Counterpart.** This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be

deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: 05 / 31 / 2022

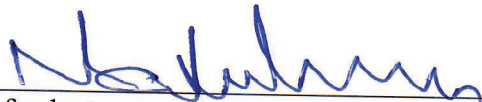
JESSE MCCAULEY



Plaintiff

Dated: 6/1/22

MT. MULLAHEY, INC.

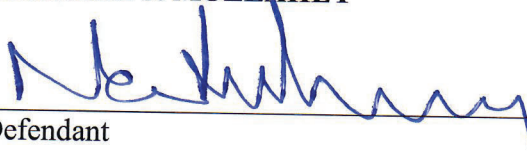


Defendant

Name: Michael Mullahey
Title: President

Dated: 6/1/22

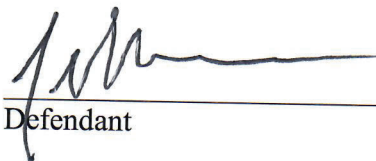
MICHAEL J. MULLAHEY



Defendant

Dated: June 2, 2022

TIMOTHY J. MULLAHEY



Defendant

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Dated: 06/01/2022

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Dated: June 6, 2022

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