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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

DANIELLE PARKER, in her individual and
representative capacity

Plaintiff,

vs.

META DYNAMIC, INC., a California
Corporation; and DOES 1-10, Inclusive,

Defendants.

Case No.: 30-2020-01145767-CU-OE-CJC
Assigned to Hon. John C. Gastelum
Dept. C11

**JOINT STIPULATION REQUESTING
APPROVAL OF REPRESENTATIVE
ACTION SETTLEMENT UNDER
CALIFORNIA PRIVATE ATTORNEYS
GENERAL ACT, LABOR CODE §§ 2698, ET
SEQ. ("PAGA")**

Complaint filed: May 26, 2020

1 **I. INTRODUCTION**

2 By this stipulation and pursuant to Labor Code § 2699(l), DANIELLE PARKER (“Plaintiff”), a
3 former clerical case manager of META DYNAMIC, INC., (“META”), and META, on the other hand,
4 seek an order permitting settlement of Plaintiff’s California Private Attorneys General Act, Labor Code
5 Sections 2698, *et seq.* (“PAGA”) action on the terms outlined below. Below, Plaintiff and META are
6 collectively referred to as “the Parties” and any one of them individually may be referred to as “Party.”
7 This document with its supporting exhibits is referred to below as “the PAGA Settlement” or “the
8 Settlement.” The settlement set forth in this PAGA Settlement is a common fund, non-reversionary
9 settlement of the covered claims raised by Plaintiff in her letter to the California Labor and Workforce
10 Development Agency (“LWDA”) and PAGA lawsuit.

11 **II. RECITALS**

12 Pursuant to the provisions of the California Private Attorneys General Act, Labor Code
13 Sections 2698, *et seq.*, on May 6, 2020, Plaintiff sent a letter to the LWDA alleging certain California
14 Labor Code violations by META (the “PAGA Letter”). Plaintiff sent the letter on behalf of Plaintiff
15 and other non-exempt employees who were allegedly aggrieved. The LWDA did not elect to proceed
16 with an investigation.

17 On August 27, 2020, following the passage of 65 days without a response from the LWDA to
18 Plaintiff’s written notice, Plaintiff commenced a putative representative action under the PAGA for
19 the alleged violations of Labor Code on behalf of herself, the State, and other allegedly aggrieved
20 employees.

21 Plaintiff alleged in her PAGA Letter and in her First Amended Complaint filed with the Court
22 in this Action that Defendant violated various Labor Code sections (“PAGA Claims”).¹ As part of
23 these PAGA Claims, Plaintiff alleges that META underpaid employees overtime compensation by
24 failing to include non-discretionary bonuses in the “regular rate” for overtime purposes. Additionally,
25 Plaintiff alleged that surgical navigation specialists were misclassified as exempt. Plaintiff alleges that
26 this and the other identified Labor Code violations give rise to a claim for penalties under PAGA

27 ¹ These Labor Code sections included: Labor Code §90.5, §201-204, §206, §206.5, §208, §216, §218.5, §223, §226,
28 §226(a), §226(e)(1), §226.3, §226.6, §226.7, §227.3, §256, §432.5, §510, §512, §558, §1174, §1174.5, §1182.12, §1194,
§1194.2, §1197, §1197.1, §1198, §1199, §1723, §1771, §2698, and §2699.5.

1 pursuant to Labor Code §§ 2699, *et seq.* Conversely, Defendant refutes all of the allegations made
2 against it by Plaintiff and denies wrongdoing.

3 After the Action was at issue, the Parties engaged in informal discovery and the exchange of
4 information. The Parties engaged in informal arms' length settlement discussions, through which
5 Plaintiff learned there were a total of sixteen (16) PAGA members (including Plaintiff), with Plaintiff
6 alleging approximately 100 pay periods through the date of the settlement that fell within the
7 parameters of the overtime claims alleged by Plaintiff, or any derivative claim. Based on this
8 information, Plaintiff alleged that the exposure for the PAGA penalties at the time of mediation
9 (without "stacking" penalties) for said PAGA members was an estimated total of \$40,000. Plaintiff
10 also asserted that the sixteen PAGA members should be entitled to more than one penalty per pay
11 period, which would create a potential additional exposure for PAGA penalties. Conversely,
12 Defendant contends that stacking penalties would be factually and legally unwarranted, and
13 inappropriate here for many reasons based on supporting California law.

14 The parties participated in a mediation on September 29, 2020 with Glenn Lerman, a respected
15 mediator with extensive experience in resolving wage and hour class actions and PAGA representative
16 action disputes. A full-day mediation took place on September 29, 2020 via video conference.
17 Plaintiff attended this mediation along with her counsel. In preparation for the mediation, META
18 provided extensive information, including plaintiff's personnel documents, paystubs and information
19 that we were able to use to identify the number of aggrieved employees and pay periods in question.
20 The parties each investigated the claims asserted, developed exposure models, and prepared detailed
21 mediation briefs. The parties resolved the PAGA Claims at the September 29, 2020 mediation.

22 Plaintiff's counsel carefully evaluated the potential PAGA liability and exposure, as well as the
23 likelihood of success. The PAGA Claims primary involve the alleged misclassification of employees
24 (surgical navigation specialists) as exempt (i.e., salaried) rather than non-exempt, triggering potential
25 PAGA violations for alleged failures to pay overtime, provide compliant meal periods and rest
26 periods, and provide proper wage statements, among other things. There was also an allegation
27 related to the calculation of the regular rate as it related to non-exempt employees; however, the
28 alleged overtime underpayments appeared to be minimal, if any, which raised the prospect of a

1 significant reduction in connection with the civil penalties sought. META also provided information
2 establishing that the sixteen PAGA members had an aggregate total of approximately 410 paychecks
3 during the period of May 6, 2019 (one year prior to Plaintiff's PAGA Notice) until September 29 2020
4 the date of settlement. Without "stacking" PAGA penalties, Plaintiff alleged that the potential
5 exposure for the PAGA penalties for the PAGA members was estimated to be \$41,000 (410 wage
6 statements x \$100 PAGA penalty). While Plaintiff contended that the PAGA penalties should be
7 stacked, this was disputed and Plaintiff recognizes Courts have discretion to reduce civil PAGA
8 penalties based on many factors, including the egregiousness of violations and an employer's efforts
9 at compliance. See e.g., *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1213 (2008); *Thurman*
10 *v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1136 (2012); *Fleming v. Covidien*, No. ED
11 CV 10-10487 RGK (OPx), 2011 WL 7563047 at *4 (C.D. Cal. Aug. 12, 2011). Plaintiff's counsel
12 also recognizes that some courts have interpreted Labor Code § 2699(f)(2) to impose the enhanced
13 "subsequent violation penalty" or "heightened penalty" only after an employer has been notified that
14 its conduct violates the Labor Code. (See *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209
15 (2008); *Trang v. Turbine Engine Components Technologies Corp.*, (C.D. Cal. Dec. 19, 2012) No. CV
16 12-07658 DDP (RZx), 2012 WL 6618854; *Amalgamated Transit Union Local 1309, AFL-CIO v.*
17 *Laidlaw Transit Services, Inc.*, (S.D. Cal. 2009) No. 05cv1199- IEG-CAB, 2009 WL 2448430.)
18 While Plaintiff regards this interpretation as flawed, they nonetheless recognize that this interpretation
19 has gained traction with some courts. Defendant, however, denies Plaintiff's allegations as alleged in
20 Plaintiff's PAGA Letter and in her First Amended Complaint, as well as all willful misconduct alleged
21 by Plaintiff.

22 Based on the available evidence and the current state of the law, Plaintiff's counsel concluded
23 that \$17,000 is a fair and just settlement of the PAGA Claims for the sixteen (16) PAGA members.
24 We viewed the technical nature of the violations, which effectively penalized the employer for
25 providing bonuses to employees, to be vulnerable to a significant reduction in the \$100 default
26 penalty. Plaintiff alleges that this common fund settlement constitutes approximately 38% of the
27 potential PAGA liability without stacking penalties. This is a common fund, non-reversionary
28 settlement. As described above, as the parties reached a settlement through arms'-length negotiations

1 via experienced counsel with the assistance of a highly-qualified mediator after sufficient discovery,
2 the settlement should be deemed presumptively fair.

3 The proposed PAGA Settlement in the gross amount of SEVENTEEN THOUSAND
4 DOLLARS (\$17,000), with only Three Thousand Dollars (\$3,000) of this amount allocated to
5 settlement administration costs, Two Thousand Dollars (\$2,000) to attorney's fees, and the remainder
6 – Twelve Thousand (\$12,000) – comprises the PAGA Penalty Fund for payment to the LWDA and
7 the sixteen PAGA members for settlement and release of the PAGA Claims. Of this \$12,000 PAGA
8 Penalty Fund, Seventy-Five Percent (75%) shall be paid directly to the Department of Industrial
9 Relations Accounting Unit and Twenty-Five Percent (25%) shall be distributed to sixteen PAGA
10 members (or a Settlement Administrator) in a pro rata share based on the number of work weeks
11 worked by the sixteen PAGA members, respectively. The Parties estimate each of the sixteen PAGA
12 members will receive an average payout of \$187.50 per person and the LWDA will receive
13 approximately \$9,000. Plaintiff believes that this settlement is a fair, adequate, and reasonable
14 compromise of the disputed claims for alleged PAGA penalties asserted in this case.

15 The Parties desire to settle fully and finally resolve all PAGA Claims on behalf of the sixteen
16 PAGA members against META to the greatest extent possible. The Parties understand, acknowledge,
17 and agree that this PAGA Settlement constitutes a compromise of the PAGA Claims of Plaintiff the
18 other PAGA members, and that it is the desire and intention of the Parties to affect a final and
19 complete resolution of the PAGA Claims of the sixteen PAGA members. The Parties further
20 acknowledge that the PAGA Settlement is a compromise of all PAGA Claims and that nothing in this
21 PAGA Settlement shall be construed as an admission by META of liability. The sixteen PAGA
22 members do not waive or release any claims as part of this settlement other than: (a) their right to
23 receive any amounts pursuant to PAGA for the release of the PAGA Claims during the time period
24 covered by the settlement, as they are no longer aggrieved pursuant to the settlement, and (b) their
25 right to bring an action regarding the PAGA Claims as an aggrieved person pursuant to PAGA for the
26 time period covered by the PAGA Settlement.

1 The Parties believe and agree that the PAGA Settlement provides for a fair, adequate, and
2 reasonable resolution of the PAGA Claims, and the Parties have arrived at the settlement by means of
3 extensive, arms-length negotiations over several months.

4 Pursuant to California Labor Code section 2699(1)(2), the Parties have stipulated to a Court
5 Order and Judgment Approving the PAGA Settlement in the gross amount of SEVENTEEN
6 THOUSAND DOLLARS (\$17,000); THREE THOUSAND DOLLARS (\$3,000) of this amount is
7 allocated to settlement administration; TWO THOUSAND DOLLARS (\$2,000) to attorney's fees and
8 NINE THOUSAND (\$9,000.00) of this amount is allocated for payment to the LWDA; and THREE
9 THOUSAND DOLLARS (\$3,000) is allocated to the PAGA members for settlement and release of
10 the PAGA Claims.

11 The PAGA Settlement is conditioned on the Court approving that stipulation and executing the
12 Order and Judgment proposed therewith.

13 The Parties have agreed that upon entry of the Order approving this settlement of PAGA
14 claims and Judgment thereon, the LWDA and the sixteen PAGA members, including but not limited
15 to Plaintiff, acting as a private attorneys general on the LWDA's behalf, will be forever barred from
16 pursuing against META any representative action for PAGA penalties under the California Labor
17 Code, for or relating to the PAGA claims alleged in the PAGA Letter and/or this lawsuit, or that could
18 have been alleged based on the facts asserted in the PAGA Letter or this lawsuit, for the time period
19 commencing May 6, 2019 (one year prior to Plaintiff's PAGA Notice) until this Court's final Order.

20 The parties recognize that the PAGA representative issues presented in the PAGA Letter and
21 the First Amended Complaint were likely to be resolved only with extensive and costly pretrial and
22 trial proceedings, and that further litigation would cause inconvenience, distraction, disruption, delay
23 and expense disproportionate to the potential benefits of litigation.

24 Plaintiff's counsel submitted via the LWDA electronic filing system the PAGA Letter which
25 first asserted PAGA Claims, and the First Amended Complaint asserting the PAGA Claims in this
26 lawsuit, as well as this Joint Stipulation Requesting Approval of the PAGA Settlement, and Proposed
27 Order and Judgment thereon (the "Joint Stipulation") pursuant to Labor Code § 2699(1)(1) and (2).
28 The LWDA case number is LWDA-CM-785727-20

1 **III. TERMS AND PROCEDURES OF PAGA SETTLEMENT**

2 IT IS HEREBY STIPULATED AND PROPOSED BY THE PARTIES HERETO THAT THE
3 COURT APPROVE THE SETTLEMENT AGREEMENT ATTACHED HERETO AS EXHIBIT
4 "A" AND THE LETTER THAT WILL BE SENT TO THE AGGRIEVED EMPLOYEES WITH
5 THEIR PENALTY CHECKS, WHICH IS ATTACHED HERETO AS EXHIBIT "B".
6
7
8

9 **Approved as to Form and Content:**

10 **HARDIN LAW GROUP, APC**

11 

12 Executed on 12/31/2020

13 By:

14 **JAMES B. HARDIN**
15 **Attorneys for Plaintiff**
16 **DANIELLE PARKER**

17 **CDF LABOR LAW, LLP**

18 Executed on 12/31/20

19 By:

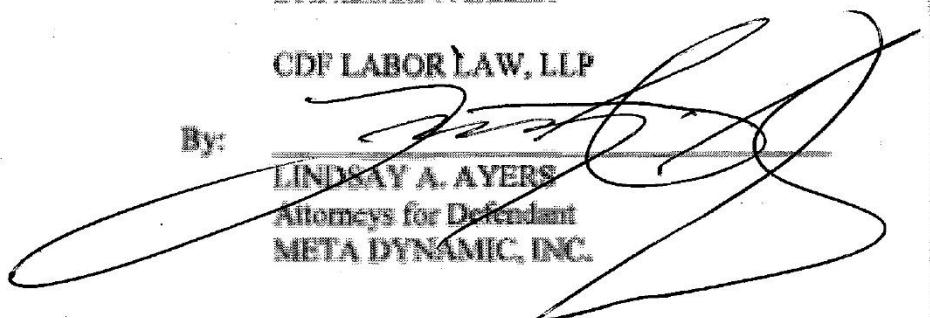
20 
21 **LINDSAY A. AYERS**
22 **Attorneys for Defendant**
23 **META DYNAMIC, INC.**
24
25
26
27
28

EXHIBIT A

SETTLEMENT AGREEMENT AND RELEASE OF PAGA CLAIMS

Parker v. META Dynamic, Inc.

Orange County Superior Court, Case No. 30-2020-01145767-CU-OE-CJC

This Settlement Agreement and Release of PAGA Claims is made and entered into by and between Plaintiff Danielle Parker (“Plaintiff”), a representative for the State of California and a representative on behalf of other similarly situated Aggrieved Employees; and Defendant META Dynamic, Inc., and is approved by their respective counsel of record, subject to the terms and conditions hereof and the Court’s approval.

A. Definitions.

1. “Action” means and refers to the PAGA Claims filed by Plaintiff Danielle Parker on August 27, 2020 via Plaintiff’s First Amended Complaint in the Superior Court, County of Orange County, entitled *Danielle Parker v. META Dynamic, Inc.*, Case No. 30-2020-01145767-CU-OE-CJC.
2. “Agreement” or “Settlement Agreement,” shall mean this Settlement Agreement and Release of Plaintiff’s PAGA claims, including attached exhibits to the First Amended Complaint.
3. “Aggrieved Employee(s)” means and refers to all non-exempt and other similarly situated employees employed by Defendant in the State of California at any time during the Statutory Period. Defendant represents that there are 16 of these employees within the Statutory Period.
4. “Aggrieved Employees Settlement Proceeds” means the twenty-five percent (25%) of the Net Settlement Amount that shall be paid to the Aggrieved Employees.
5. “First Amended Complaint” means and refers to the complaint submitted for filing in the Action, which includes a cause of action for Violation of the Private Attorneys General Act of 2004, California Labor Code § 2698; among other individual claims against Defendant.
6. “Court” means the California Superior Court, County of Orange, or any other Court which may possess jurisdiction to rule on this Action.
7. “Defendant” means and refers to META Dynamic, Inc.
8. “Defendant’s Counsel” means and refers to CDF Labor Law LLP.
9. “Effective Date” means the day the Court enters the Final Order and judgment approving this Agreement.
10. “Eligible Pay Period” means any pay period in which an Aggrieved Employee worked at least one shift with Defendant’s business during the Statutory Period.
11. “Final Order” refers to the order of the Court granting final approval of this Settlement Agreement on substantially the terms provided herein or as may be modified by subsequent agreement of the Parties and entry of judgment.

12. “Funding Date” means thirty (30) calendar days after the Effective Date.
13. “Individual Share” means and refers to each Aggrieved Employees’ individual settlement amount based on his/her pro rata share of Eligible Pay Periods worked during the Statutory Period.
14. “LWDA Settlement Proceeds” means the seventy-five percent (75%) of the Net Settlement Amount that shall be paid to the Labor Workforce and Development Agency.
15. The “Net Settlement Amount” is defined as the Settlement Amount less attorneys’ fees, any actual litigation costs advanced by Plaintiff’s Counsel, and Settlement Administrator costs.
16. “Notice” means the notice that will be sent to the Aggrieved Employees with payment after the Final Order is entered by the Court and the Funding Date occurs.
17. “PAGA Employees List” means and refers to a list of all Aggrieved Employees on one spreadsheet containing each Aggrieved Employee’s: (1) full name; (2) last known address; (3) social security number; and (4) the number of Eligible Pay Periods he or she worked during the Statutory Period.
18. “PAGA Letter” means and refers to the letter Plaintiff sent on May 6, 2020, pursuant to the California Private Attorneys General Act, Labor Code Sections 2698, *et seq.*, to the LWDA alleging certain California Labor Code violations against META.
19. “PAGA Representative” and/or “Plaintiff” means and refers to Danielle Parker.
20. “Parties” or “Settling Parties” mean Plaintiff, the Aggrieved Employees, and Defendant, collectively.
21. “Plaintiff’s Counsel” and “PAGA Counsel” are the Law Offices of Buchsbaum & Haag, L.P. and Hardin Law Group, APC.
22. “Released Claims” or “PAGA Claims” means and refers to the PAGA claims alleged in the Action or that could have been claimed based on the facts alleged in the PAGA Letter and/or Action for the entirety of the Statutory Period, specifically Plaintiff’s PAGA claims under California Labor Code § 2698 *et seq.*, seeking penalties, costs, attorney’s fees and expenses based on predicate violations of Industrial Welfare Commission Orders (e.g. 5-2001) including failure to pay minimum wages, failure to compensate for all hours, failure to pay overtime compensation, failure to provide uninterrupted off-duty meal periods, failure to pay meal period compensation premium wages, failure to provide uninterrupted off-duty rest periods, failure to pay rest period compensation premium wages, failure to furnish accurate wage and hour statements, failure to maintain accurate records, failure to pay wages upon discharge, failure to pay waiting time penalties, failure to pay wages due by statute, statutory penalties (Cal. Labor Code §§203, 226.3, 558, 1174.5, 1197.1, 2698 *et seq.*, 2802), and violation of Labor Code §§ 201, 202, 203, 204, 206, 206.5, 208, 210, 216, 218.5, 223, 226, 226.3, 226.6, 226.7 *et seq.*, 227.3, 256, 432.5, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 1723, 1771, 2698-2699.5 *et seq.*, 2802, all other Industrial Welfare Commission Wage Orders “Wage Orders”) applicable to the above causes of action (i.e. reporting time pay requirements in section 5 of the applicable Wage Orders) and Work Order 5 section 12 (A).

23. “Released Parties” means Defendant and its past, present and/or future owners, officers, directors, employees, affiliated companies and agents.

24. “Settlement Administrator” means and refers to Ilym, the entity that will be administrator of the settlement.

25. “Settlement Amount” is the amount that Defendant will pay in connection with this settlement, which is Seventeen Thousand U.S. dollars (\$17,000.00).

26. “Statutory Period” means any time during the period of May 6, 2018, through the date of the Final Order.

B. General.

27. On May 6, 2019, Plaintiff gave written notice to the Labor and Workforce Development Agency (“LWDA”) and Defendant for alleged violations under California Labor Code § 2698 *et seq.*, and for penalties, costs, attorney’s fees and expenses based on predicate violations of Industrial Welfare Commission Orders (e.g. 5-2001) including failure to pay minimum wages, failure to compensate for all hours, failure to pay overtime compensation, failure to provide uninterrupted off-duty meal periods, failure to pay meal period compensation premium wages, failure to provide uninterrupted off-duty rest periods, failure to pay rest period compensation premium wages, failure to furnish accurate wage and hour statements, failure to maintain accurate records, failure to pay wages upon discharge, failure to pay waiting time penalties, failure to pay wages due by statute, statutory penalties (Cal. Labor Code §§203, 226.3, 558, 1174.5, 1197.1, 2698 *et seq.*, 2802), and violation of Labor Code §§ 201, 202, 203, 204, 206, 206.5, 208, 210, 216, 218.5, 223, 226, 226.3, 226.6, 226.7 *et seq.*, 227.3, 256, 432.5, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 1723, 1771, 2698-2699.5 *et seq.*, 2802, and Work Order 5 section 12 (A)). The LWDA did not assert jurisdiction over the claims. On May 26, 2019, Plaintiff filed a Complaint in the Action. On August 26, 2020, Plaintiff submitted to the Court for filing a First Amended Complaint in the Action alleging the PAGA Claims. On September 29, 2020, the Parties mediated PAGA Claims with Glenn Lerman, Esq.

28. The Action asserts representative PAGA Claims for civil penalties, including an award of reasonable attorneys’ fees and costs, pursuant to PAGA, based on predicate violations alleged in the First Amended Complaint.

29. The Parties agree that neither the Parties’ settlement, this Agreement, nor the acts to be performed or judgments to be entered pursuant to the terms of the settlement and Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of any statute or law or liability on the claims or allegations in the Action.

30. Defendant denies all of the allegations in the First Amended Complaint, including all PAGA Claims, and denies that it has committed any misconduct, statutory or regulatory violation, wrongdoing, or any other actionable conduct of any kind and further denies that this Action is appropriate for PAGA representative treatment for any purpose other than settling this Action. Defendant has denied and continues to deny each and every material factual allegation and alleged claims asserted against it in the First Amended Complaint.

31. The Parties have conducted a thorough investigation into the facts of the PAGA Claims. This included conducting informal discovery prior to mediation, and exchanging

information and documents relating to the PAGA Claims. Based on the foregoing data and on their own independent investigation and evaluation, Plaintiff's Counsel is of the opinion that the settlement with Defendant for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the LWDA and Aggrieved Employees in light of all known facts and circumstances, including the risk of significant delay, uncertainty associated with litigation, various defenses asserted by Defendant, and numerous potential appellate issues. Defendant and Defendant's counsel also agree that the PAGA settlement is fair and in the best interest of the LWDA and Aggrieved Employees. The Parties desire to completely dispose of the PAGA Claims by this Settlement Agreement.

32. Under California Law, the State may assess and collect civil penalties from employers for violations of certain provisions of the Labor Code. (See Cal. Lab. Code §§ 2699 *et seq.*) Under PAGA, however, if an "aggrieved employee" "give[s] written notice by certified mail to the [State] and the employer of the specific provision of the [Labor Code] alleged to have been violated," and the State thereafter decides not to investigate, as was the case here, or does investigate and determines that a citation against the employer should not issue, the employee may, "as an alternative" to enforcement by the State, act as a proxy or agent of the state's labor law enforcement agencies and bring a civil action under PAGA to recover civil penalties "on behalf of himself or herself and other current or former employees." "[C]ivil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the state and 25 percent to the aggrieved employees."

33. California Labor Code § 2699(1)(2) provides that "The superior court shall review and approve any settlement of any civil action filed pursuant to this part."

34. In consideration of the promises and agreements contained herein, the Parties agree and covenant as follows:

C. Terms of Settlement.

35. Subject to submission of this Settlement Agreement to the Labor and Workforce Development Agency by Plaintiff and subject to the Court's approval of the Settlement pursuant to Labor Code § 2699(1)(2), which counsel and the Parties agree to recommend in good faith to the Court, the Parties agree to the following binding settlement and disposal of the PAGA Claims, with prejudice.

36. Defendant shall pay a non-reversionary Settlement Amount of Seventeen Thousand U.S. Dollars (\$17,000.00) within thirty (30) calendar days of the Effective Date. The Parties seek to allot \$17,000.00 to the PAGA claims, less the costs of the Settlement Administrator and attorneys' fees. The Settlement Amount is the maximum amount that will be paid inclusive of all settlement payments to the State of California and Aggrieved Employees; Plaintiff's Counsel for attorneys' fees and litigation costs; the Individual Settlement Payment to Plaintiff; and Settlement Administrator costs, and will be distributed in the following manner:

a. **Settlement Administrator Costs:** The costs associated with settlement administration (*e.g.* NCOA searches, preparing and mailing payments/notices to LWDA and Aggrieved Employees, tax documentation, etc.) shall be paid from the Net Settlement Amount and shall not exceed \$Three Thousand Dollars and Zero Cents (\$3,000.00).

b. **Attorneys' Fees and Costs:** The Parties agree that, subject to the Court's review and approval, PAGA counsel will be paid a total of Two Thousand Dollars and Zero Cents (\$2,000.00) in attorneys' fees and actual litigation costs for time spent pursuing Plaintiff's PAGA claims (1099 reporting).

c. **Allocation of Net Settlement Amount:** After deducting the amounts specified in items (a) and (b) the balance remaining will form the Net Settlement Amount and will be paid to the Labor and Workforce Development Agency ("LWDA") and the Aggrieved Employees in the following proportion: 75 percent to the LWDA ("LWDA Settlement Proceeds") and 25 percent to the Aggrieved Employees (the "Aggrieved Employees Settlement Proceeds"). The Aggrieved Employees Settlement Proceeds will be distributed to the Aggrieved Employees on a pro rata basis according to the following formula:

- i. The Settlement Administrator will calculate the total number of Eligible Pay Periods worked by all Aggrieved Employees during the Statutory Period, and the resulting figure will be referred to as the "Divisor."
- ii. Each Aggrieved Employee's *pro rata* share of the Aggrieved Employees Settlement Proceeds will be determined by dividing the Eligible Pay Periods that each Aggrieved Employee worked by the Divisor and then multiplying the product by the Aggrieved Employees Settlement Proceeds. The product of the foregoing formula results in the "Aggrieved Employee's Individual Share".

d. **Taxes and Reporting:** Each Aggrieved Employee's Individual Share shall be treated as penalties (*i.e.*, non-wage income) for all purposes and reported by the Settlement Administrator on IRS Form 1099, as required by law, to the respective Aggrieved Employee and applicable governmental authorities. No portion of the Aggrieved Employees Settlement Proceeds is or shall be construed as wages. Nothing in this Settlement Agreement is intended to constitute legal advice regarding federal, state and/or local tax obligations or legal requirements for attribution of settlement proceeds. To the extent that this Settlement Agreement or any of its attachments is interpreted to contain or constitute advice regarding any U.S. or Federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code. Defendant, Defendant's Counsel, Plaintiff and Plaintiff's Counsel are not responsible for any employee tax obligations arising out of the Aggrieved Employee's Individual Share.

37. The Parties agree that the settlement is fair and reasonable and will so represent to the Court.

D. Release as to the PAGA Claims.

38. Upon the Court's entry of the Final Order, and except as to such rights or claims as may be created by this Settlement Agreement, Plaintiff, as representative for the State of California, hereby forever completely releases and discharges the Released Parties of any and all of the Released Claims, including all claims alleged in the First Amended Complaint. The time period governing these Released Claims shall be the Statutory Period.

F. Settlement Approval and Implemental Procedures.

39. Plaintiff will move the Court for approval of the Settlement, including the PAGA Claims, Plaintiff's Counsel's attorneys' fees and costs, and Settlement Administrator costs, which Defendant will not oppose. A copy of this Agreement will be attached as an Exhibit to the Motion.

40. The Parties have agreed to the appointment of the Settlement Administrator to perform the duties of a settlement administrator, including mailing the Notice, using standard devices to obtain forwarding addresses, resolving any disputes regarding the calculation or application of the formula for determining each Aggrieved Employee's Individual Share, drafting and mailing the settlement checks to Aggrieved Employees, issuing 1099 forms, and performing such other tasks as set forth herein or as the Parties mutually agree or that the Court orders. All disputes relating to administration of the settlement by the Settlement Administrator shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement Agreement, until all payments and obligations contemplated by this Settlement Agreement have been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the dispute without the necessity of Court intervention. The Settlement Administrator shall also be responsible for issuing to Plaintiff, Aggrieved Employees, and Plaintiff's and/or Defendant's Counsel any 1099, or other tax forms as may be required by law for all amounts paid pursuant to this Agreement.

41. Upon the Court's entry of the Final Order, the Settlement Administrator will perform all settlement administration duties, including (i) performing a National Change of Address ("NCOA") search on all Aggrieved Employees to update the addresses of the Aggrieved Employees, (ii) issuing the Notice and payments to the Aggrieved Employees, (iii) issuing any required IRS forms as required by law, and (iv) issuing payment to the LWDA and Plaintiff's Counsel. Within five (5) calendar days after the Effective Date, the Settlement Administrator shall send counsel for Defendant electronic wiring instructions to fund the Settlement Amount which shall be paid directly by Defendant.

42. Within ten (10) calendar days after the Effective Date, Defendant will send to the Settlement Administrator the PAGA Employees List. This information shall be treated as and remain confidential and shall be used solely by the Settlement Administrator to manage the notice and payment process described herein, shall not be disclosed to anyone other than the Settlement Administrator, except to applicable taxing authorities, or pursuant to express written authorization of Defendant, the individual in question, or by order of the Court.

43. On or before the Funding Date, Defendant shall wire to the Settlement Administrator the Settlement Amount as approved by the Court.

44. The Notice, as approved by the Court, shall be sent by the Settlement Administrator to the Aggrieved Employees, by first class mail with a check in the amount of each Aggrieved Employee's Individual Share. The Settlement Administrator shall use standard devices to obtain forwarding addresses of Aggrieved Employees if any envelopes are returned, including a skip trace if necessary. The Notice will inform Aggrieved Employees of their respective share of the settlement.

45. The Settlement Administrator shall deduct the amount of approved attorneys' fees and costs, and the Settlement Administrator's costs, to arrive at the Net Settlement Amount, which will be distributed as set forth herein.

46. Within ten (10) days of receiving the wire transfer of the Net Settlement Amount from Defendant the Settlement Administrator shall mail: (a) the respective settlement checks to the Aggrieved Employees, (b) a check for the approved amount of attorneys' fees and costs to Plaintiff's Counsel and (c) a check amounting to 75% of the Net Settlement amount to the LWDA. The settlement checks mailed to the Aggrieved Employees will be accompanied with the Notice letter explaining the payment and deadline to cash the check.

47. Aggrieved Employees shall have 180 calendar days after mailing to cash their settlement checks. If any Aggrieved Employee's check is not cashed within that period, the check will be voided and a stop-payment will be issued. In the event that any settlement check is returned to the Settlement Administrator within 180 days of mailing, the Settlement Administrator will, within five (5) business days of receipt of the returned settlement check, perform a skip trace to locate the individual, and notify Defendant's Counsel and Plaintiff's Counsel of the results. If a new address is located by these means, the Administrator will have ten (10) business days to issue the check. Any funds in the Settlement Administrator's account as a result of a failure to timely cash a settlement check shall be deemed void, and the Settlement Administrator will return the amount of uncashed checks to Defendant. Neither Defendant, Defense Counsel, Plaintiff's Counsel nor Plaintiff will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, unauthorized negotiation of settlement checks or failure to timely cash a settlement check within the 180 day period.

48. Upon the Court's entry of the Final Order, Plaintiff will: (i) be bound by the terms and conditions of this Agreement, and the releases set forth herein; (ii) be deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy of the settlement and the Court's Final Order; and (iii) be entitled to receive their respective settlement payments or a share of the Net Settlement Amount, as the case may be, along with all other Aggrieved Employees, as set forth herein.

G. Miscellaneous Provisions.

49. **Voiding the Agreement:** If this Settlement Agreement is not approved by Final Order of the Court without making a fundamental change of the Parties' settlement, this shall render the entire Settlement Agreement void and unenforceable as to all Parties unless otherwise approved and ratified by the Parties. The Parties will attempt in good faith to cure any perceived defects in the Settlement to facilitate approval.

50. **Waiver:** The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

51. **Parties' Authority:** The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

52. **Mutual Full Cooperation:** The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts,

including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Plaintiff's Counsel shall, with the assistance and cooperation of Defendant and Defendant's counsel, take all necessary steps to secure the Court's approval of the settlement, and the Final Order.

53. **No Prior Assignments:** The Parties hereto represent, covenant, and warrant that they have 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 released and discharged by this Settlement Agreement.

54. **No Admission:** Defendant denies any and all liability to Plaintiff and/or the Aggrieved Employees in this Action, as to any and all causes of action that were asserted or that might have been asserted in this Action. Nonetheless, Defendant wishes to settle and compromise the PAGA Claims at issue in the First Amended Complaint to avoid further substantial expense and the inconvenience and distraction of protracted and burdensome litigation regarding these PAGA Claims. Defendant also has taken into account the uncertainty and risks inherent in litigation, and without conceding any infirmity in the defenses that it has asserted or could assert against Plaintiff and/or Aggrieved Employees, has determined that it is desirable and beneficial that Plaintiff's PAGA Claims be settled in the manner and upon the terms and conditions set forth in this Agreement.

55. **Binding Settlement:** Each of the Parties hereto has entered into this Settlement Agreement with the intention of avoiding further disputes and litigation with the attendant inconvenience and expenses as it relates to the PAGA Claims. This Settlement Agreement is a settlement document and shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement.

56. **Enforcement Actions:** Except as otherwise provided in this Settlement Agreement, in the event that one or more of the Parties to this Settlement Agreement 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 Agreement, the successful Party or Parties shall be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs incurred in connection with any enforcement actions. This paragraph shall not apply to nor subject unnamed Aggrieved Employees to possible attorney's fees or costs in connection with any enforcement action.

57. **Notices:** Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed:

To Plaintiff:

James B. Hardin
HARDIN LAW GROUP, APC
23 Corporate Plaza Dr., Ste. 150
Newport Beach, CA 92660

Brent S. Buchsbaum
LAW OFFICES OF BUCHSBAUM AND HAAG, APC
100 Oceangate, Suite 1200
Long Beach, California 90802

To Defendant:

Lindsay A. Ayers, Esq.
CDF Labor Law LLP
18300 Von Karman, Suite 800
Irvine, CA 92612

58. **Construction:** The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms' length negotiations among the Parties and that this Settlement Agreement constitutes the entire agreement among Plaintiff and Defendant regarding actual or potential PAGA Claims asserted by Plaintiff against Released Parties. This Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or her or its counsel participated in the drafting of this Settlement Agreement.

59. **Captions and Interpretations:** Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

60. **Modification:** This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto.

61. **Choice of Law:** This Settlement Agreement shall be governed by and construed, enforced and administered in accordance with the laws of the State of California, without regard to its conflicts-of-law rules.

62. **Integration Clause:** This Settlement Agreement contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are expressly superseded by this Agreement. No rights hereunder may be waived except in writing.

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

64. **Counterparts:** This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one

fully-signed Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic delivery shall be deemed an original.

65. **Jurisdiction:** The Parties agree that upon approval of this Settlement Agreement submitted to the Court, this Settlement shall be enforceable by the Court, and the Court shall retain exclusive and continuing equity jurisdiction of this action over all Parties and Aggrieved Employees to interpret and enforce the terms, conditions, and obligations set forth in this Settlement. The Parties agree that if any provision of this Settlement is determined to be invalid, the invalid portion shall be deemed severed and the remaining Settlement deemed enforceable.

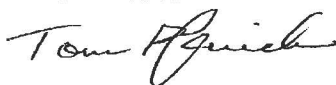
DANIELLE PARKER

Dated: December 10, 2020


Danielle Parker, an individual

META Dynamic, Inc.

Dated: December 29, 2020


Tom Pfeiffer, CEO/Founder, META Dynamic, Inc.

Approved as to content and form: LAW OFFICES OF BUCHSBAUM & HAAG, L.P.

Dated: December 17, 2020


Brent S. Buchsbaum
Attorneys for Plaintiff Danielle Parker

Approved as to content and form: HARDIN LAW GROUP, APC

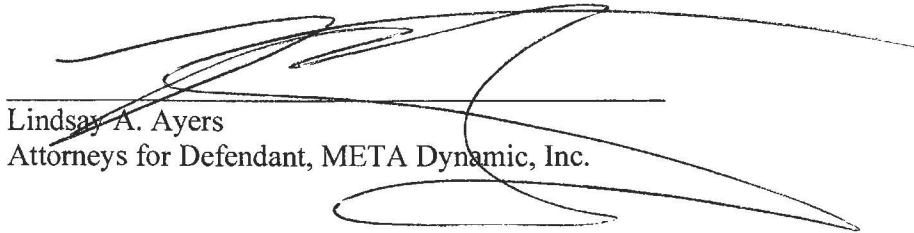
Dated: December 17, 2020


James H. Hardin
Attorneys for Plaintiff Danielle Parker

Approved as to form:

CDF LABOR LAW LLP

Dated: December 18, 2020



Lindsay A. Ayers
Attorneys for Defendant, META Dynamic, Inc.

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 23 Corporate Plaza Drive, Suite 150, Newport Beach, CA 92660.

On February 10, 2021, I served the foregoing document described as **JOINT STIPULATION REQUESTING APPROVAL OF REPRESENTATIVE ACTION SETTLEMENT UNDER CALIFORNIA PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE §§ 2698, ET SEQ. ("PAGA")** on the following person(s) in the manner indicated:

SEE ATTACHED SERVICE LIST

☐ (BY MAIL) I am familiar with the practice of Hardin Law Group, APC for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. On this date, a copy of said document was placed in a sealed envelope, with postage fully prepaid, addressed as set forth herein, and such envelope was placed for collection and mailing at Hardin Law Group, APC, Newport Beach, California, following ordinary business practices.

☐ (BY OVERNIGHT FEDERAL EXPRESS) I am familiar with the practice of Hardin Law Group, APC for collection and processing of correspondence for delivery by overnight courier. Correspondence so collected and processed is deposited in a box or other facility regularly maintained by Federal Express that same day in the ordinary course of business. On this date, a copy of said document was placed in a sealed envelope designated by Federal Express with delivery fees paid or provided for, addressed as set forth herein, and such envelope was placed for delivery by Federal Express at Hardin Law Group, APC, Newport Beach, California, following ordinary business practices.

☐ (BY HAND DELIVERY) I am familiar with the practice of Hardin Law Group, APC for collection and processing of correspondence for hand delivery by courier. I caused such document to be delivered by hand to the addressee(s) designated.

☒ (BY ELECTRONIC TRANSMISSION) I served electronically from the electronic notification address of brice@hardinemploymentlaw.com the document described above and a copy of this declaration to the person and at the electronic notification address set forth herein. The electronic transmission was reported as complete and without error.

☐ (BY ELECTRONIC SERVICE) I am causing the document(s) to be served by email or electronic transmission via First Legal sent on the date shown below to the email addresses of the persons listed in the attached service list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 10, 2021, at Newport Beach, California.



Briana Rice

SERVICE LIST

Lindsay A. Ayers
CDF LABOR LAW, LLP
18300 Von Karman Avenue, Suite 800
Irvine, CA 92612
T: (949) 622-5847
E: layers@cdflaborlaw.com

Attorneys for Defendants, META
DYNAMIC, INC.,