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12 JUSTIN BEARD
13 TEN FIVE SIXTY FOODS, LLC

14
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF RIVERSIDE
17

18 SARAH SMITH, individually, and on behalf of all
19 others similarly situated,

20 Plaintiff,

21 vs.
22

23 TEN FIVE SIXTY FOODS, LLC, a limited
liability company; DIGOBAH, LLC, a limited
24 liability company; JUSTIN BEARD, an
individual; and DOES 1 through 10, inclusive,

25 Defendants.
26
27
28

Case No.: RIC2001672

PAGA REPRESENTATIVE ACTION

**SETTLEMENT AGREEMENT AND
RELEASE OF PAGA CLAIMS**

Action Filed: June 10, 2020

FAC Filed: August 13, 2020

SETTLEMENT AGREEMENT AND RELEASE OF PAGA CLAIMS

Plaintiff Sarah Smith ("Plaintiff"), individually and in her capacity as a representative of the State of California on behalf of other allegedly aggrieved employees (as defined in paragraph 2, below), and Defendant Ten Five Sixty Foods, LLC ("Defendant"), hereby enter into this Settlement Agreement and Release of Private Attorneys General Act of 2004 Claims ("Settlement") as follows:

DEFINITIONS

As used in this Settlement, the following terms shall have the following meanings:

1. **"Action"** shall mean the civil action entitled *Sarah Smith v. Ten Five Sixty Foods, LLC*, pending in Riverside County Superior Court, Case No. RIC2001672, which is currently pending in the Riverside County Superior Court of the State of California.

2. **"PAGA Settlement Members"** The PAGA Settlement Members (also referred to herein as the "aggrieved employees") included in the Settlement shall mean all individuals that Defendant issued wage statements to in California at any time during the PAGA Period.

3. **"Settled Claims"** This Settlement is a settlement of all PAGA claims identified in Plaintiff's PAGA notice letter, dated June 4, 2020 ("Settled Claims").

4. The terms **"Agreement," "Settlement,"** and **"Settlement Agreement"** mean this Agreement for PAGA Representative Action Settlement, which the Parties acknowledge sets forth all material terms and conditions of the Settlement between them, and which is subject to Court approval pursuant to Section 2699(1) of the California Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*

5. **"Court"** means the California Superior Court, County of Riverside.

6. **"Defendant"** means Ten Five Sixty Foods, LLC.

7. **"Effective Date"** refers to the date upon which both of the following have occurred: (i) approval of the Settlement is granted by the Superior Court of California for the County of Riverside, or other court assuming jurisdiction of this matter, and (ii) the Court's Judgment approving the Settlement becomes Final.

8. **"PAGA Period"** shall mean June 4, 2019 through the date the Court grants approval of this settlement.

1 9. **“Gross Settlement Amount”** means a maximum total of \$115,000, which includes
2 all payments owing as a result of this Agreement and includes: the Net Settlement Amount;
3 Settlement Administration Costs; and PAGA Counsel Attorneys’ Fees and Costs as awarded by the
4 Court.

5 10. **“LWDA Payment”** means a payment to the California Labor Workforce and
6 Development Agency in an amount equal to 75% of the Net Settlement Amount.

7 11. **“Net Settlement Amount”** is the Gross Settlement Amount less (1) PAGA
8 Counsel’s Attorneys’ Fees and Costs, and (2) Settlement Administration Costs.

9 12. **“PAGA Aggrieved Employee Payment”** means a payment of 25% of the Net
10 Settlement Amount, which the Parties have agreed to pay the Aggrieved Employees in connection
11 with the settlement of the PAGA Claim.

12 13. **“PAGA Claim”** means the claim for civil penalties under the California Labor Code
13 Private Attorneys General Act of 2004 (Cal. Lab. Code sections 2698 *et seq.*, “PAGA”) alleged in
14 the Action and stated in Plaintiff’s June 4, 2020 notice letter to the LWDA.

15 14. **“PAGA Counsel”** means Moon & Yang, APC.

16 15. **“Released Claims”** shall mean any and all claims, whether known or unknown, to
17 recover civil penalties pursuant to PAGA for any alleged violations by Defendants that were
18 included in Plaintiff’s letter to the LWDA and/or Plaintiff’s operative complaint including, but not
19 limited to, California Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et*
20 *seq.*, based on alleged violations of Labor Code §§ 201-204, 210, 218.5, 218.6, 226, 226.3, 226.7,
21 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1198, and the related applicable IWC Wage Order
22 provision for the PAGA Period whether for civil penalties or attorneys’ fees and costs arising out of
23 the PAGA claims at issue, including but not limited to: failure to pay minimum and regular rate
24 wages, failure to pay overtime compensation, failure to provide meal periods, failure to authorize
25 and permit rest breaks, failure to timely pay final wages at termination, and failure to provide
26 accurate itemized wage statements, and any other violations that were alleged or could have been
27 alleged in Plaintiff’s letter to the LWDA or any complaint filed in this action.

28 16. **“Released Parties”** shall mean Defendant, and all of their subsidiary companies,

1 affiliates, franchisors, holding companies, successors, partners, shareholders, insurers, legal
2 representatives, assigns, employees, officers, directors, attorneys, and agents.

3 17. **“Representative Plaintiff”** means Plaintiff Sarah Smith.

4 18. **“Settlement Administrator”** refers to a qualified, third-party settlement
5 administrator agreed to by the Parties to administer the terms of the Settlement. The Parties agree
6 to utilize Phoenix Class Action Administration Solitons (“Phoenix”) to administer the Settlement,
7 at an estimated cost not to exceed \$4,500.

8 **RECITALS**

9 19. On June 4, 2020, Plaintiff sent a PAGA Notice to the Labor Workforce and
10 Development Agency (“LWDA”), with a copy to Defendant. On June 10, 2020, Plaintiff filed a
11 class action complaint in the Superior Court of the State of California, County of Riverside, in a
12 case styled *Sarah Smith v. Ten Five Sixty Foods, LLC*, Case No. RIC2001672.

13 20. On August 13, 2020, Plaintiff filed a First Amended Complaint in the Action adding
14 the Eight Cause of Action under PAGA. On September 28, 2022, Plaintiff moved to dismiss her
15 class allegations pursuant to Rules of Court 3.770. On November 8, 2022, the Court granted the
16 dismissal.

17 21. The PAGA Claims seeks civil penalties and an award of reasonable attorneys’ fees
18 and costs.

19 22. The Parties have conducted a thorough investigation into the facts of the Action.
20 This included exchanging data and information as well as documents relating to the underlying
21 alleged violations. After attending a mediation with Kelly A. Knight, Esq. on August 18, 2022, the
22 Parties believe that the Settlement is fair, reasonable, and adequate. The Parties understand,
23 acknowledge, and agree that this Settlement Agreement constitutes a compromise of Representative
24 Plaintiff’s and the Aggrieved Employees’ PAGA Claim, and that it is the desire and intention of the
25 Parties to effect a final and complete resolution of the PAGA Claim that the Representative Plaintiff
26 and the Aggrieved Employees have against Defendant or any persons or companies affiliated with
27 Defendant.

28 23. The Parties enter into this Settlement Agreement on a conditional basis. In the event

the Court does not enter a Final Order and Judgment as defined in this Settlement Agreement, this Settlement Agreement will be deemed null and void *ab initio* and will be of no force or effect whatsoever, and will not be referred to or utilized for any purpose whatsoever.

24. Defendant denied, and continues to deny, each and every claim and contention alleged in the Action, and has always maintained that it never engaged in any unlawful acts regarding any of the matters alleged in the Action.

25. Defendant denies all of the claims in the Action, and does not waive, but rather expressly reserves, all rights to challenge all such claims and allegations upon all legal, procedural and factual grounds should this Settlement Agreement not become final. This Settlement Agreement reflects a compromise reached to end litigation.

26. The Parties stipulate and agree to the following terms of this Settlement Agreement with the intent that this Agreement finally disposes of the Action with prejudice.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and conditions set forth, the Parties agree as follows:

TERMS AND CONDITIONS

Settlement Payments and Calculation of Claims. The following table summarizes the allocation of the Gross Settlement Amount:

<u>Gross Settlement Amount of \$115,000 is Broken Down As Follows:</u>
• PAGA Counsel Attorneys' Fees not to exceed 33% (or \$37,950). • PAGA Counsel Costs not to exceed \$15,000. • Settlement Administration Costs not to exceed \$4,500. • Approximately \$57,550 for the Net Settlement Amount: ○ 25% of the Net Settlement Amount for the PAGA Aggrieved Employee Payment (approximately \$14,387.50) ○ 75% of the Net Settlement Amount for the LWDA Payment (approximately \$43,162.50)

27. Subject to final Court approval and the conditions specified in this Agreement, and in consideration of the mutual covenants and promises set forth in this Agreement, Defendant agrees to pay the Gross Settlement Amount of \$115,000. The Gross Settlement Amount includes, but is not limited to, payments to be made to PAGA Counsel's attorneys' fees and costs, LWDA Payment, and Settlement Administration Costs.

1 28. Escalator Clause: At mediation Plaintiff calculated based on the information
2 provided by Defendant through informal discovery that there was approximately 8,000 pay periods
3 through August 18, 2022, and Defendant agreed this was roughly in the proximity. If the actual
4 number of pay periods is more than 20% greater than this number (i.e., if there are more than 9,600
5 pay periods in the Covered Period), Defendant shall increase the settlement payment in proportion
6 to the increase in pay periods.

7 29. The Parties agree, subject to Court approval, that the Gross Settlement Amount shall
8 be apportioned as follows:

9 a. Settlement Administration Fees and Costs: Settlement administration shall
10 be done by a qualified, third-party settlement administrator agreed to by the Parties and approved
11 by the Court (“Settlement Administrator”). The fees and costs associated with settlement
12 administration (*e.g.*, preparing and mailing payments to the Aggrieved Employees, tax
13 documentation, etc.) (the “**Settlement Administration Costs**”) will be paid from the Gross
14 Settlement Amount at an estimated cost not to exceed \$4,500. The Parties agree to use Phoenix as
15 the Settlement Administrator. Any unused portion of the settlement administration fees shall be
16 distributed to the aggrieved employees and LWDA on a pro-rata basis.

17 b. Tax Treatment and Tax Indemnification: PAGA Settlement Members will
18 assume any tax obligations or consequences which may arise from this Settlement. PAGA
19 Settlement Members release any and all claims that they have or may have against Defendants for
20 any claims, demands, deficiencies, levies, assessments, executions, judgments, penalties, taxes,
21 indemnification, and any other recoveries related to any payments made under this Settlement or
22 any compensation provided at any time by Defendants or any of the Released Parties. If any state
23 or federal taxing authority contacts, investigates, or pursues any action against any PAGA
24 Settlement Members for their individual share of taxes related to any payments made under this
25 Settlement or any compensation provided at any time by Defendants or any of the Released Parties,
26 each PAGA Settlement Member shall be responsible for their own defense of and payment for any
27 claim of unpaid taxes, interest, or penalties brought by any state or federal taxing authority for the
28 PAGA Settlement Member’s share of any state or federal tax obligation. If a PAGA Settlement

1 Member has questions about any liability to any state or federal taxing authority, they shall contact
 2 the Settlement Administrator. The PAGA Settlement Members shall not contact Defendants, any
 3 of the Released Parties, or Defense Counsel.

4 c. PAGA Counsel's Attorneys' Fees and Costs: The Parties agree that, subject
 5 to the Court's review and approval, PAGA Counsel will be paid from the Gross Settlement Amount
 6 an amount that is up to 33% of the Gross Settlement Amount for attorneys' fees (\$37,950), plus
 7 actual litigation costs), not to exceed \$15,000.00. Any unused portion of the attorneys' costs shall
 8 be distributed to the aggrieved employees and LWDA on a pro-rata basis.

9 30. Net Settlement Amount: After deducting PAGA Counsel's Attorneys' Fees and
 10 Costs, and Settlement Administration Costs from the Gross Settlement Amount, the remaining
 11 amount will comprise the Net Settlement Amount. The Net Settlement Amount is comprised of the
 12 LWDA Payment and the PAGA Aggrieved Employee Payment. The Net Settlement Amount of
 13 approximately \$57,550 shall be allocated 75% to the "LWDA Payment", which is estimated to total
 14 \$43,162.50 (\$57,550 x .75). The remaining 25% of the Net Settlement Amount, estimated to total
 15 \$14,387.50 (\$57,550 x .25), shall be allocated to the "PAGA Aggrieved Employee Payment" to be
 16 paid to the Aggrieved Employees based on his or her proportionate share of the weeks worked
 17 during the PAGA Period., which shall be referred to as the Aggrieved Employee's "**Individual**
 18 **PAGA Payment.**"

19 Example:

20 Aggrieved Employee A was actively employed during the PAGA Period for 25 pay periods.
 21 All Aggrieved Employees were actively employed a combined total of 8,000 pay periods during the
 22 PAGA Period. Aggrieved Employee A's Individual PAGA Payment would be calculated as follows:

- 23 ➤ 25 pay periods for Aggrieved Employee A ÷ 8,000 total pay periods for all Aggrieved
 24 Employees = 0.312%.
- 25 ➤ Aggrieved Employee A is entitled to an Individual PAGA Payment in an amount that is
 26 0.312% of the PAGA Aggrieved Employee Payment.

27 a. Taxes and Reporting: The Individual PAGA Payments will be treated as non-
 28 wage income to the Aggrieved Employees and reported by the Settlement Administrator on IRS

1 Form 1099.

2 31. **Release By PAGA Settlement Members**

3 a. Claims Released by the LWDA and All PAGA Settlement Members. Upon
4 the date of entry of an order by the Court in this Action approving this Settlement, and payment of
5 all funds due under this Settlement, the LWDA and PAGA Settlement Members, including Plaintiff,
6 fully release and forever discharge the Released Parties from any and all Released Claims. As a
7 result of this release, the PAGA Settlement Members will be unable to bring a claim under, or
8 recover in any other claim brought under, the California Private Attorneys General Act, California
9 Labor Code § 2698 *et seq.*, for any violations of the Released Claims that took place during the
10 PAGA Period.

11 b. **No Claims Based On Agreement.** No Aggrieved Employee will have any
12 claim against any of the Released Parties, Defendant's counsel, the Representative Plaintiff, or
13 PAGA Counsel, based on errors in administering claims or performing the mailing and skip-tracing
14 requirements of the Settlement Administrator under this Agreement.

15 32. **Settlement Funding**

16 33. The Settlement Administrator shall establish a Qualified Settlement Fund pursuant
17 to Section 468B(g) of the Internal Revenue Code for purposes of administering the Settlement. The
18 Settlement Administrator shall furnish the Qualified Settlement Fund with its own Employer ID
19 Number and calculate all settlement checks and withholdings required under law based on
20 information that will be confidentially furnished by Defendants. There are no payroll deductions to
21 be calculated under this Settlement, since no part of the Settlement will be classified as wages.

22 a. Subject to Court approval of the Settlement, and within seven (7) days of the
23 Court's approval of the Settlement, payment shall be made in full to the administrator.

24 b. Within seven (7) days after the full funding of the settlement, the Settlement
25 Administrator shall pay to the LWDA an amount equivalent to seventy-five percent (75%) of the
26 PAGA Fund, or as otherwise directed by the Court.

27 c. Within seven (7) days after the full funding of the settlement, the Settlement
28 Administrator shall distribute to the Plaintiff's Counsel their court-approved Plaintiff's Counsel

1 Payment and approved litigation costs.

2 d. Within seven (7) days after the full funding of the settlement, the Settlement
3 Administrator shall deduct an amount equivalent to the Settlement Administrative Costs.

4 34. **PAGA List**

5 Defendants shall provide the Settlement Administrator with a list of the names and addresses
6 of the PAGA Settlement Members, to be furnished within fourteen (14) days after the Court issues
7 an Order approving the Settlement. The contact information is being provided confidentially to the
8 Settlement Administrator only, and the Settlement Administrator shall treat the information as
9 private and confidential and take all necessary precautions to maintain the confidentiality of contact
10 information of the PAGA Settlement Members. This information is to be used only to carry out the
11 Settlement Administrator's duties as specified in this Settlement.

12 35. **PAGA Payments to Aggrieved Employees.**

13 a. On the Payment Date, the Settlement Administrator will mail to each
14 Aggrieved Employee, via first-class United States Mail, the following: (a) the PAGA Settlement
15 Notice, attached as **Exhibit A** to this Agreement and (b) their Individual PAGA Payment
16 (collectively, the "**PAGA Packet**").

17 b. Prior to mailing, the Settlement Administrator will update all addresses using
18 the National Change of Address System (NCOA). In the event that a PAGA Packet is returned to
19 the Settlement Administrator with a forwarding address, the Settlement Administrator will re-send
20 the PAGA Packet to the forwarding address identified. If no forwarding address is provided, then
21 the Settlement Administrator will promptly conduct a "standard search," sometimes called, "Skip
22 Trace" or "Credit Header" searches, to locate a better address. If a better address is found, the
23 Settlement Administrator will promptly re-send the PAGA Packet. If a better address is not found
24 or the PAGA Packet is ultimately returned without a forwarding address, neither the Settlement
25 Administrator, Defendant, or PAGA Counsel shall be required to take further action.

26 c. Aggrieved Employees shall have 180 calendar days after the date the PAGA
27 Packet is mailed to them to cash their settlement payment checks. If any Aggrieved Employee's
28 check is not cashed within that period, the settlement payment check will be voided and a stop-

1 payment will be issued. Neither Defendant, Defendant's counsel, Plaintiff, nor PAGA Counsel will
2 have any liability for lost or stolen settlement payment checks, forged signatures on settlement
3 payment checks, unauthorized negotiation of settlement payment checks or failure to timely cash a
4 settlement payment check within the 180-day period.

5 d. Any unpaid cash residue or unclaimed Aggrieved Employee funds, plus any
6 accrued interest that has not otherwise been distributed pursuant to order of the Court, shall be
7 transmitted to California's Labor & Workforce Development Agency.

8 36. **Enforcement and Continuing Jurisdiction of the Court.**

9 Pursuant to the Parties agreement, this Settlement Agreement will be approved by the Court
10 and will be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6.
11 Even after the entry of the Final Order and Judgment, this Court will have and retain continuing
12 jurisdiction over the Action and over all Parties and the Aggrieved Employees, to the fullest extent
13 necessary or convenient to enforce and effectuate the terms and intent of this Settlement Agreement
14 and all matters provided for in it, and to interpret it.

15 37. **Mutual Full Cooperation.**

16 The Parties will fully cooperate with each other to accomplish the terms of this Settlement
17 Agreement, including, but not limited to, execution of such documents and taking such other action
18 as may be reasonably necessary or convenient to implement it. The Parties agree to use their best
19 efforts and any other efforts that may become necessary by Order of the Court, or otherwise, to
20 effectuate this Settlement.

21 38. **Non-Admission of Liability.**

22 Based on the factual and legal issues involved, the expense and time necessary to prosecute the
23 Action through trial, the risks, uncertainty and costs of further prosecution, the difficulty of proof
24 necessary to establish a class for purposes of liability, and the relative benefits to the PAGA Settlement
25 Members of an expeditious resolution to the Action, the Parties have concluded that the terms set forth
26 in this Settlement are fair, reasonable, adequate and in the best interests of the PAGA Settlement
27 Members.

28 In entering into this Agreement, Defendant does not admit, and specifically denies, that it has

1 violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to
2 any statute or any other applicable laws, regulations or legal requirements; violated or breached any
3 duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with
4 respect to the Action. Neither this Agreement, nor any of its terms or provisions, nor any of the
5 negotiations connected with it, shall be construed as an admission or concession by Defendant of any
6 such violations or failures to comply with any applicable law. Defendant specifically denies that it has
7 engaged in any unlawful or wrongful conduct against Plaintiff or the PAGA Settlement Members.

8 39. **Effective Date of Defendant's Obligations Under This Agreement.**

9 Defendant's obligations under this Settlement Agreement will become final and effective
10 only upon the occurrence of the Effective Date. In the event that any of the conditions specified in
11 this Settlement Agreement are not satisfied, or in the event that this Settlement does not obtain
12 approval of the Court for any reason, all matters covered by this Agreement will be null and void.
13 In such event, neither this Agreement nor any negotiations leading to this Settlement will be used
14 or construed by or against any Party as a determination, admission, or concession of any issue of
15 law or fact in the litigation; and the Parties do not waive, and instead expressly reserve, their
16 respective rights regarding the prosecution and defense of the Action, including all available
17 defenses and affirmative defenses, and to challenge any claim, as if this Settlement Agreement never
18 existed.

19 40. **Nullification.**

20 If: (1) the Court should for any reason fail to enter the Final Order and Judgment; or (2) the
21 Court's Final Order and Judgment is reversed or modified as to any material term as defined above,
22 or declared or rendered void as to any material term as defined above, then (a) the Settlement
23 Agreement shall become null and void; (b) the Parties will revert to their respective positions
24 immediately prior to reaching the settlement; and (c) the Parties will split the cost for any Settlement
25 Administration Costs.

26 41. **Invalidation.**

27 Invalidation of any material term of this Settlement Agreement will invalidate this
28 Agreement in its entirety unless the Parties subsequently agree in writing that the remaining

provisions will remain in full force and effect.

42. **Entire Agreement.**

This Settlement Agreement constitutes the entire integrated agreement between the Parties relating to the Action, and no oral representations, warranties, or inducements have been made to any party concerning this Settlement Agreement other than the representations, warranties, and covenants contained and memorialized in this Settlement Agreement. Representative Plaintiff and Defendant have entered into a separate agreement resolving Representative Plaintiff's individual claims, which he had previously dismissed without prejudice to proceed with the PAGA Claim.

43. **Authorization To Act.**

PAGA Counsel warrants and represents that they are authorized by the Representative Plaintiff, and counsel of record for Defendant warrants that they are authorized by Defendant, 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, except for any documents, including but not limited to this Settlement Agreement, that are required to be executed by the Parties.

44. **Modification Only In Writing.**

This Settlement Agreement may be amended or modified only by a written instrument signed by all Parties or their successors in interest.

45. **Binding On Successors.**

This Settlement Agreement is binding upon and will inure to the benefit of the Parties to this Agreement, as well as their respective attorneys, past, present, and future predecessors, successors, shareholders, officers, directors, employees, agents, trustees, representatives, administrators, fiduciaries, assigns, insurers, executors, partners, parent corporations, subsidiaries, and related or affiliated entities.

46. **No Prior Assignments.**

The Aggrieved Employees are deemed by operation of the Final Order and Judgment to 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, cause of action, or rights released and discharged by this Agreement.

47. **Governing Law.**

All terms of this Settlement Agreement will be governed by and interpreted according to the laws of the State of California, without giving effect to conflicts of laws principles.

48. **Counterparts.**

This Settlement 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. Counsel for the Parties will exchange among themselves signed counterparts.

49. **Headings For Convenience Only.**

The descriptive headings of any paragraphs or sections of this Settlement Agreement are inserted for convenience of reference only and do not constitute a part of this Settlement Agreement.

50. **Construction Of This Agreement.**

The Parties agree that the terms and conditions of this Settlement Agreement are the result of arms-length negotiations between the Parties and that this Settlement Agreement will 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 Agreement. This Settlement Agreement constitutes the entire agreement between the Parties. Except as expressly provided in this Agreement, this Settlement Agreement has not been executed in reliance upon any other oral or written representations or terms and no such extrinsic oral or written representations or terms will modify, vary or contradict the terms of this Settlement Agreement. In entering this Settlement Agreement, the Parties explicitly recognize California Civil Code section 1625 and California Code of Civil Procedure section 1856(a), which provide that a written agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence. The Representative Plaintiff and Defendant had available to them the advice and assistance of independent counsel. As such, neither Representative Plaintiff nor Defendant may claim that any ambiguity in this Settlement Agreement should be construed against the other.

51. **Corporate Signatories.**

Any person executing this Settlement Agreement or any related document on behalf of a

corporate signatory warrants and promises for the benefit of all Parties that such person has been duly authorized by such corporation to execute this Settlement Agreement or any related document.

52. Representation By Counsel.

All of the Parties hereto acknowledge that they have been represented by counsel throughout all negotiations which preceded the execution of this Settlement Agreement, and that this Agreement has been executed with the consent and advice of counsel.

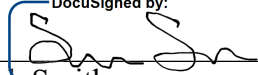
53. Attorneys' Fees and Costs.

Except as otherwise provided in this Agreement, the Parties will bear responsibility for their own attorneys' fees and costs, taxable or otherwise, incurred by them or arising out of this Action and will not seek reimbursement thereof from any Party to this Settlement Agreement. In the event of a proven breach of this Agreement, the breaching party will be required to pay the prevailing Party's reasonable attorneys' fees and costs incurred in enforcing this Agreement.

IT IS SO AGREED:

Dated: November 22, 2022

PLAINTIFF SARAH SMITH

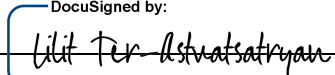
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Plaintiff's Counsel:

Dated: November 21, 2022

MOON & YANG, APC

By: Lilit Ter-Astvatsatryan
 Kane Moon
 Lilit Ter-Astvatsatryan
 Attorneys for Plaintiff

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