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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

JORGE AYARD, individually and on behalf of
 all others similarly situated,

Plaintiff,

vs.

CHARMAN MANUFACTURING, INC. a
 corporation; and DOES 1-20 inclusive,

Defendants.

Case No. 20STCV37730

**JOINT STIPULATION FOR COURT
 APPROVAL OF PAGA SETTLEMENT;
~~[PROPOSED]~~ ORDER & JUDGMENT**

Assigned for All Purposes to:
 Hon. Stephen Goorvitch
 Dept. 39

Complaint filed: October 1, 2020
 Trial Date: None Set

FILED
 Superior Court of California
 County of Los Angeles
 06/09/2022

Sherri R. Carter, Executive Officer / Clerk of Court
 By: R. Mendoza Deputy

1 By and through their respective counsel of record, Named Plaintiff Jorge Ayard
2 (“Plaintiff”) and Defendant Charman Manufacturing, Inc. (“Defendant”) (Plaintiff and Defendant
3 are collectively referred to as “Parties”) submit this Joint Stipulation and Proposed Order for this
4 Court’s review and approval of their “Private Attorneys General Act (Cal. Lab. Code § 2698, *Et*
5 *Seq.*) Settlement Agreement” (“Settlement Agreement”). A true and correct copy of the PAGA
6 Settlement Agreement is attached hereto as Exhibit A.

7 Through the instant joint-stipulation, the Parties respectfully request the Court grant the
8 Parties’ Proposed Order which grants approval of a settlement of \$140,000 in exchange for the
9 release of the PAGA-only claims asserted in this action.

10 Pursuant to Labor Code Section 2699(1)(2), the proposed PAGA-only settlement requires
11 court approval which the parties seek herein. Similalry, pursuant to PAGA, concurrently with the
12 filing of this Joint Stipulation, Plaintiff’s Counsel is providing a copy of the Settltment
13 Agreement to the LWDA as explained in the Declaration of Christopher A. Adams. If, after
14 review of the instant Stipulation and Settlement Agreement, the Court has any questions
15 regarding the particular terms of the Settlement Agreement, the Parties respectfully request that
16 the Court set the first-available date for a hearing to discuss any of these topics.

17 RECITALS

18 1. Defendant employed Plaintiff Jorge Ayard to perform services as a general laborer at
19 its warehouse in Vernon, California from approximately 2018 to March 2020.

20 2. On July 14, 2020, Plaintiff, through his legal counsel, KJT Law Group LLP and
21 Adams Employment Counsel (“Plaintiff’s Counsel”), submitted a notice to the Labor Workforce
22 Development Agency (“LWDA”), alleging a variety of California Labor Code violations against
23 Defendant (the “LWDA Notice”), including, among other things, that Defendant failed to provide
24 meal and rest breaks, pay minimum and overtime wages, provide accurate wage statements to its
25 employees, reporting time pay, reimburse for business expenses, and timely pay wages. The
26 LWDA declined to investigate this matter, leaving Plaintiff free to pursue such PAGA Claims in
27 a superior court civil action under the California Private Attorneys General Act (California Labor
28 Code §§ 2698, *et seq.*) (“PAGA”)

1 3. After waiting the sixty-five days required by PAGA, on October 1, 2020, Plaintiff
2 filed the instant lawsuit alleging one cause of action under PAGA based on those allegations
3 contained in the LWDA Notice. In his complaint, Plaintiff seeks to represent the State of
4 California and the following group of employees: any person who was employed by Defendant
5 since July 14, 2019, and against whom one or more of the alleged violations was committed.

6 4. On November 19, 2019, Defendant filed its answer denying any and all liability.

7 5. Following Defendant's answer, Plaintiff, through his legal counsel, met and
8 conferred regarding the potential mediation of this Action. The Parties thereafter agreed to
9 engage in informal discovery to thoroughly evaluate the claims and defenses of the Parties. A
10 comprehensive description of the informal discovery completed and analysis performed is
11 contained in the Declaration of Christopher A. Adams filed concurrently with this Joint
12 Stipulation.

13 6. The Parties agreed to mediate the case on October 21, 2021 before neutral mediator
14 Jeffrey Krivis, who is well-respected and knowledgeable in wage-and-hour actions and has
15 additional specific expertise in PAGA actions.

16 7. To provide a comprehensive review and analysis of the claims and potential
17 damages at trial, Plaintiff sought, and Defendant provided time keeping and payroll records for
18 randomly-selected employees so that Plaintiff had sufficient information to base his evaluation of
19 the claims alleged. In addition, Plaintiff's Counsel sought and Defendant produced copies of the
20 relevant employment policies at-issue in this Action.

21 8. Thereafter, Plaintiff's Counsel engaged in a thorough analysis of these records and
22 documents in order to evaluate the strength of the claims, the potential defenses, and to present a
23 thorough damages analysis at mediation that identified the potential exposure of Defendant at
24 trial if Plaintiff was successful on all claims. A comprehensive description of Plaintiff's
25 Counsel's analysis is included in the concurrently filed Declaration of Christopher A. Adams.

26 9. The Parties participated in a full-day mediation before neutral mediator Jeffrey
27 Krivis wherein the Parties discussed the claims and defenses at-length. This mediation
28 ultimately resulted in the instant Settlement for which they now seek approval. The proposed

1 settlement herein provides for Defendant to contribute a non-reversionary PAGA settlement of
2 \$140,000 which is comprised of the following elements:

- 3 • Attorneys' fees of 33% of the gross settlement amount, which amounts to
4 \$46,666.67;
- 5 • Attorneys' costs of \$10,766.70;
- 6 • Costs of administration of the PAGA Settlement Agreement, expected not to
7 exceed \$3,000; and
- 8 • PAGA allocation of the remaining gross settlement amount, estimated to be
9 \$79,566.63, as civil penalties, 75% of which shall be paid to the LWDA
10 (\$59,674.97), and 25% of which shall be apportioned and paid to Aggrieved
11 Employees (\$19,891.66) in proportion to their pro rata share of work weeks
12 each employee worked during the relevant PAGA period.

13 10. Pursuant to California Labor Code section 2699(1), "the superior court shall review
14 and approve any settlement of any civil action filed pursuant to this part."

15 11. PAGA penalties are in the nature of a law enforcement penalty and are designed to
16 penalize an employer for its failure to comply with California's wage-and-hour laws and
17 regulations and are not designed to compensate employees. *Ochoa-Hernandez v. CJADERS*
18 *Foods, Inc.* (E.D. Cal. Apr. 2, 2010) 2010 U.S. Dist. LEXIS 32774, at *12-13. ("Unnamed
19 employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of
20 the representative PAGA claim. There is no indication that the unnamed plaintiffs can contest a
21 settlement, if any, reached between the parties,").

22 12. The settlement of a private plaintiff's PAGA claim is binding on all other
23 purportedly aggrieved employees on behalf of whom it was asserted as to recovery of PAGA
24 penalties. *See Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009) (because a private plaintiff's
25 PAGA action "functions as a substitute for an action brought by the government itself, a
26 judgment in that action binds all those, including nonparty aggrieved employees, who would be
27 bound by a judgment in an action brought by the government,").

28 13. The Parties recognize and agree there is a genuine, good faith dispute as to the

merit and scope of the PAGA claims, especially in light of the current global pandemic and its negative effect on retail business like Defendant. As stated in the PAGA Settlement Agreement, Defendant disputes all allegations of purported wrongdoing that Plaintiff sets forth in his LWDA Notice and as alleged in the Action.

14. The Parties submit that the PAGA Settlement Agreement provides fair and reasonable payment penalties for the benefit of the LWDA and the approximately 131 employees who qualify as PAGA Group Members.

15. Contingent on this Court's approval of the Parties' settlement of the PAGA claims, the Parties have fully and finally settled all PAGA claims that were or could have been asserted against Defendant by Plaintiff and now hereby seek court approval of the Settlement Agreement pursuant to California Labor Code §§ 2698 *et seq.*

16. The Parties agree that Defendant will provide the settlement sum and the last known contact information for the PAGA Group Members to the Claims Administrator, Simpluris Inc., within 120 days after entry of the Court's Order Approving the PAGA Settlement Agreement or ten business days of the Effective Date as described in the Settlement Agreement, whichever is later. The Claims Administrator will run an address verification for all PAGA Group Members via the USPS National Change of Address database, perform all necessary calculations to determine all the pro rata individual settlement share for each PAGA Group Member and then will make payment to each of the PAGA Group Members along with a copy of a Notice of PAGA Claims Settlement to each of the PAGA Group Members. A true and correct copy of the Notice of PAGA Claims Settlement is attached hereto as Exhibit B.

17. As explained in the Declaration of Christopher A. Adams filed concurrently, at the same time of filing this Joint Stipulation, Plaintiff's Counsel provided the LWDA with a copy of the PAGA Settlement Agreement. (*See* Declaration of Christopher A. Adams, Exhibit B.)

STIPULATION

Thus, the Parties stipulate:

1. On review of the complaint in this Action, the PAGA Settlement Agreement (Exhibit A), and all other supporting exhibits and submissions, the Parties request that the Court

1 approve all terms of the instant settlement of PAGA Claims and payment of PAGA penalties.

2 2. The Parties have entered a PAGA Settlement Agreement in consideration of
3 Plaintiff's full and final settlement and release of all of Plaintiff's individual claims as well as the
4 PAGA representative claims, including without limitation: any and all PAGA claims or causes of
5 action for civil penalties, arising from the same facts and/or claims alleged in this Action,
6 including the Complaint, the LWDA Notice, or related to claims that were pled or that could have
7 been pled based on the facts alleged, including all claims based on the following categories of
8 claims and allegations: (1) all claims relating to the failure to provide meal periods; (2) all claims
9 relating to the failure to provide rest breaks; (3) all claims relating to the failure to pay for all time
10 worked, including double time, overtime and minimum wage; (4) all claims relating to the failure
11 to timely pay all wages during employment, including overtime and minimum wage; (5) all
12 claims relating to the failure to timely pay wages upon termination of employment, including
13 overtime; (6) all claims relating to inaccurate wage statements; (7) all claims for failure to
14 maintain accurate records; (8) all claims relating to reporting pay; (9) all claims relating to
15 expense reimbursements; and (10) all claims relating to providing suitable seating; including
16 PAGA claims for the alleged violation of California Labor Code sections 201, 202, 203, 226,
17 226.3, 226.7, 432.5, 510, 511, 512, 558, 1194, 1197, 1197.1, 1198, and 2802.

18 3. Pursuant to the provisions of PAGA and the terms of the Parties' PAGA Settlement
19 Agreement, the Parties have agreed that after payment of Attorneys' Fees and Cost, and Claims
20 Administrator's fees, the total amount of PAGA penalties payable as part of this settlement is
21 estimated to be \$79,566.63, as civil penalties, 75% of which shall be paid to the LWDA
22 (\$59,674.97), and 25% of which shall be apportioned and paid to Aggrieved Employees
23 (\$19,891.66) in proportion to their pro rata share of work weeks each employee worked during
24 the relevant PAGA period.

25 4. Pursuant to Code of Civil Procedure § 664.6, the Parties agree this Court shall
26 retain jurisdiction over the parties to enforce the PAGA Settlement Agreement until full and final
27 performance of all its terms and conditions has been satisfied.

28 5. Plaintiff's Counsel shall notify the Court upon full and final performance of all

1 terms and conditions of the PAGA Settlement Agreement in this action, which will be dismissed
2 with prejudice.

3
4 ADAMS EMPLOYMENT COUNSEL
KJT LAW GROUP

5
6 Dated: June 8, 2022

7 
8 Christopher A. Adams
Attorneys for Plaintiff, individually, and on
9 behalf of aggrieved employees Jorge Ayard

10 LEWIS BRISBOIS BISGAARD & SMITH LLP

11
12 Dated: 4/21/22

13 
14 Michael P. Witezak
Attorneys for Defendant Charman
15 Manufacturing, Inc.

EXHIBIT A

Private Attorneys General Act (Cal. Lab. Code § 2698, *Et Seq.*) Settlement Agreement

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned Parties, subject to the approval of the Court, that the Action and PAGA Released Claims shall be settled and resolved subject to the following terms and conditions set forth in this Private Attorneys General Act (Cal. Lab. Code § 2698, *et seq.*) Settlement Agreement (“Settlement Agreement”), entered by and between Plaintiff Jorge Ayard (“Plaintiff”), for himself and on behalf of the State of California and other Aggrieved Employees pursuant to the California Private Attorneys General Act, and Defendant Charman Manufacturing, Inc. (“Defendant” or “Charman”) (collectively, the “Parties”).

This Settlement Agreement shall be effective upon the date the Court executes the order approving the Settlement Agreement (the “Effective Date”).

I. DEFINITIONS

Unless otherwise defined herein, the following terms, when used in this Settlement Agreement, shall have the following meanings:

1. “Action” means the matter entitled *Jorge Ayard v. Charman Manufacturing, Inc.*, Los Angeles Superior Court Case No. 20STCV37730.
2. “Aggrieved Employees” mean all current and former hourly-paid or non-exempt employees who worked at least one pay period for Defendant in the State of California during the PAGA Period, i.e., from July 14, 2019 through Court Approval of the Settlement Agreement.
3. “LWDA” means the California Labor and Workforce Development Agency.
4. “Complaint” means the claims and allegations set forth in Plaintiff’s correspondence to the California Labor and Workforce Development Agency dated July 14, 2020 (“LWDA Letter”) and the Complaint (“Complaint”) filed on October 1, 2020.
5. “Court” or “Los Angeles Superior Court” means the Superior Court of California for the County of Los Angeles.
6. “Defendant” means Charman Manufacturing, Inc.
7. “Defense Counsel” or “Counsel for Defendant” means Katherine C. Den Bleyker and Michael P. Witczak of Lewis Brisbois Bisgaard & Smith LLP, 633 West 5th Street, Suite 4000, Los Angeles, California 90071.
8. “Employee PAGA Portion” is the amount to be distributed to the Aggrieved Employees, which shall consist of 25% of the PAGA Penalties Amount, as provided in Section III.3 herein.

9. “Employee Payments” refers to the PAGA Penalty Payments that will be distributed to Aggrieved Employees, as provided in Section III.3 herein.

10. “Gross Settlement Amount” is the sum of One Hundred Forty Thousand Dollars and Zero Cents (\$140,000.00), which represents the total amount payable under this Settlement Agreement by Defendant, and includes the Employee PAGA Portion payable to Aggrieved Employees, LWDA Payment payable to the LWDA, Court-Awarded Attorneys’ Fees (not to exceed \$46,666.67) to Plaintiff’s Counsel, Court-awarded Litigation Costs of \$10,766.70 to Plaintiff’s Counsel, , Court-Awarded Payment to the Settlement Administrator for Settlement Administration Costs (not to exceed \$3,000).

11. “Plaintiff’s Counsel” means Christopher A. Adams, Vache A. Thomassian, Esq., and Casper Jivalagian, Esq. of KJT Law Group, LLP. 230 N. Maryland Ave. Suite 306, Glendale CA 91206.

12. “Net Settlement Amount” is the amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts are subtracted from the Gross Settlement Amount: (a) Attorneys’ Fees to Plaintiff’s Counsel; (b) Litigation Costs to Plaintiff’s Counsel; and (c) Settlement Administration Costs to Settlement Administrator.

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

14. “LWDA Payment” means the amount to be paid to the LWDA, which is seventy-five percent (75%) of the Other PAGA Penalties Amount as set forth in Section III.3 herein.

15. “PAGA Period” means the time period from July 14, 2019 through Court Approval of the Settlement Agreement.

16. “PAGA Released Claims” mean any and all claims, rights, demands, liabilities and causes of action for civil penalties under the PAGA asserted, or that could have been asserted in the Complaint, including, but not limited to, those under California *Labor Code* §§ 1197, 1197.1, 1198, 510, 558, 1194, 1197.1, 1198, 226.7, 512(a), 226, 201, 202, 203, 2802, 1198, 2698, Wage Order 12 and a California *Civil Code* § 1542 release as to those sections, that arose during the PAGA Period, based on the factual allegations pled in the operative complaint in the Action.

17. “Released Parties” mean Charman Manufacturing, Inc. and its former, present and future owners, parents, and subsidiaries, and all of their current, former and future spouse(s), children, officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, agents, predecessors, successors, assigns, accountants, reinsurers, insurers, or legal representatives.

18. “Settlement Administrator” means Simpluris, Inc., a third-party administrator who shall administer the Settlement, subject to approval by the Court, in accordance with this Settlement Agreement, and whose costs and expenses to administer the Settlement are currently estimated not to exceed \$3,000 (“Settlement Administration Costs”).

II. RECITALS

1. Plaintiff filed his Operative Complaint against Defendant on October 1, 2020. Plaintiff's Complaint alleged the individual causes of action on behalf of himself and civil penalties on behalf of himself and a PAGA group of all current and former hourly employees of Defendant: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) failure to furnish accurate wage statements; (6) waiting time penalties; (7) failure to reimburse for business expenditures and losses; (8) failure to provide suitable seating; (9) failure to pay reporting time pay; (10) civil penalties under the Private Attorneys General Act.

2. On October 21, 2021, the Parties participated in mediation before mediator Jeffrey Krivis after undertaking investigation and exchange of information and documents pertaining to Plaintiff and the Aggrieved Employees.

3. On October 21, 2021, the Parties agreed to fully and finally resolve the Action and the PAGA Released Claims as to Plaintiff, the State of California, and the Aggrieved Employees.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. **Non-Admission.** Nothing in this Settlement Agreement nor action taken in implementation thereof shall be construed to be an admission or concession by Plaintiff that his claims do not have merit or by Defendant of any liability or wrongdoing as to Plaintiff, Aggrieved Employees, or any other person, and Defendant specifically disclaims any such liability or wrongdoing. Nor will any of the foregoing be used in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation of any federal, state or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Settlement Agreement may be used in any court proceeding that has as its purpose the interpretation, implementation, or enforcement of the Settlement or any orders or judgments of the Court entered into in connection therewith. The Parties have entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and risks. This Settlement Agreement and any related Court documents or orders are not and may not be cited or admitted as evidence of liability.

2. **Gross Settlement Amount.** Defendant shall pay \$140,000.00 as the Gross Settlement Amount. Defendant will not pay more than the Gross Settlement Amount.

3. **Net Settlement Amount.** The Parties agree that the Net Settlement Amount shall be distributed to the LWDA and Aggrieved Employees as follows: Seventy-five percent (75%) of the Net Settlement Amount shall be distributed to the LWDA (i.e., the LWDA Payment) and twenty-five percent (25%) of the Net Settlement Amount shall be distributed to the Aggrieved Employees on a *pro rata* basis, based on their respective number of pay periods worked for

Defendant during the PAGA Period. Payments to Aggrieved Employees of their share of the Other PAGA Penalties Amount shall be referred to as “PAGA Penalty Payment(s).” Each Aggrieved Employee will be paid a non-wage check for the PAGA Penalty Payment, and will receive an IRS Form 1099 for said payment.

4. **Attorneys’ Fees Payment and Litigation Costs Payment.** Defendant will not oppose Plaintiff’s request for an award of attorneys’ fees in the amount up to \$46,666.67 (“Attorneys’ Fees”) and litigation costs and expenses in the amount of \$10,766.70 incurred in prosecuting this Action (“Litigation Costs”), to Plaintiff’s Counsel. In the event the Court approves a payment of less than \$46,666.67 for Attorneys’ Fees and/or less than \$10,766.70 for Litigation Costs to Plaintiff’s Counsel, the difference will be a part of the Net Settlement Amount. The Attorneys’ Fees and Litigation Costs payments will be reported on an IRS Form 1099 issued to Plaintiff’s Counsel.

5. **Settlement Administration Costs.** Defendant will not oppose Plaintiff’s request for payment in the amount up to \$3,000 to the Settlement Administrator for administering the Settlement. In the event the Court approves a payment of less than \$3,000 or Settlement Administration Costs, the difference will be a part of the Net Settlement Amount. Settlement Administration Costs will be reported on an IRS Form 1099 issued to the Settlement Administrator.

6. **Plaintiff’s Release of Claims and Waiver of California Civil Code section 1542.** In consideration of payment under the Settlement, and upon the funding of the Settlement by Defendant, Plaintiff shall be deemed to release the Released Parties from any and all PAGA Released Claims and any other claims that he may have against the Released Parties, including and not limited to, all complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses (including attorneys’ fees and costs actually incurred, other than as otherwise provided herein) of any nature whatsoever, known or unknown, suspected or unsuspected, including, but not limited to, any claim for damages related to Plaintiff’s employment with Defendant, the separation of his employment, rights arising out of alleged violations of any contracts, express or implied, any covenant of good faith and fair dealing, express or implied, or any tort including defamation, any claim of wrongful termination, retaliation, or wage and hour violations, or any legal restrictions of Defendant’s right to terminate employees, or any federal, state or other governmental statute, regulation or ordinance, including, without limitation: (1) the Civil Rights Act of 1964, as amended; (2) 42 U.S.C. § 1981; (3) the California Government Code; (4) section 503 of the Rehabilitation Act of 1973; (5) the Americans with Disabilities Act; (6) the Fair Labor Standards Act (including the Equal Pay Act); (7) the California Constitution; and (8) the California Labor Code, which Plaintiff now has, owns or holds, or claims to have, own or hold, or which Plaintiff at any time heretofore had, owned or held, or claimed to have owned or held against any of the Released Parties relating to any conduct occurring prior to and including the date of execution of this Settlement Agreement (collectively, “Plaintiff’s Released Claims”). Plaintiff represents that he is not aware of any claims he may have against the Released Parties other than the PAGA Released Claims and Individual Claims asserted in the same Action, resolved by separate agreement. As a material inducement for Defendant to enter into this Settlement, Plaintiff waives any and all rights and benefits conferred by the provisions of section 1542 of the California

Civil Code and any similar law of any state or territory of the United States or other jurisdiction. Section 1542 of the California Civil Code 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.

Plaintiff understands and acknowledges that this Settlement Agreement is meant to include, to the fullest extent, all PAGA Released Claims and other claims which Plaintiff does not know or suspect to exist in his favor against the Released Parties.

7. **PAGA Released Claims.** Upon the funding of the Settlement by Defendant, Plaintiff, Aggrieved Employees, and the State of California will be forever barred from pursuing any and all PAGA Released Claims defined in Section I.16 herein. This release of claims only covers those civil penalties which are recoverable under PAGA, and does not otherwise cover individual, underlying claims or causes of action that Aggrieved Employees may have under the law against Released Parties for violations of the California Labor Code.

8. **Covenants and Representations by Plaintiff and Plaintiff's Counsel.** Plaintiff represents and warrants that he has not assigned or transferred or purported to assign or transfer to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Settlement Agreement.

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

9. **Limited Disclosure and No Publicity.** Except as provided below, to the extent necessary to effectuate the Settlement or as required by the PAGA statute, a court of law, or legal process, neither Defendant, Defense Counsel, Plaintiff, nor Plaintiff's Counsel will publicize the terms of this Settlement Agreement or issue a press release, hold a press conference, publish information about the Settlement on any website or through any social media, or otherwise publicize the Settlement or communicate its terms in public or in private, unless ordered by the Court. Any breach of disclosure will result in a payment of liquidated damages in the amount of 2% of the Settlement by the breaching party to the non-breaching party.

10. **Filing of Motion for Approval of Settlement by Plaintiff's Counsel.** Plaintiff's Counsel shall be responsible for preparing the Motion for Approval of the Settlement ("Motion") and providing Defense Counsel with an opportunity to propose revisions to the Motion prior to filing. Plaintiff's Counsel will file the Motion, which is mutually agreed to by the Parties, as soon as practicable. Plaintiff's Counsel will serve the Motion on Defendant's Counsel and submit it to the LWDA. Pursuant to California Labor Code section 2698, *et seq.*, Plaintiff's Counsel shall

undertake all required submissions and disclosures to the LWDA and the Court to obtain approval of the Settlement.

11. **Termination of Settlement Agreement.** If the Court does not approve the Settlement, if the Court does not dismiss the Action with prejudice, as provided for in this Settlement Agreement, or if appellate review is sought and, on such review, the Court's decision is materially modified or reversed, or if one or more of the terms of the Settlement Agreement is not approved or is materially modified or reversed or found to be invalid, or the Settlement does not become final for any other reason, then either of the Parties shall have the right within ten (10) calendar days of written notice thereof to elect to terminate the Settlement Agreement, in which case it shall have no force or effect, and the Parties shall be deemed to have reverted to their original, respective status as of the date and time immediately prior to the execution of this Settlement Agreement. However, the Parties agree to attempt to re-negotiate the Settlement in good faith in an effort to obtain approval by the Court of the Settlement.

12. **Dismissal.** The Settlement Administrator will provide the Parties with a declaration confirming that distribution of payments has been completed in accordance with the Settlement Agreement and the Court's orders within ten (10) business days of distributing all payments under the Settlement. Plaintiff's Counsel will file the declaration with the Court and required dismissal papers (i.e., a Request for Dismissal of the Action with prejudice) within ten (10) business days of receipt or as otherwise ordered by the Court. This Settlement Agreement is expressly conditioned upon the Court entering the dismissal of the Action in its entirety. The dismissal will not release or bar any claims other than all claims as to Plaintiff pursuant to Cal. Code Civ. Proc. Section 1542, and the PAGA Released Claims as to Plaintiff, Aggrieved Employees, and State of California.

IV. ADMINISTRATION OF SETTLEMENT

1. **Settlement Administrator.** The Parties have mutually selected Simpluris, Inc. to handle the administration of this Settlement, subject to approval by the Court.

2. **Notice to Aggrieved Employees.**

a. No later than twenty-one (21) business days after the Effective Date, Defendant shall provide the Settlement Administrator with a list of the Aggrieved Employees (the "Aggrieved Employees List"). The Aggrieved Employees List shall include each Aggrieved Employee's full name, last known mailing address, start and end date(s) of employment or total pay periods worked for Defendant in California during the PAGA Period, and Social Security number, to the extent available from Defendant's records. Because Social Security numbers are included in the list, the Settlement Administrator will maintain the list in confidence, and shall only access and use the list to administer the Settlement in conformity with the Court's orders. Defendant will in good faith compile from its records the Aggrieved Employees List and provide it to the Settlement Administrator in a computer-readable format, such as a Microsoft Excel spreadsheet.

b. No later than twenty-one (21) calendar days after receipt of the Gross Settlement Amount from Defendant, the Settlement Administrator will mail the Employee Payments under cover letter, substantially in the form attached hereto as “**Exhibit A**” (“Cover Letter”), to each of the Aggrieved Employees identified on the Aggrieved Employees List. Prior to mailing the Cover Letter, the Settlement Administrator shall check the addresses provided in the Aggrieved Employees List using the United States Postal Service’s National Change of Address database and update the addresses for known address changes. Should any of the mailings to the Aggrieved Employees of their Cover Letter and Employee Payments be returned as undeliverable within thirty (30) calendar days of mailing, the Settlement Administrator will have five (5) calendar days after it receives the returned undeliverable mail to search for a more current address for the Aggrieved Employee (via a skip trace or other reasonable method) and re-mail the Cover Letter and Employee Payments to any alternative or updated address obtained by the Settlement Administrator.

3. **Deposit and Distribution of Gross Settlement Amount.**

a. No later than thirty (30) business days from the Effective Date (“Funding Date”), Defendant shall fund the Gross Settlement Amount into an account established by the Settlement Administrator, for administration and distribution in accordance with this Settlement Agreement and the Court’s orders.

b. The Settlement Administrator shall distribute payments for the General Release Fee, the Attorneys’ Fees, the Litigation Costs, the Settlement Administration Costs, the Employee Payments, and the LWDA Payment within twenty-one (21) calendar days after receipt of the Gross Settlement Amount from Defendant. All payments provided for by this Settlement Agreement shall be made by the Settlement Administrator in accordance with this Settlement Agreement and the Court’s order approving this Settlement.

c. Each Aggrieved Employee will be issued one check for his or her Employee Payment which will expire one hundred and eighty (180) calendar days from the date the checks are issued by the Settlement Administrator. After the 180 day-period, the Settlement Administrator shall cancel all checks that have not been cashed or deposited and remit funds associated with such canceled checks to the State Controller’s Office, Unclaimed Property Division in the name associated with each Aggrieved Employee whose Employee Payment checks are canceled.

V. **MISCELLANEOUS PROVISIONS**

1. **No Impact on Employee Benefit Plans.** Neither the Settlement Agreement nor any amounts paid to Plaintiff, any Aggrieved Employee, or the LWDA under the Settlement will modify any previously credited hours or service under any employee benefit plan, policy, or bonus program sponsored by Defendant. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under Defendant’s sponsored benefit plans, policies, or bonus programs. The payments made under the terms of this Settlement Agreement shall not be applied retroactively, currently, or on a going-forward basis, as salary, earnings, wages, or any other form of compensation for the purposes of any Defendant’s benefit

plan, policy, or bonus program. Defendant retains the right, if necessary, to modify the language of their benefit plans, policies, and bonus programs to effect this intent, and to make clear that any amounts paid pursuant to this Settlement Agreement are not for “hours worked,” “hours paid,” “hours of service,” or any similar measuring term as defined by applicable plans, policies, and bonus programs for purposes of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Settlement Agreement.

2. **Tax Consequences.** Plaintiff and Aggrieved Employees will be solely responsible for correctly characterizing any compensation received under the Settlement on their personal income tax returns for tax purposes, and paying all appropriate taxes due for any and all amounts paid to them under the Settlement. Plaintiff, Defendant, Plaintiff’s Counsel, and Defense Counsel make no representations or warranties with respect to tax consequences of any payment under this Settlement Agreement, do not intend anything contained in this Settlement Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Settlement Agreement be relied upon as such.

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

4. **Entire Agreement.** This Settlement Agreement constitutes the entirety of the Parties’ settlement terms. No other prior or contemporaneous written or oral agreements may be deemed binding on the Parties. The Parties each acknowledge and represent that no promise or representation not contained in this Settlement Agreement has been made to them and acknowledge and represent that this Settlement Agreement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the Action and PAGA Released Claims.

5. **Judgment and Continued Jurisdiction.** The Parties agree that this Settlement Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6, and the Court, to the fullest extent of the law, shall retain exclusive and continuing jurisdiction over this Action, over all Parties, and the Aggrieved Employees to interpret and enforce the terms, conditions, and obligations of the Settlement Agreement.

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

7. **Authorization to Enter into Binding Settlement Agreement.** Defendant represents and warrants that the undersigned has the authority to act on behalf of Charman Manufacturing, Inc. and to bind Charman Manufacturing, Inc. to the terms of this Settlement Agreement. Plaintiff represents and warrants that he has the capacity to act on his own behalf and

on behalf of all who might claim through him to bind him to the terms and conditions of this Settlement Agreement. Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any Settlement and/or mediation privileges and/or confidentiality provisions that otherwise might apply under federal or state law.

8. **Binding on Successors and Assigns.** This Settlement Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

9. **Execution and Counterparts.** This Settlement Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

10. **Acknowledgement of Mutual Drafting and that the Settlement is Fair, Adequate, and Reasonable.** The Parties believe this Settlement Agreement is a fair, adequate, and reasonable Settlement of the Action, and have arrived at this Settlement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement. The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm's-length negotiations and that neither Party shall be considered the "drafter" of this Settlement Agreement for purposes of having terms construed against that Party. The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one Party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

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

12. **Severability.** If any term or provision of this Settlement Agreement is held to be invalid or unenforceable, the remaining portions of this Settlement Agreement will continue to be valid and will be performed, construed, and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Settlement Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

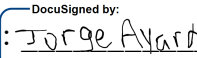
13. **No Waiver.** No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right, or remedy.

14. **Cooperation and Execution of Necessary Documents.** All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to implement the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

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

PLAINTIFF:

Dated: _____

By: 
Jorge Ayard

DEFENDANT Charman Manufacturing, Inc.

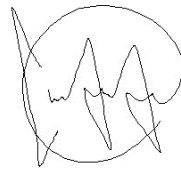
Dated: _____

By: _____
Shawn Namvar

APPROVED AS TO FORM AND CONTENT:

KJT Law Group

Dated: June 8, 2022

By: 
Christopher Adams, Esq.
Attorney for Plaintiff
Jorge Ayard

LEWIS BRISBOIS BISGAARD & SMITH LLP

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

14. **Cooperation and Execution of Necessary Documents.** All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to implement the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

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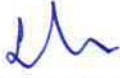
PLAINTIFF:

Dated: _____

By: _____
Jorge Ayard

DEFENDANT Charman Manufacturing, Inc.

Dated: 2-24-22

By:  _____
Shawn Namvar

APPROVED AS TO FORM AND CONTENT:

KJT Law Group

Dated: _____

By: _____
Christopher Adams, Esq.
Attorney for Plaintiff
Jorge Ayard

LEWIS BRISBOIS BISGAARD & SMITH LLP

Dated: 6/8/22

By: 
Katherine C. Den Bleyker
Michael P. Witzak
Attorneys for Defendant
Charman Manufacturing, Inc.

EXHIBIT B

NOTICE OF PAGA SETTLEMENT AND RELEASE OF CLAIMS

In The Matter of
Jorge Ayard v. Charman Manufacturing, Inc.
Superior Court of California for the County of Los Angeles, Case No. 19NWCV00496

A court authorized this notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.

I. NOTICE OF PAGA SETTLEMENT

The Los Angeles County Superior Court (the “Court”) has approved a settlement in the above-captioned action filed by Jorge Ayard (“Plaintiff”) on behalf of himself and all other aggrieved employees.

In this lawsuit, Plaintiff claims that Charman Manufacturing, Inc. (“Charman”) failed: (a) to pay all minimum and overtime wages; (b) to provide all lawful meal periods; (c) to authorize and permit all lawful rest periods; (d) to issue accurate and itemized wage statements; (e) to pay reporting time pay; (f) to provide suitable seating; and (g) to timely pay all final wages owed upon separation from employment. Plaintiff is seeking civil penalties on behalf of the California Labor and Workforce Development Agency (“LWDA”) and other aggrieved employees under the Private Attorneys General Act (“PAGA”).

Charman maintains that it was in compliance with the California Labor Code at all times and enters into this Settlement with no admission of liability. The Court has not made a determination about Plaintiff’s claims, and this Notice is not an expression of any opinion by the Court as to the merits of Plaintiff’s claims. Charman has agreed to this settlement solely for the purposes of compromising and settling the action to avoid the cost and operational burden of continued litigation.

You are receiving this Notice because you are in the group of employees referred to as “Aggrieved Employees” or “PAGA Settlement Group Members” which is defined as: all non-exempt current and former employees employed by Charman in California between July 14, 2020 and **[Insert Date of Approval]** (the “PAGA Period”).

II. SUMMARY OF SETTLEMENT

Without admitting any wrongdoing, Charman has agreed to pay \$140,000 (the “Total Settlement Amount”) to resolve this PAGA Claim, which amount will be fully funded by Charman. In summary, the monetary terms of the Settlement Agreement are:

<u>Total Settlement Amount:</u>	<u>\$140,000.00</u>
Minus Court-approved attorneys’ fees (33%):	\$46,666.67
Minus Court-approved attorneys’ costs:	\$10,766.70
Minus estimated settlement administrator costs:	\$ 3,000.00
<u>Net Settlement Amount:</u>	<u>\$79,566.63</u>
Minus paid to PAGA Settlement Members:	\$19,891.66
<u>Total Paid to LWDA 75% Share of Section 2699 Penalties:</u>	<u>\$59,674.97</u>

The foregoing is a summary of the Settlement provisions. The specific and complete terms of the proposed Settlement are stated in the Settlement Agreement and Release of PAGA Claims, a copy of which is filed with the Clerk of the Court. The pleadings and other records in the lawsuit may can be reviewed online at the Los Angeles County Superior Court’s website at www.lacourt.org. Click on the “Online Services” tab, then click on the “Access Now” button next to “Case Access - Civil.” Next, enter Case Number “20STCV37730.”

III. CALCULATION OF INDIVIDUAL PAGA PAYMENT

You worked [Pay Periods] pay periods during the PAGA Period. The total amount of pay periods worked by all Aggrieved Employees during the PAGA period is [Total Pay Periods].

Your individual PAGA payment is [Check Amount].

Each individual PAGA payment was calculated on a pro rata basis (i.e., proportional) based on the number of pay periods worked by each Aggrieved Employee in the PAGA Period divided by the total number of pay periods worked by all Aggrieved Employees.

IV. RELEASE

The Court has approved the parties' Settlement Agreement and Release of PAGA Claims ("Settlement Agreement"). By operation of the Settlement Agreement's terms, all PAGA Settlement Members will release the Released Parties from any and all PAGA claims or causes of action for civil penalties, arising from the same facts and/or claims alleged in this Action, including the Complaint, the LWDA Notice, or related to claims that were pled or that could have been pled based on the facts alleged, including all claims based on the following categories of claims and allegations: (1) all claims relating to the failure to provide meal periods; (2) all claims relating to the failure to provide rest breaks; (3) all claims relating to the failure to pay for all time worked, including double time, overtime and minimum wage; (4) all claims relating to the failure to timely pay all wages during employment, including overtime and minimum wage; (5) all claims relating to the failure to timely pay wages upon termination of employment, including overtime; (6) all claims relating to inaccurate wage statements; (7) all claims for failure to maintain accurate records; (8) all claims relating to reporting pay; (9) all claims relating to expense reimbursements; and (10) all claims relating to providing suitable seating; including PAGA claims for the alleged violation of California Labor Code sections 201, 202, 203, 226, 226.3, 226.7, 432.5, 510, 511, 512, 558, 1194, 1197, 1197.1, 1198, and 2802.

Upon entry of the Order approving the Settlement Agreement, any Aggrieved Employee covered by this Settlement Agreement is barred from proceeding with any claim released by this Settlement Agreement.

V. SETTLEMENT ADMINISTRATOR

The court-appointed Administrator for this Settlement is as follows:

Jorge Ayard v. Charman Manufacturing, Inc. PAGA Action Settlement

Simpluris, Inc.

[ADDRESS] | [ADDRESS]

If you have questions, you may call the Settlement Administrator, toll free at [Number]. Ask about the *Jorge Ayard v. Charman Manufacturing, Inc. PAGA Settlement*. **PLEASE DO NOT CALL THE COURT.**

Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall direct all unclaimed funds to the California Department of Industrial Relations Unpaid Wage Fund in the name of the Aggrieved Employee to whom the check was issued. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

~~PROPOSED~~ ORDER

The Parties having so stipulated, and having reviewed and considered the materials on file, and for good cause appearing, the COURT HEREBY ORDERS:

1. The PAGA Settlement Agreement attached hereto as Exhibit A is APPROVED as fair, adequate and reasonable and is entered as an Order of the Court.
2. All scheduling entries in this matter are vacated, and Plaintiff's claims are dismissed with prejudice in their entirety.
3. The Court shall retain jurisdiction over this matter until advised that full and final performance of all terms and conditions of the Stipulation have been satisfied.

IT SO ORDERED.

Dated: June 9, 2022



Stephen I. Goorvitch

Stephen I. Goorvitch / Judge

Hon. Fernando Aenille-Rocha
Judge of the California Superior Court