

CONFIDENTIAL MEMORANDUM OF UNDERSTANDING(Privileged Settlement Communication)

Code of Civil Procedure §§1175.10 and 1775.12; Evidence Code §§703.5, 1115-1128 and 1152

Plaintiff Brenda Hayden (“Plaintiff”) and Defendant Aftermath Services, LLC (“Defendant”) (collectively the “Parties”), represented by their respective counsel of record, privately negotiated a proposed class and representative action settlement of alleged wage and hour violations as contained in part within Plaintiff’s Notice of Labor Code Violations to the California Labor and Workforce Development Agency, dated August 4, 2020, and Plaintiff’s Representative Action Complaint for Civil Fines, Sacramento County Superior Court, Case No. 34-2020-00287716, filed October 26, 2020 (collectively the “Claims”). The Parties reached the following class and Private Attorney’s General Act (PAGA) action settlement (the “Settlement”), which, subject to approval by the Court, is intended to be a full and final resolution of the Claims and of all released claims as set forth below:

1. The Settlement is not an admission of any liability or wrongdoing.
2. Within 14 calendar days after full execution of this Confidential Memorandum of Understanding, Plaintiff will file an amended complaint in Sacramento County Superior Court (the “Action”), which will be mutually agreed upon by the Parties, that: (1) adds Calvin Stevens as a named plaintiff; (2) asserts the same wage and hour violations as in Plaintiff’s civil complaint of October 26, 2020, but on behalf of the proposed class, as defined below; (3) asserts a claim under Business and Professions Code section 17200, *et seq.*, extending the limitations period from October 26, 2016 to the present; (4) asserts claims under the Fair Labor Standards Act (FLSA); and (5) includes all claims released by this Settlement. Class Counsel agrees to that once Plaintiff has filed the Action, Plaintiff Stevens agrees to dismiss his individual civil complaint against Defendant without prejudice, which is currently pending in Sacramento County Superior Court, Case No. 34-2020-00286997.
3. “Released Parties” as referenced herein and as released in the Settlement shall collectively mean: (i) Aftermath Services, LLC (“Defendant”); (ii) each of Defendant’s respective past, present and future parents, subsidiaries and affiliates; (iii) the past, present and future partners, shareholders, directors, officers, agents, employees, attorneys, insurers, predecessors, successors and assigns of any of the foregoing; and (iv) any individual or entity which could be jointly liable with any of the foregoing.
4. The class of individuals encompassed within the Settlement will include all persons employed by Defendant as non-exempt employees in California between October 26, 2016 and preliminary Court approval of the Settlement (the “Settlement Class” or the “Class Members”). The Settlement Class will not include any person who previously settled or released any of the claims covered by this Settlement, or any person who previously was paid or received awards through civil or administrative actions for the claims covered by this Settlement.
5. The Parties agree to the designation of Justin Lo and Edward Kim of Work Lawyers, PC as counsel for the Settlement Class (“Class Counsel”).

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6. The class period will be from October 26, 2016 through the date the Court preliminarily approves the Settlement (“Class Period”).
7. As consideration for the Settlement, Defendant, on behalf of the Released Parties, agrees to pay on a claims-made basis up to a maximum of \$300,000.00, which sum shall include all claims, Class Counsel’s attorneys’ fees and costs, enhancement awards to the class representatives, employer payroll taxes for the wage portion of the settlement awards, \$30,000.00 allocated to penalties under PAGA with \$22,500.00 (75%) paid to the California Labor and Workforce Development Agency (“LWDA”) and \$7,500.00 (25%) paid to the Settlement Class as described below, and settlement administration expenses (“Maximum Settlement Amount”). Under no condition will Defendant’s aggregate liability exceed the Maximum Settlement Amount. At no time shall Defendant have the obligation to segregate the funds comprising the Maximum Settlement Amount, and Defendant shall retain exclusive authority over, and the responsibility for, those funds. All claims submitted by and payments to Class Members, and all Class Counsel’s attorneys’ fees and costs, the enhancement awards to the class representatives, the employer payroll taxes for the wage portion of the settlement awards, and the claims administration expenses, will be paid out of the Maximum Settlement Amount.
8. The net settlement amount will be calculated by deducting all Class Counsel’s attorneys’ fees and costs, the enhancement awards to the class representatives, the employer payroll taxes for the wage portion of the settlement awards, \$22,500.00 payable to the LWDA for PAGA, and settlement administration expenses, from the Maximum Settlement Amount (“Net Settlement Amount”). The Parties agree that the minimum amount to be paid to Class Members who submit valid claims (i.e., the settlement floor) will be 50 percent of the Net Settlement Amount; if the amount claimed by Class Members is less than 50 percent, the amount to be paid to Class Members who submit valid claims will be increased *pro rata* until 50 percent of the Net Settlement Amount is paid out. Any unclaimed residue remaining in the Net Settlement Amount will remain Defendant’s sole and exclusive property.
9. The claims to be released by the Settlement Class include all claims under state, federal and local law ultimately alleged in the Action, and that reasonably could have been alleged in the Action, based on the factual allegations contained in the operative complaint in the Action and any amendments thereto, as to the Class Members, including but not limited to: California Labor Code sections 201, 202, 203, 204, 210, 216, 221, 222, 223, 224, 226, 226.3, 226.6, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, *et seq.*, 2802, and 2810.5; California Business and Professions Code section 17200, *et seq.*, class and representative claims, the applicable California Wage Order(s), the federal Fair Labor Standards Act, 29 U.S.C. sections 201-219 as amended, and all claims for or related to unpaid wages, overtime, double time, minimum wages, off-the-clock work, regular rate of pay, rounding time, on call time, reporting time, split shifts, timely paid wages, timely paid final wages, breach of any express or implied contract relating to the

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payment of wages, meal periods and/or meal period premiums, rest breaks and/or rest period premiums, accurate and itemized wage statements, failure to maintain accurate time records and/or payroll records as required by law, unreimbursed business expenses, unfair competition, unfair business practices, unlawful business practices, fraudulent business practices, injunctive relief, declaratory relief, liquidated damages, penalties of any nature (including but not limited to civil penalties, waiting-time penalties, and PAGA penalties), interest, fees, costs, as well as all other claims and allegations alleged in the Action, from October 20, 2016 through the date the Court finally approves the Settlement (collectively “Released Claims”). Expressly excluded from the release are claims for retaliation, discrimination, unemployment insurance, disability, workers compensation, and claims outside the Released Claims.

10. The Parties agree to stipulate to class certification for purposes of Settlement only as to the Settlement Class and for the Released Claims.
11. Individual settlement awards for the Settlement Class will be allocated from the Net Settlement Amount and paid as follows: (1) one third (1/3) will be allocated to alleged unpaid wages for which IRS Forms W-2 will issue; (2) one third (1/3) will be allocated to alleged unpaid penalties for which IRS Forms 1099-MISC will issue; and (3) one third (1/3) will be allocated to alleged unpaid interest for which IRS Forms 1099-MISC will issue. The Parties further agree to a reasonable allocation between federal and California claims for purposes of the individual settlement awards, if necessary for a complete and binding release of the Released Claims.
12. The Settlement Administrator will be Simpluris, Inc. (“Settlement Administrator”), or as otherwise mutually agreed upon by the Parties, for a not-to-exceed quote for all settlement administration expenses which Plaintiffs’ counsel agree to request and to circulate to Defendant’s counsel. All settlement administration expenses shall be paid out of the Maximum Settlement Amount.
13. Defendant or the Settlement Administrator will calculate the number of workweeks worked by the Class Members during the Class Period based on information provided by Defendant. The workweeks will be calculated by Defendant or the Settlement Administrator for each Class Member by dividing the total days employed as a Class Member during the Class Period by seven. Partial workweeks will not be counted, meaning incomplete workweeks will be rounded down; however, if a Class Member worked only one day as a Class Member, such Class Member will be credited with having worked one workweek for purposes of the Settlement. Defendant’s workweek data will be presumed correct, unless a particular Class Member proves otherwise to the Settlement Administrator by credible written evidence. All workweek disputes will be decided by the Settlement Administrator, and the Settlement Administrator’s decision on all workweek disputes will be final and non-appealable. The amount to be paid per workweek to Class Members who submit timely and valid claim forms will be calculated by the Settlement Administrator by dividing the Net Settlement Amount by the number of weeks worked by all Class Members; any person who opts out of the

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Settlement is not a Class Member, and is ineligible to object to the Settlement or to participate in the Settlement.

14. The settlement will be made on a claims-made basis, and putative class members must submit a claim form to receive a settlement award in the Settlement. The notice and the claim form sent to the Class Members are to be mutually agreed upon by the Parties, and presented for approval to the Court.
15. The preliminary approval order and the final approval order are to be mutually agreed upon by the Parties, and presented for approval to the Court.
16. Defendant agrees to provide to Plaintiff's counsel all necessary statistical and class data information to effectuate approval of the preliminary and final approval of the Settlement.
17. The Parties agree Defendant will confidentially provide to the Settlement Administrator the Class Members' names, social security numbers, last-known addresses, and start and end dates during the Class Period, within 30 calendar days after the Court's preliminary approval of the Settlement. Within 45 calendar days of the Court's preliminary approval of the Settlement, the Settlement Administrator will mail the notices and the claim forms to Class Members. The Class Members will have 60 calendar days in which to postmark claim forms or requests for exclusion; the Settlement Administrator will perform an NCOA check and will skip-trace return mail and re-mail the notices within 5 calendar days. The Parties agree the Class Members' contact information and social security numbers will only be provided to the Settlement Administrator for the sole purpose of effectuating the Settlement, and will not be provided to Class Counsel. To the extent Class Counsel possess, or come to possess, Class Members' contact information and/or social security numbers from the Settlement Administrator, Class Counsel shall return all such information (including copies and data or information derived therefrom) within 5 calendar days from the date the Court preliminarily approves the Settlement, shall not retain copies of such information, and shall not maintain or use such information for any purpose except administration of this Settlement.
18. The Settlement Administrator is to send one deficiency notice to Class Members for deficiencies in timely submitted claim forms. The deficiency notice will provide the Class Members a maximum of 21 calendar days from the date of the re-mailing to cure the deficiency. The claim forms must be signed, dated and completed to be valid. The cost of all deficiency notices shall be part of the Settlement Administrator's expenses and paid out of the Gross Settlement Amount.
19. Defendant, on behalf of the Released Parties, will fund the Settlement within 30 calendar days following the Court's final approval effective date (the date the Court enters an order granting final approval and judgment if no objections to the settlement are made; after the 60-day appeal period has expired without notice of any appeals or

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challenges provided a written objection has been filed by a Class Member; or the date any appeal is finally resolved, whichever is later) for timely and valid claims, and for Court-approved Class Counsel's attorneys' fees and costs, enhancement awards to the Class Representatives, employer payroll taxes for the wage portion of the settlement awards, and settlement administration expenses. The Settlement Administrator will be responsible for making appropriate deductions, paying to Class Counsel any court-approved Class Counsel's attorneys' fees and costs, paying to the Class Representatives any court-approved enhancement awards, meeting any reporting obligations, and for issuing the individual settlement awards to Class Members. The expiration date on the settlement checks will be 180 days from the date the settlement checks are issued. Uncashed settlement checks will not be re-issued, except for good cause and as mutually agreed upon by the Parties in writing.

20. If a Class Member fails to cash his or her settlement check within 180 calendar days after the date it is mailed to him or her, those funds will be distributed pursuant to California Code of Civil Procedure section 384(b), as follows: 50 percent to Koinonia Family Services, a non-profit 501(c)(3) organization, to be used for child advocacy programs within the State of California, and 50 percent to the Sacramento Voluntary Legal Services Program Employment Law Clinic. The Court will retain jurisdiction over the Action pursuant to California Code of Civil Procedure section 384(b) to address uncashed Settlement Award checks, if necessary. The Claims Administrator will transfer all uncashed Settlement Awards to the *cy pres* beneficiaries, and the Parties agree that all costs associated with doing so shall be paid from the unpaid residue of the Net Settlement Amount.
21. The number of opt-outs by Class Members is not to exceed 10 percent, or Defendant may terminate the Settlement; however, Defendant shall not be required to terminate the Settlement. Defendant agrees to notify Class Counsel of any such decision no later than 10 calendar days before final approval, and agrees to pay all claim administration costs incurred through such date.
22. Class Counsel agrees to petition the Court for attorneys' fees not to exceed \$100,000.00 (33 1/3 percent of the Maximum Settlement Amount), plus attorney costs not to exceed \$30,000.00, subject to approval by the Court. The Court-approved attorneys' fees and costs are part of, and to be deducted from, the Maximum Settlement Amount. Defendant agrees not to object to Class Counsel's fee application up to \$100,000.00 (33 1/3 percent of the Maximum Settlement Amount), plus attorney costs up to \$30,000.00.
23. The Parties agree to the designation of Plaintiffs Brenda Hayden and Calvin Stevens as "Class Representatives." The Class Representatives shall receive an enhancement award at no additional cost to the Released Parties, subject to approval by the Court, and subject to the Class Representatives' execution of a general release of all claims under California Code of Civil Procedure section 1542. The enhancement award will not exceed \$7,500.00 for each of the Class Representatives, and is in addition to the

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Class Representatives' individual settlement award. The enhancement award is to be part of, and to be deducted from, the Maximum Settlement Amount. An IRS Form 1099-MISC shall issue for the enhancement award.

24. Subject to Court approval, the Settlement Agreement and the preliminary approval order will include a provision enjoining the Class Members from filing any claims before the California Division of Labor Standards Enforcement (DLSE), or from initiating other proceedings or actions regarding the Released Claims, pending final approval of the Settlement, unless and until such persons opt out of the Settlement.
25. To effectuate the terms of the Settlement, the Parties agree all formal and informal discovery shall be stayed pending Court approval of the Settlement. Within 7 calendar days of the filing of the amended complaint in the Action, Class Counsel agree to notify the Court of the Settlement through a Notice of Proposed Class Action Settlement, and to request that all current court deadlines be continued pending Court approval of the Settlement. Class Counsel further agree to cease all affirmative communication (oral and written) with the putative class members, other than through Court-approved notices; this provision does not prevent Class Counsel from communicating with any Class Members who may contact Class Counsel.
26. Defendant's counsel is to prepare and circulate the draft Settlement documents within 30 calendar days from full execution of this Confidential Memorandum of Understanding.
27. The Class Representative and Class Counsel will not make any public disclosure of the Settlement or this Confidential Memorandum of Understanding, except through Court filings to approve the Settlement. Class Counsel will take all steps necessary to ensure that the Class Representatives are aware of, and will ensure that the Class Representatives adhere to, the restriction against any public disclosure of the Settlement or this Confidential Memorandum of Understanding.
28. Following preliminary Court approval of the Settlement, the Class Representatives and Class Counsel will not initiate any communications (directly or indirectly) with the media regarding the Action. Class Counsel will take all steps necessary to ensure the Class Representatives are aware of, and will ensure that the Class Representatives will adhere to, the restriction against any media comment on the Settlement and its terms.
29. The Parties agree to cooperate fully with each other to accomplish the terms of the Settlement, to use their reasonable best efforts to finalize the Settlement, and to use any other reasonable efforts that may become necessary by the Court, or otherwise, to effectuate the Settlement.
30. The undersigned counsel each agree they have authority to execute this Confidential Memorandum of Understanding for and on behalf of the Parties to which they are providing representation, and also represent that their respective clients agree to be

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bound by the above terms. The Parties intend for this Memorandum of Understanding to be binding under California Code of Civil Procedure section 664.6 when signed by the Parties.

IN WITNESS WHEREOF, the Parties and their respective counsel of record, knowingly and voluntarily execute this Confidential Memorandum of Understanding as of the date(s) set forth below:

10/11/2021
Dated: _____

DocuSigned by:



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Plaintiff Brenda Hayden

10/11/2021
Dated: _____

DocuSigned by:



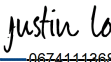
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Plaintiff Calvin Stevens

10/11/2021
Dated: _____

WORK LAWYERS, P.C.

DocuSigned by:

By: 

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Justin Lo

Edward Kim

Counsel for Plaintiffs,

Class Representatives, and Settlement Class

Dated: _____

Defendant AFTERMATH SERVICES LLC

By: _____
Its Authorized Officer or Agent

Dated: _____

JACKSON LEWIS P.C.

By: _____
Cary G. Palmer
Erika M. Barbara
Counsel for Defendant
Aftermath Services, LLC