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MONTALVAN SALES, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA - DOWNTOWN SUPERIOR COURT

WALTER MANAY, an individual, JOSE
UMANZOR, an individual, individually, and
on behalf of aggrieved employees pursuant
to the Private Attorneys General Act,

Plaintiffs,

v.

MONTALVAN SALES, INC., A California
Corporation; and DOES 1 through 10,
inclusive,

Defendants.

CASE NO.: 20CV372305
[Unlimited Jurisdiction]

*Assigned for all purposes to the
Honorable Patricia M. Lucas, Dept. 3*

STIPULATION OF PAGA RESOLUTION

Complaint Filed: October 29, 2020
Trial Date: None set

This Stipulation of PAGA Resolution is made by and between the Named Plaintiffs, WALTER MANAY and JOSE UMANZOR ("Named Plaintiffs"), on their own behalf, as representatives of the State of California, and on behalf of all members of the PAGA Group, as defined below, on the one hand, and MONTALVAN SALES, INC., ("Defendant") on the other hand (collectively the "Parties"), in the lawsuit entitled *Walter Manay, Jose Umanzor, and on behalf of aggrieved employees pursuant to the Private Attorneys General Act v. Montalvan Sales, Inc.*, filed in Santa Clara County Superior Court, Case No. 20CV372305. This Stipulation of PAGA Resolution resolves all claims that were asserted or could have been asserted against Defendant pertaining to the claims in the Litigation.

I. DEFINITIONS

A. Administrative Costs. All administrative costs of settlement, including cost of notice to the Settlement Group, administration, and any fees and costs incurred or charged by the Settlement Administrator in connection with the execution of its duties under this Stipulation of PAGA Resolution.

B. Agreement. The terms "Agreement" or "Settlement Agreement" are used synonymously herein to mean this Stipulation of PAGA Resolution for purposes of Resolution.

C. Court. The term "Court" as used herein means the Superior Court of the State of California for the County of Santa Clara.

D. Date of Approval. The terms "Date of Approval" or "Approval" as used herein mean the date of the PAGA Settlement Approval Hearing.

E. Defendant. The term "Defendant" as used herein means: Montalvan Sales, Inc.

F. Defense Counsel. The term "Defense Counsel" as used herein means: FISHER & PHILLIPS, LLP who are counsel for and acting on behalf of Defendant.

G. LWDA. The term "LWDA" means the Labor Workforce Development Agency.

H. LWDA Payment. The term "LWDA Payment" as used herein means seventy-five percent (75%) of the remainder of the Settlement Amount after the deduction of any award of attorneys' fees and litigation costs, enhancement, and Administrative Costs. This amount shall be calculated as follows: Settlement Amount minus (Court approved amounts for

attorneys' fees, litigation costs, enhancement to Named Plaintiffs, and Administrative Costs) times 75%.

I. Litigation. The term "Litigation" as used herein means the action filed in Santa Clara County Superior Court, Case No. 20CV372305.

J. Named Plaintiffs. The term "Named Plaintiffs" as used herein means WALTER MANAY and JOSE UMANZOR. The term Named Plaintiffs shall be used synonymously with the term PAGA Representatives.

K. Net Settlement Amount. The term "Net Settlement Amount" as used herein means the Settlement Amount minus any award of attorneys' fees and litigation costs, Administrative Costs, enhancement to Named Plaintiffs, and the seventy-five percent (75%) of the LWDA Payment, and as provided in Sections VI, VIII(C), X, and XI.

L. Net Settlement Payments. The term "Net Settlement Payment(s)" shall include payments made to the PAGA Group as part of the Resolution.

M. Notice of Resolution. The Notice of PAGA Resolution is the document attached hereto as Exhibit "A."

N. PAGA Group or Aggrieved Employee(s). The PAGA Group is defined as: All persons within the State of California who are or were employed by Defendant as non-exempt employees or as salespersons classified as exempt in the State of California at any time within the PAGA Period.

O. PAGA List. A list of the Aggrieved Employees including: (1) name; (2) last known home address; (3) number of pay periods as a PAGA Group member during the PAGA period; and (4) social security number.

P. PAGA Period. The term "PAGA Period" or "Settlement Period" shall refer to the time period from August 3, 2019 to the date of the approval hearing and the court's order therein, or March 15, 2021 whichever is earlier.

Q. Plaintiffs' Counsel. The term "Plaintiffs' Counsel" as used herein means: MACIAS RODRIGUEZ ADAMS LLP who are counsel for and acting on behalf of Named Plaintiffs.

1 **R. Released Entities.** The term “Released Entities” shall refer to Defendant,
2 Defendant’s parents, subsidiaries, affiliates, their insurers, attorneys, shareholders, executives,
3 managers, and all agents thereof.

4 **S. Resolution.** The term “Resolution” as used herein means this Agreement to
5 resolve the Litigation.

6 **T. Settlement Administrator.** The term “Settlement Administrator” as used herein
7 means ILYM Group, Inc., which will be responsible for the administration of the Settlement
8 Payment, as defined below, and all related matters.

9 **U. Settlement Amount.** The terms “Settlement Amount” and “Gross Settlement
10 Fund” as used herein mean a fund in the sum of Two Hundred Thirty Thousand dollars and zero
11 cents (\$230,000.00) which shall be paid by Defendant, and from which all Net Settlement
12 Payments, Court approved attorneys’ fees and litigation costs pursuant to Section X,
13 Administrative Costs pursuant to Section VI, enhancement to Named Plaintiffs pursuant to
14 Section XI, and distribution to the LWDA pursuant to Section VIII(C) shall be paid, except as
15 provided herein.

16 **II. BACKGROUND**

17 **A.** August 3, 2020, Named Plaintiffs submitted a letter to the LWDA alleging
18 violations of wage and hour laws including failure to pay all minimum wages, failure to pay all
19 overtime wages, failure to provide meal breaks, failure to provide rest breaks, failure to provide
20 accurate wage statements, failure to timely pay final wages, failure to maintain accurate payroll
21 records, failure to provide payroll records, failure to timely pay wages during employment,
22 failure to pay commissions, failure to reimburse business expenses, and violation of California’s
23 Wage Theft Prevention Act. On October 29, 2020, Named Plaintiffs filed the Litigation alleging
24 a single case of action for penalties pursuant to Labor Code § 2699(f) for alleged violations and
25 penalties under Labor Code §§2699(f), 201, 202, 203, 204, 223, 225.5, 226(a), 226.3, 226.7,
26 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, and 2810.5 as well as the IWC
27 Wage Order.

28 **B.** Following the filing of the action, counsel for the Parties met and conferred with

1 respect to the potential settlement of the Litigation. Pursuant to these discussions, the Parties
2 agreed to exchange informal discovery and engage in private mediation. The Parties
3 subsequently exchanged substantial informal discovery, including: the timekeeping and payroll
4 records of the PAGA Group; information and documentation concerning the claims set forth in
5 the Litigation, such as Defendants' employee handbooks and policies and procedures regarding
6 the payment of wages, separation pay, meal and rest breaks, and time keeping; Named Plaintiffs
7 personnel and payroll records; information regarding the number of putative PAGA Group
8 members and the number of current versus former employees; and the total workweeks and pay
9 periods worked by the PAGA Group.

10 C. Named Plaintiffs and Plaintiffs' Counsel have engaged in good faith, arms-length
11 negotiations. On January 15, 2021, the Parties participated in a full-day mediation before Steven
12 Pearl, a highly-respected mediator who specializes in wage and hour collective actions. After
13 an arms-length negotiation facilitated by Mr. Pearl, the Parties reached a resolution of this matter
14 via a Memorandum of Understanding, the terms of which are superseded by this Agreement.
15 The Parties have now entered into a more detailed, formalized Settlement Agreement for
16 submission to the Court for Approval.

17 D. Plaintiffs' Counsel has conducted an investigation of the law and facts relating
18 to the claims asserted in the Litigation and has concluded, taking into account the sharply
19 contested issues involved, the expense and time necessary to pursue the Litigation through trial
20 and any appeals, the risks and costs of further prosecution of the Litigation, the risk of an adverse
21 outcome, the uncertainties of complex litigation, and the substantial benefits to be received by
22 the Named Plaintiffs and the members of the PAGA Group pursuant to this Agreement, that a
23 settlement with Defendant on the terms and conditions set forth herein is fair, reasonable,
24 adequate, and in the best interests of the PAGA Group. Named Plaintiffs, on their own behalf
25 and as representatives pursuant to PAGA, have agreed to settle the Litigation with Defendant
26 on the terms set forth herein.

27 E. Defendant has concluded that, because of the substantial expense of defending
28 against the Litigation, the length of time necessary to resolve the issues presented herein, the

1 inconvenience involved, and the concomitant disruption to their business operations, it is in its
2 best interests to accept the terms of this Agreement. Defendant denies each of the allegations
3 and claims asserted against it in the Litigation. However, Defendant nevertheless desires to settle
4 the Litigation for the purpose of avoiding the burden, expense and uncertainty of continuing
5 litigation and for the purpose of putting to rest the controversies engendered by the Litigation.

6 **F.** This Agreement is intended to and does effectuate the full, final and complete
7 resolution of all allegations and claims that were asserted, or could have been asserted, in the
8 Litigation by Named Plaintiffs.

9 **III. JURISDICTION**

10 The Court has jurisdiction over the Parties and the subject matter of this Litigation. The
11 Litigation includes claims that, while Defendant denies them in their entirety, would, if proven,
12 authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted
13 Approval of the resolution, pursuant to California Code of Civil Procedure Section 664.6, the
14 Court shall retain jurisdiction of this action solely for the purpose of interpreting, implementing,
15 and enforcing this Stipulation of PAGA Resolution consistent with the terms set forth herein,
16 and the Parties and their counsel submit to the jurisdiction of the Court for purposes of
17 interpreting, implementing and enforcing this Agreement and all orders and judgments entered
18 in connection therewith.

19 **IV. STATEMENT OF NO ADMISSION**

20 **A.** Defendant denies liability to Named Plaintiffs and to the PAGA Group upon any
21 claim or cause of action. This Agreement does not constitute, and is not intended to constitute,
22 an admission by Defendant as to the merits, validity, or accuracy of any of the allegations or
23 claims made against it in the Litigation.

24 **B.** Nothing in this Agreement, nor any action taken in implementation thereof, nor
25 any statements, discussions or communications, nor any materials prepared, exchanged, issued
26 or used during the course of the negotiations leading to this Agreement or the Resolution, is
27 intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be
28 used or be admissible in any way in this case or any other judicial, arbitral, administrative,

1 investigative or other forum or proceeding as evidence of any violation of any federal, state, or
2 local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law
3 or in equity. The Parties themselves agree not to introduce, use, or admit this Agreement, directly
4 or indirectly, in this case or any other judicial, arbitral, administrative, investigative or other
5 forum or proceeding, as purported evidence of any violation of any federal, state, or local law,
6 statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in
7 equity, or for any other purpose. Notwithstanding the foregoing, this Agreement may be used in
8 any proceeding before the Court that has as its purpose the interpretation, implementation, or
9 enforcement of this Agreement or any orders or judgments of the Court entered in connection
10 with the Resolution.

11 C. None of the documents produced or created in the Litigation or in the process of
12 seeking approval of this Stipulation of PAGA Resolution constitute, and they are not intended
13 to constitute, an admission by Defendant of any violation of any federal, state, or local law,
14 statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in
15 equity.

16 D. Nothing in this Agreement will be construed as an admission or
17 acknowledgement of any kind that any group should or would be given collective treatment in
18 the Litigation or in any other action or proceeding. Further, neither this Agreement nor the
19 Court's actions with regard to this Agreement will be admissible in any court or other tribunal
20 regarding the propriety of collective treatment. In the event that this Agreement is not approved
21 by the Court or any appellate court, is terminated, or otherwise fails to be enforceable, Named
22 Plaintiffs will not be deemed to have waived, limited or affected in any way any claims, rights
23 or remedies in the Litigation, and Defendant will not be deemed to have waived, limited, or
24 affected in any way any of their objections or defenses in the Litigation.

25 **V. RELEASE, DISMISSAL, AND CONFIDENTIALITY**

26 **A. Release as to PAGA Claims.**

27 Upon Approval by the Court of this Settlement, Named Plaintiffs, as representatives of
28 the State of California, and the State of California will release any and all claims and causes of

1 action, known or unknown, contingent or accrued, against the Released Entities, arising out of
2 the facts and claims asserted in the Litigation for civil penalties under the Private Attorney
3 General Act of 2004 Cal. Lab. Code § 2698 based upon the facts alleged, for violations of the
4 California Labor Code governing: meal and rest breaks; unpaid wages, including minimum
5 wages, regular wages, overtime, and double time wages, and all theories for or related to
6 nonpayment of such wages (including, without limitation, theories for or related to proper
7 calculation of the applicable rate of pay, pre- and post- shift activities, "off-the-clock" work,
8 unpaid commissions, or any other unpaid or underpaid wage theory); wage statement violations;
9 separation pay violations; failure to maintain accurate payroll records; failure to provide payroll
10 records; failure to timely pay wages during employment; failure to reimburse business
11 expenses; violation of California's Wage Theft Prevention Act; and any other penalties which
12 could be asserted based on the allegations alleged against Defendant in Plaintiffs' LWDA letter
13 and the Litigation.

14 **B. Publicity.**

15 The Named Plaintiffs agree that they have not and will not publish the Resolution. By
16 way of this Resolution, Named Plaintiffs direct their counsel not to issue any press releases or
17 press statements regarding the Settlement, identify Defendant or Defense Counsel by name in
18 any media including Plaintiffs' Counsel's website, or have any communications with the press
19 or media about the Lawsuit or the Settlement. However, nothing in the provision shall be
20 construed from as preventing the Parties from taking following actions: (a) Named Plaintiffs'
21 Counsel shall be allowed to refer to the Litigation and Resolution in other litigations to support
22 their adequacy as attorneys for a putative class or PAGA group or to justify an award of
23 attorneys' fees; (b) the Parties shall have the right to disclose the Resolution as may be required
24 under federal or state tax and/or securities laws or under Generally Accepted Accounting
25 Principles; (c) the Parties shall have the right to disclose the Resolution to third parties without
26 identifying the case name, case number, or names of any of the Parties or Released Entities; (d)
27 the Parties may refer to the Resolution, describe its terms, and file the settlement agreement with
28 the Court, the LWDA, and the Settlement Administrator in connection with any proceedings

1 which are reasonably necessary to obtain Approval of the Settlement; and (e) the Parties or their
2 representatives may communicate with accountants or legal advisors regarding the Resolution.
3 Except for the previously listed exceptions, in response to any inquiries about the Lawsuit, the
4 Parties may state that “the matter has been resolved.”

5 **VI. SETTLEMENT ADMINISTRATOR**

6 Named Plaintiffs and Defendant, through their respective counsel, have selected ILYM
7 Group, Inc. as the Settlement Administrator to administer the Resolution, which includes but is
8 not limited to distributing and responding to inquiries about the Notice of PAGA Resolution and
9 calculating all amounts to be paid from the Net Settlement Fund. Charges and expenses of the
10 Settlement Administrator, estimated to be Four Thousand Dollars (\$4,000.00), will be paid from
11 the Settlement Amount. Any charges and expenses of the Settlement Administrator greater than
12 the allocated Four Thousand Dollars (\$4,000.00) will come from the Settlement Amount. If the
13 actual Settlement Administrator fees are less than the Parties’ estimation, the difference between
14 the actual and estimated Settlement Administrator fees will be included in the Net Settlement
15 Amount.

16 **VII. NOTICE**

17 **A.** Named Plaintiffs and Defendant, through their respective attorneys, have jointly
18 prepared a Notice of PAGA Resolution, in the form attached hereto as Exhibit “A” which in
19 substance will be provided to the members of the PAGA Group as follows:

20 (1) As soon as practicable following Approval of the Resolution, but no later
21 than twenty (20) business days after the Court’s Approval, Defendant will provide to the
22 Settlement Administrator the PAGA list.

23 (2) The Settlement Administrator shall run all the addresses provided through
24 the United States Postal Service NCOA database (which provides updated addresses for any
25 individual who has moved in the previous four years who has notified the U.S. Postal Service of
26 a forwarding address) to obtain current address information.

27 (3) Within thirty (30) business days after the Settlement Administrator’s
28 receipt of the PAGA List, the Settlement Administrator will mail the Notice of PAGA Resolution

1 together with a settlement payment to all PAGA Group members by first-class United States
2 mail, postage prepaid, with directions to the Postmaster to forward the Notice and return all
3 undeliverable Notices to the Settlement Administrator. For each Notice of PAGA Resolution and
4 settlement payment that is returned as undeliverable, the Settlement Administrator shall promptly
5 attempt to locate the Aggrieved Employee by performing an additional skip trace and shall re-
6 mail the Notice of PAGA Resolution and settlement check no later than ten (10) calendar days
7 following receipt of the undeliverable Notice of PAGA Resolution.

8 (4) The Notice of PAGA Resolution will be provided in English and Spanish.

9 **VIII. COMPUTATION AND DISTRIBUTION OF PAYMENTS**

10 **A. Distribution Formula.**

11 (1) Members of the PAGA Group will receive a lump sum payment in an
12 amount determined by the Settlement Administrator in accordance with the provisions of this
13 Agreement.

14 (2) The lump sum payment to each member of the PAGA Group will be
15 determined by dividing the Net Settlement Amount by the total number of pay periods worked
16 by all members of the PAGA Group during the Settlement Period (the "Pay Period Amount")
17 and then multiplying the Pay Period Amount by the number of pay periods worked by the
18 individual PAGA member.

19 **B. Funding of Resolution.**

20 (1) The funding of the Settlement Amount will be completed at one time with
21 funds provided to and escrowed by the Settlement Administrator. The funds used for the
22 Settlement Amount shall be paid to the Claims Administrator by Defendant within twenty (20)
23 business days of its receipt of a notice of entry of the Court's Approval order.

24 (2) If a PAGA Group member is deceased at the time of distribution, the
25 Settlement Administrator shall distribute the deceased PAGA Group member's Net Settlement
26 Payment to the deceased PAGA Group member's legal heir(s). In the event of a dispute as to
27 the legal heir(s), the Settlement Administrator shall notify the executor of the deceased PAGA
28 Group member's estate and attempt to place the deceased PAGA Group member's payment in

escrow or similar disposition such that any competing heirs may take whatever action they wish to resolve ultimate disposition of such money and the Settlement Administrator and the Parties hereto may disclaim any further interest in or obligation in relation to such money.

(3) If a check is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace search and, if another address is identified, shall mail the check to the newly identified address. If the Settlement Administrator is unable to obtain a valid mailing address through this process, the monies represented by the check shall be turned over according to the below procedures.

(4) Settlement checks will specifically indicate that they are void if not negotiated within one hundred eighty 180 days of their issuance. Any settlement checks that remain uncashed one hundred eighty (180) or more calendar days after issuance by the Settlement Administrator shall be voided. The Settlement Administrator will remit the entire amount of each PAGA Group member's uncashed Individual Settlement Payment to the California State Controller for deposit in the Unclaimed Property Fund in the name of the PAGA Group member to whom the uncashed Individual Settlement Payment was drafted.

C. Time for Distribution of the Enhancement to Named Plaintiffs, Attorneys' Fees, Costs, and LWDA Payment.

The Settlement Administrator shall cause the Court approved enhancement to Named Plaintiffs, attorneys' fees, litigation costs, and LWDA Payment to be paid at the same time and manner as the Settlement Payments to the PAGA Group.

IX. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN

The amounts paid under this Agreement do not represent a modification of any previously credited hours of 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, benefit plans (self-insured or not) sponsored by Defendant, policies or bonus programs. Any payments made under the terms of this Resolution 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 Defendant's benefit plan, policy or bonus program. Defendant retains the right to modify the language of its benefit plans, policies and bonus programs to effect this intent and to make clear that any amounts paid pursuant to this Resolution 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 purpose of eligibility, vesting, benefit accrual or any other purpose, and that additional contributions or benefits are not required by this Resolution.

X. PLAINTIFFS' COUNSEL ATTORNEYS' FEES AND LITIGATION COSTS

Defendant shall not oppose an application by Plaintiffs' Counsel to receive, and Plaintiffs' Counsel shall not seek or receive, an amount in excess of Seventy-Six Thousand Six Hundred Sixty Dollars and Zero Cents (\$76,660.00) which represents 33 1/3% of the Settlement Amount for all past and future attorneys' fees necessary to prosecute, settle, and administer the Litigation and this Resolution. Additionally, Defendant shall not oppose an application by Plaintiffs' Counsel to receive, and Plaintiffs' Counsel shall not seek or receive, an amount in excess of Seven Thousand Nine Hundred Forty-Three Dollars (\$7,943.00), which represents all past and future litigation costs and expenses necessary to prosecute, settle and administer the Litigation and this Resolution. Any attorneys' fees or litigation costs awarded to Plaintiffs' Counsel by the Court shall be deducted from the Settlement Amount for the purpose of determining the Net Settlement Amount. This amount shall include all attorneys' fees and litigation costs and expenses for which Named Plaintiffs and Plaintiffs' Counsel could claim under any legal theory whatsoever. Should the Court approve a lesser percentage or amount of fees and/or litigation costs than the amount that Plaintiffs' Counsel ultimately seeks, then the unapproved portion or portions shall revert to the Net Settlement Amount.

XI. ENHANCEMENT TO NAMED PLAINTIFFS

Defendant shall not oppose an application by Named Plaintiffs to receive, and Named Plaintiffs shall not seek or receive, an amount in excess of Five Thousand Dollars (\$5,000.00) each (Ten Thousand Dollars (\$10,000) total for both Named Plaintiffs) for their participation in and assistance with the Litigation. Any enhancement awarded to Named Plaintiffs by the Court

shall be deducted from the Settlement Amount for the purpose of determining the Net Settlement Amount and shall be reported on IRS Form 1099. If the Court approves an enhancement of less than Five Thousand Dollars (\$5,000.00) each (Ten Thousand Dollars (\$10,000) total for both Named Plaintiffs) to Named Plaintiffs, then the unapproved portion or portions shall revert into the Net Settlement Amount.

XII. TAXATION AND ALLOCATION

A. For withholding tax characterization purposes and payment of taxes, the Net Settlement Amount shall be deemed and is allocated by the Parties as follows ("Net Settlement Allocation"): 100% as penalties.

B. All PAGA Group members who cash their settlement check may receive an IRS Form 1099 for their portion of the settlement, if deemed required by the Settlement Administrator (in compliance with IRS guidelines).

C. Nothing in this Settlement is intended to constitute legal advice regarding federal, state, and/or local tax obligations. The Parties make no representations as to the tax treatment or legal effect of the payments called for hereunder, and Aggrieved Employees are not relying on any statement or representation by the Parties, Plaintiffs' Counsel or Defense Counsel in this regard. Aggrieved Employees understand and agree that they will be responsible for the payment of any employee taxes and penalties assessed on the payment described herein and will hold the Parties, Plaintiffs' Counsel and Defense Counsel free and harmless from and against any claims, liabilities, costs and expenses, including attorney's fees, resulting in any way from personal tax treatment of the payments made pursuant to this Agreement. To the extent that this Settlement or any of its attachments is interpreted to contain or constitute advice regarding any state or federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code. Neither the Parties, Plaintiffs' Counsel nor Defense Counsel are responsible for any Aggrieved Employee's tax obligations regarding the allocation of the settlement payments.

XIII. COURT APPROVAL

This Agreement and the Resolution is contingent upon Approval by the Court. Named

1 Plaintiffs and Defendant agree to take all steps as may be reasonably necessary to secure
2 Approval of the Resolution, to the extent not inconsistent with the terms of this Agreement, and
3 will not take any action adverse to each other in obtaining Court Approval of the Resolution in
4 all respects.

5 **XIV. APPRIASAL AND CERTIFICATION BY THE SETTLEMENT**
6 **ADMINISTRATOR.**

7 The Settlement Administrator shall keep Plaintiffs' Counsel and Defense Counsel
8 apprised of all distributions from the Settlement Amount. Upon completion of administration of
9 the Settlement, the Settlement Administrator shall provide written certification of such
10 completion to Plaintiffs' Counsel and Defense Counsel. The Settlement Administrator shall also
11 provide Defense Counsel with a final accounting, including the names of payees and Net
12 Settlement Payments.

13 **XV. MISCELLANEOUS PROVISIONS**

14 **A. Stay of Litigation.**

15 Named Plaintiffs and Defendant agree to the stay of all discovery in the Litigation,
16 pending Approval of the Resolution by the Court.

17 **B. Interpretation of This Agreement.**

18 (1) This Agreement constitutes the entire agreement between Named
19 Plaintiffs and Defendant. Except as expressly provided herein, this Agreement has not been
20 executed in reliance upon any other written or oral representations or terms, and no such
21 extrinsic oral or written representations or terms shall modify, vary or contradict its terms. In
22 entering into this Agreement, the Parties agree that this Agreement is to be construed according
23 to its terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be
24 interpreted and enforced under the laws of the State of California, both in its procedural and
25 substantive aspects, without regard to its conflict of laws provisions. Any claim arising out of
26 or relating to this Agreement, or the subject matter hereof, will be resolved solely and
27 exclusively in the Superior Court of the State of California for the County of Santa Clara, and
28 Named Plaintiffs and Defendant hereby consent to the personal jurisdiction of the Court over

1 them solely in connection therewith. The foregoing is only limited to disputes concerning this
2 Agreement and in no way limits or negates the enforceability and effect of the underlying
3 arbitration agreements signed by employees of Defendant, specifically including but not limited
4 to Named Plaintiffs, obligating them to arbitrate any and all claims on an individual (and not on
5 a class, collective, or representative) basis.

6 (2) Named Plaintiffs, on their own behalf and on behalf of the PAGA Group,
7 and Defendant participated in the negotiation and drafting of this Agreement and had available
8 to them the advice and assistance of independent counsel. As such, neither Named Plaintiffs nor
9 Defendant may claim that any ambiguity in this Agreement should be construed against the
10 other.

11 (3) The terms and conditions of this Agreement constitute the exclusive and
12 final understanding and expression of all agreements between Named Plaintiffs and Defendant
13 with respect to the Resolution of the Litigation. This Agreement may be modified only by a
14 writing signed by counsel for all Parties or their successors-in-interest.

15 **C. Further Cooperation.**

16 Named Plaintiffs and Defendant and their respective counsel shall proceed diligently to
17 prepare and execute all documents, to seek Approval from the Court, and to do all things
18 reasonably necessary or convenient to consummate this Agreement as expeditiously as possible.

19 **D. Confidentiality of Documents.**

20 Named Plaintiffs, and the Settlement Administrator, shall maintain the confidentiality of
21 all documents, deposition transcripts, declarations and other information obtained in the lawsuit,
22 unless necessary for appeal or if such documents are ordered to be disclosed by the Judge or by
23 a subpoena.

24 **E. Counterparts.**

25 This Agreement may be executed in one or more actual or non-original counterparts, all
26 of which will be considered one and the same instrument and all of which will be considered
27 duplicate originals. This Agreement may be signed electronically or by facsimile, and an
28 electronic or facsimile signature is deemed valid and binding, and triggers all rights and

obligations under this Agreement.

F. Authority.

Each individual signing below warrants that he or she has or they have the authority to execute this Agreement on behalf of the party for whom or which that individual signs.

G. No Third-Party Beneficiaries.

Named Plaintiffs, members of the PAGA Group, the State of California, Defendant and Released Entities are direct beneficiaries of this Agreement, but there are no third-party beneficiaries.

H. Force Majeure.

The failure of any party to perform any of its obligations hereunder shall not subject such party to any liability or remedy for damages, or otherwise, where such failure is occasioned in whole or in part by acts of God, fires, accidents, earthquakes, other natural disasters, explosions, floods, wars, interruptions or delays in transportation, power outages, labor disputes or shortages, shortages of material or supplies, governmental laws, restrictions, rules or regulations, sabotage, terrorist acts, acts or failures to act of any third parties, or any other similar or different circumstances or causes beyond the reasonable control of such party.

I. Deadlines Falling on Weekends or Holidays.

To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday, or legal/court holiday, that deadline shall be continued until the following business day.

J. Severability.

In the event that any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision if Defense Counsel and Plaintiffs' Counsel, on behalf of the Parties and the PAGA Group, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

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K. Defendant's Fees and Costs

All of Defendant's own legal fees, costs and expenses incurred in this Action shall be borne by Defendant.

APPROVED AS TO CONTENT

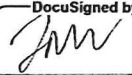
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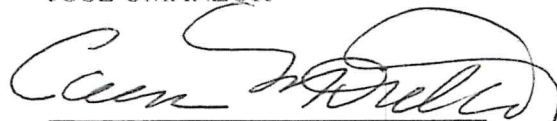
WALTER MANAY

DATE: 4/22/2021, 2021

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JOSE UMANZOR

DATE: 3/26, 2021



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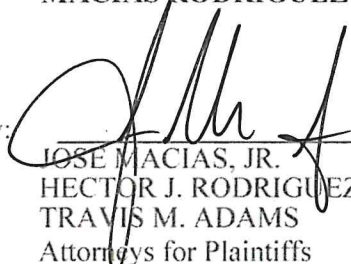
For: MONTALVAN SALES, INC.

APPROVED AS TO FORM

DATE: 4/23, 2021

MACIAS RODRIGUEZ ADAMS LLP

By:


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DATE: March 26, 2021

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