

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is entered into in *Ernest R. Bennick v. Pump, LLC, et al.*, Los Angeles Superior Court Case Number 20STCV29819 (the “Class Action”) by and between plaintiff Ernest R. Bennick (“Plaintiff”), on the one hand; and Defendants PUMP, LLC and Ken Todd (collectively “Defendants”), on the other hand, for the purpose of memorializing their agreement to the principle terms of a settlement of this action. Plaintiff and Defendants shall collectively be referred to herein as the “Parties”.

1. This MOU shall become binding and enforceable upon its execution by Plaintiff, or a designated representative of Plaintiff, and a designated representative for Defendants. The Parties agree that even if no formal settlement document is signed, they intend this MOU to be enforceable by motion under California Code of Civil Procedure section 664.6. Further, the Parties intend this MOU to be enforceable, notwithstanding the confidentiality provisions of California Evidence Code section 1119, *et seq.* (if applicable). The Court shall retain continuing jurisdiction over the MOU and over all Parties and Class Members, to the fullest extent to enforce and effectuate the terms and intent of this MOU (even if no formal settlement document is signed), and to adjudicate any claimed breaches of this MOU. The Court may award reasonable attorneys’ fees and costs to the prevailing party in any motion or action taken and based on an alleged violation of any material term of the MOU.
2. The Parties also intend this MOU to be fully binding and enforceable by the Court upon the motion of any part, and pledge their good faith and fair dealing in providing assent to a final settlement agreement.
3. The settlement class herein consists of all persons currently or formerly employed by Defendants, either directly or through any subsidiary, staffing agency, or professional employer organization, as hourly-paid, non-exempt employees from August 6, 2016 through December 1, 2022 or on the date that the number of Workweeks worked by such non-exempt employees amounts to 14,246, whichever is sooner (“Class Period”), in the State of California (“Class Members”). Workweeks worked shall be defined using hire dates, re-hire dates, and termination dates, as applicable. It shall be an opt-out class.
4. The Parties stipulate to class certification for purposes of settlement only. If the Court does not grant Preliminary and Final Approval of the Class Action Settlement, the parties will not stipulate to Class Certification.
5. The settlement will be on a common fund basis. There will be no claim form or claims process. There will be no reversion to Defendants, or either of them. Class Members will be mailed their share of the settlement funds as long as they have a verifiable mailing address and do not opt out of the settlement.
6. Defendants shall pay upon court approval of the settlement a Gross Fund Value (“GFV”) of \$490,000 in settlement of this matter, including the class and representative allegations made in the Class Action. The GFV herein includes the settlement payments to Class

Members, settlement administration fees and costs, Plaintiff's incentive and/or enhancement, payment to the government of its share under the Labor Code Private Attorneys' General Act of 2004 ("PAGA, codified at Labor Code section 2698, *et seq.*), It shall expressly exclude the employer's share of taxes, which will be paid separate and apart from the GFV.

7. Plaintiff's counsel shall be responsible for drafting a long form settlement agreement. The long form agreement will include the dismissal without prejudice of Lisa Vanderpump as an individual defendant as part of the settlement approval process.
8. Defendants will make payments to the Settlement Administrator chosen by Plaintiff for deposit in an interest-bearing qualified settlement account ("QSF") with an FDIC insured banking institution, for distribution in accordance with this Memorandum of Understanding and the Court's orders and subject to the conditions described herein. Specifically, Defendants shall pay Four Hundred and Ninety Thousand (\$490,000) within fourteen (14) days of final approval. Defendants shall include Defendants' share of taxes owed on the wages portion of the settlement, which shall be determined by the Settlement Administrator chosen by Plaintiff. If the Settlement is not finally approved by the Court despite the Parties' best efforts to achieve final approval, any amounts deposited shall revert back, without interest, to Defendants.
9. Plaintiff will request that the Court approve an award of attorneys' fees in an amount not to exceed 35% of the GFV, as the same may be escalated pursuant to this MOU, actual costs not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00), and an Incentive Award to Plaintiff Ernest R. Bennick of Seven Thousand and Five Hundred Dollars (\$7,500.00) (which is in part due to his participation in the action and for an individual release of claims and a Section 1542 waiver). The Parties also agree that \$40,000 of the GFV will be allocated to the PAGA cause of action, seventy-five percent (75%) of which will be paid to the Labor and Workforce Development Agency ("LWDA") and twenty-five percent (25%) of which will be paid to Class Members working as hourly paid non-exempt employees during the period of August 6, 2019 through end of the Class Period ("PAGA Period") in the State of California ("Aggrieved Employees"). Defendants will not oppose the reasonableness of any of these requests. Any reduction by the Court of these requests will revert to the Class Members who do not opt out.
10. Payment will be made to Class Members based on the number of Workweeks worked by Class Members for Defendants during the Class Period and to Aggrieved Employees based on the number of Workweeks worked by Aggrieved Employees during the PAGA Period. For purposes of payment, Workweeks worked shall be defined using hire dates, re-hire dates, and termination dates, as applicable.
11. The Parties agree that the settlement administrator will administer this settlement, and will issue to Class Members a form W-2 for all amounts paid as wages under this settlement, which shall be 20% of the GFV, making all deductions and withholdings required under law, and a Form 1099 for all amounts paid as penalties and interest, which shall be 80% of the GFV.

12. Defendants will pay the employer's share of payroll taxes as required by law separate and apart from the GFV. Any Incentive Award approved by the Court, as well as payment of PAGA penalties, will result in the issuance of a Form 1099 to Plaintiff as a class representative, who shall assume full responsibility and liability for the payment of taxes due on such award.
13. The Parties agree to an opt-out period of forty-five (45) calendar days for Class Members. Aggrieved Employees cannot opt out of the settlement of the PAGA cause of action.
14. Class Members, except those who opt out, will release all claims, rights, demands, damages, liabilities, and causes of action, in law or in equity, arising at any time during the Class Period for the claims brought by Plaintiff in the Class Action, or that could have been brought by Plaintiffs against Defendants in the Class Action based on the facts alleged therein. As to representative allegations made in Plaintiff's August 6, 2020 LWDA notice letter under PAGA, those are released for civil penalties only for Aggrieved Employees working during the PAGA Period.
15. The Parties, and each of them, waive any and all claims for fees, costs, indemnity or contribution against Plaintiff, any Class Member, Plaintiff's Counsel in the Action, Defendants, or Defendants' Counsel in the Action other than as provided herein.
16. The parties to this MOU pledge their good faith and fair dealing in supporting the approval of this settlement by the Court and shall not encourage or solicit Class Members to opt out or object to the settlement.
17. Neither this MOU, nor the final form of the settlement, shall constitute an admission on behalf of Defendants of any form of liability or the accuracy of any allegation made by Plaintiffs or their counsel. Payment of wages does not extend or alter the Class Member-claimants' period of employment for any purpose.
18. The parties to this MOU agree that it reflects their good faith compromise of the claims raised in this Class Action, based upon the assessment of the mutual risks and costs of further litigation and the assessments of their respective counsel.
19. The parties to this MOU are represented by competent counsel, and they have had an opportunity consult with counsel prior to its execution.

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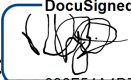
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20. Participating Class Members (*i.e.*, Class Members who do not opt out) and Aggrieved Employees will receive payment checks that shall remain valid and negotiable for one hundred and eighty (180) calendar days after the date of their issuance. Thereafter, checks for such payments shall be canceled and funds associated with such checks shall be considered unpaid, unclaimed or abandoned cash residue pursuant to Code of Civil Procedure section 384 (“Unpaid Residue”). The Unpaid Residue plus accrued interest, if any, as provided in Code of Civil Procedure section 384, shall be transmitted to Legal Aid at Work for use in Los Angeles County. The Settlement Administrator shall prepare a report regarding the distribution plan pursuant to Code of Civil Procedure section 384 and the report shall be presented to the Court by Class Counsel along with a proposed amended judgment that is consistent with the provisions of Code of Civil Procedure section 384.

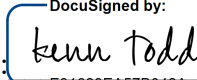
ACCEPTED AND AGREED:

For Plaintiff Ernest R. Bennick

Signature:  DocuSigned by:
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Date: 12/1/20

For Defendant PUMP, LLC

Signature:  DocuSigned by:
E31629EA57B042A...

By: Ken Todd

Its (TITLE): Managing Member

Date: 12/1/20