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11 NORMAN R. LEAL, CAROL R. LEAL, and
12 SHIN TAKESHIMA; and Defendants NORMAN
13 R. LEAL AND CAROL R. LEAL, TRUSTEES
14 OF THE LEAL FAMILY TRUST DATED
15 MARCH 30, 2021

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23 DEBORAH JENSEN

24 SUPERIOR COURT OF THE STATE OF CALIFORNIA
25 COUNTY OF SACRAMENTO

26 DEBORAH JENSEN, an individual,
27 Plaintiff,
28 v.

29 NORMAN R. LEAL, an individual; CAROL
30 R. LEAL, an individual; SHIN TAKESHIMA,
31 an individual; and DOES 1 through 50,
32 inclusive,
33 Defendants.

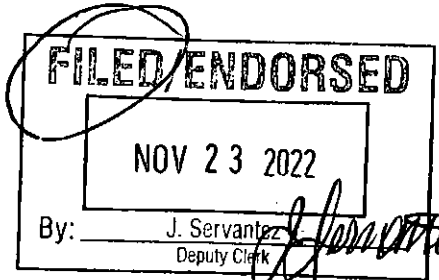
34 AND RELATED CROSS-ACTIONS

Case No. 34-2020-00285215

35 **STIPULATION OF SETTLEMENT**
36 **UNDER PRIVATE ATTORNEYS**
37 **GENERAL ACT OF 2004; [PROPOSED]**
38 **ORDER**

Action Filed: September 11, 2020
Trial Date: July 17, 2023

BY FAX



1 The Parties hereto, Plaintiff DEBORAH JENSEN ("Jensen") as a proxy for the Labor and
 2 Workforce Development Agency ("LWDA"), and Defendants NORMAN R. LEAL, CAROL R.
 3 LEAL, SHIN TAKESHIMA and NORMAN R. LEAL and CAROL R. LEAL, TRUSTEES OF
 4 THE LEAL FAMILY TRUST DATED MARCH 30, 2021 (collectively, "Defendants"), by and
 5 through their respective counsel of record, hereby stipulate and agree as follows:

6 1. Defendants own a small apartment complex on Sutterville Road in Sacramento,
 7 California. Defendant Norman Leal is 81-years old and a retired quality assurance manager. His
 8 wife, Defendant Carol Leal, is 79 years-old and a retired office clerk, and his friend, Defendant
 9 Shin Takeshima, is 59 years-old and a retired engineer. Although Defendants co-own a small
 10 apartment complex on Sutterville Road and six other properties in the Greater Sacramento area,
 11 none of them own or run any property management companies or other businesses.

12 2. Defendants retained Jensen's property management services in 2015. Defendants
 13 expected Jensen to show their Sutterville property's vacant apartments to prospective tenants and
 14 collect rent from its current tenants. In exchange, Jensen received reduced rent for an apartment
 15 on the property. In prior years, Defendants had entered similar services agreements with residents
 16 at their other properties without any issues, problems, or complaints. All of these residents were
 17 paid for their services through a reduction in their rent, and Defendants classified all of these
 18 residents as independent contractors.

19 3. In or about June of 2020, Jensen's services were terminated. On or about
 20 September 8, 2020, Jensen filed her Complaint in this action alleging she was misclassified as an
 21 independent contractor and owed unpaid wages.

22 4. On or about September 30, 2020, Jensen's attorney sent a letter to the LWDA
 23 alleging violations of the Private Attorneys General Act ("PAGA"). On or about December 9,
 24 2020, Jensen filed an Amended Complaint asserting an additional claim under PAGA to represent
 25 other allegedly "aggrieved employees." Her PAGA claim alleges Defendants misclassified other
 26 residents as independent contractors and therefore owes them unpaid wages also. Jensen refers to
 27 these allegedly "aggrieved employees" as "resident managers" (hereinafter, the "Managers").
 28

1 5. Defendants timely denied all of Jensen's allegations, legally and factually. Since
2 this action was filed in 2020, the Parties have conducted significant discovery and engaged in
3 extensive law and motion practice. As of the date of this Stipulation, there are 10 Managers who
4 Jensen represents under PAGA, including herself. These Managers provided services to
5 Defendants during the PAGA period of September 8, 2019 to the present (the "PAGA Period").
6 While Jensen asserts all of the Managers are "aggrieved employees," Defendants assert all of the
7 Managers were properly classified as independent contractors and therefore are not owed any
8 unpaid wages. Further, Defendants assert that all 10 Managers were compensated for their
9 services through significant reductions in their monthly rent.

10 6. In April 2021, Jensen filed a motion for summary adjudication asking the Court to
11 declare she was Defendants' employee rather than an independent contractor. The Court denied
12 her motion. The Court held several "factual disputes preclude summary adjudication."

13 7. On August 25, 2022, the Parties participated in an all-day mediation with the
14 Honorable Richard Kramer, who is presently a full-time neutral with Judicial Arbitration and
15 Mediation Services, and who previously presided over the Complex Litigation Department of the
16 San Francisco Superior Court for thirteen years.

17 8. At the mediation, the Parties were represented by their counsel of record, who
18 combined have over thirty years of experience litigating wage-and-hour and PAGA lawsuits.

19 9. At the mediation, the Parties reached an agreement on settlement terms regarding
20 Jensen's PAGA claim with substantial assistance from the Honorable Richard Kramer. Jensen's
21 individual claims shall be resolved by way of a separate settlement agreement. However, approval
22 by the Sacramento Superior Court of this Stipulation is a condition precedent to the Parties'
23 agreement to settle Jensen's individual claims against Defendants.

24 10. Labor Code section 2699(l) requires that the Court review and approve any
25 proposed settlement agreement pursuant to PAGA.

26 11. During the Parties' all-day mediation, Jensen and her counsel carefully
27 concluded—after taking into account the sharply disputed factual and legal issues involved in the
28 action, the risks attending further prosecution, and the discovery and investigation conducted to

1 date—that settling on the terms set forth herein is in the best interest of all interested parties,
 2 including the LWDA, and that the settlement adequately serves the purposes of PAGA. Although
 3 Jensen initially sought over \$400,000.00 in PAGA penalties on behalf of the 10 Managers, Jensen
 4 and her counsel recognized the Court has significant discretion to reduce the assessed amount of
 5 PAGA penalties if to do otherwise would result in an award that is unjust, arbitrary and
 6 oppressive, or confiscatory. (See Lab. Code § 2699(e)(2).) Jensen and her counsel further
 7 recognize it remains unresolved whether Jensen was Defendants’ employee because the Court
 8 denied her motion for summary adjudication on this issue. If Jensen was found to be an
 9 independent contractor at trial, there would be no recovery of PAGA penalties whatsoever in this
 10 case.

11 12. During the Parties’ all-day mediation, Defendants and their counsel also carefully
 12 concluded there were benefits associated with settling. Although Defendants deny and dispute all
 13 of Jensen’s factual allegations and legal assertions, Defendants took into account the sharply
 14 disputed factual and legal issues involved in the action, the risk attending further defense, the
 15 expense, time, and burden of protracted litigation and potential appeal following judgment, and the
 16 desire to put the controversy to rest. Avoiding protracted litigation was exceptionally important to
 17 Defendants due to Defendant Norman Leal’s ongoing recovery from a severe stroke he suffered in
 18 2021. Based on these factors, Defendants and their counsel agreed to this settlement without any
 19 admission of fault or liability.

20 13. “PAGA does not require the trial court to act as a fiduciary for aggrieved
 21 employees.” (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.) However, a PAGA
 22 settlement must still be “fair and reasonable.” (*Id.* at 76.) The requirement of court approval
 23 serves to “prevent fraud, collusion [and] unfairness” and to protect the interests of the public and
 24 the LWDA. (*Ibid.*) The court therefore assesses the adequacy of the settlement terms based on
 25 the record before it, including the amount in controversy and the realistic range of outcomes.
 26 (*Ibid.*) When determining the fairness and reasonability of a PAGA settlement, the following
 27 factors are “useful” to consider: “the strength of the plaintiff’s case, the risk, the stage of the
 28 proceeding, the complexity and likely duration of further litigation, and the settlement amount.”

1 (*Id.* at 77.) As further detailed below, all of these factors show the parties' settlement is fair,
2 reasonable, and adequate.

3 14. Although Jensen initially believed she had a strong case and that her employment
4 status could be resolved through summary adjudication, the Court disagreed, and Defendants
5 assert that Jensen faced a substantial risk at trial that she would be held an independent contractor
6 rather than an employee. During discovery, Defendants obtained detailed deposition testimony
7 and documentary evidence supporting their position that Jensen was an independent contractor.
8 At her deposition, Jensen testified she used her own "discretion" and "judgment" to perform her
9 services at Defendants' property. Jensen further testified "they left the property in [her] hands"
10 because Defendants lived in the Bay Area. Additionally, Defendants never owned or operated any
11 property management companies or other businesses. Because Jensen repeatedly informed
12 Defendants she had extensive property management experience, they relied on Jensen to
13 autonomously and independently manage their property. Defendants assert this evidence strongly
14 supported their claim that Jensen was an independent contractor under Labor Code § 2775(b)(1)'s
15 ABC test and under *S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48
16 Cal.3d 341's totality-of-circumstances test. Although Jensen vigorously asserted she was
17 Defendants' employee, this key issue would not be resolved until trial given the denial of her
18 motion for summary adjudication.

19 15. This case settled after nearly two years of litigation. Both Jensen and Defendants
20 conducted substantial discovery, and both sides engaged in extensive law and motion practice.
21 Because the Parties had nearly two years to evaluate the strengths and weaknesses of their case,
22 they were able to make informed decisions regarding settlement at mediation.

23 16. Settling this case now greatly benefits the Parties and the Managers that Jensen
24 represents because this case involves several factual and legal complexities and uncertainties,
25 including which independent contractor test applies to Jensen and each of the Managers. When
26 Jensen filed her motion for summary adjudication, the Court declined to decide whether Labor
27 Code § 2775(b)(1) or the *S.G. Borello & Sons, Inc.* independent contractor test governed her
28 claims. If this case did not settle at mediation, both Parties recognized there would be further

1 litigation for nearly a year, including the depositions of several third party witnesses, as well as a
2 lengthy trial in July 2023. After trial, several novel legal issues would be appealable, further
3 delaying full and final resolution of the case.

4 17. The Parties submit that the total PAGA settlement of \$15,000.00 (detailed below)
5 is reasonable, fair, and adequate, especially since Jensen alleges she is owed only \$21,125.00 in
6 unpaid wages and there are only 10 Managers who she represents under PAGA. As discussed
7 above, Jensen faced a significant risk that she would be found an independent contractor at trial
8 and therefore no PAGA penalties would be awarded in this case. An award of PAGA penalties
9 cannot be unjust, arbitrary and oppressive, or confiscatory. (See Lab. Code § 2699(e)(2).) The
10 PAGA settlement of \$15,000.00 is consistent with this requirement. This settlement amount is
11 also fair, reasonable, and adequate because it will be allocated equally among all 10 Managers as
12 further detailed in Section 27 below.

13 18. Nothing in this Stipulation, nor any action taken in implementation thereof, nor any
14 statements, discussions or communications, nor any materials prepared, exchanged, issued, or
15 used during the course of the negotiations leading to this Stipulation, is intended by the Parties to
16 constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible in any
17 way in this case or any judicial, arbitral, administrative, investigative, or other forum or
18 proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance,
19 regulation, rule, or executive order, or any obligation or duty at law or in equity, against
20 Defendants and the Released Parties (defined in Section 20 below).

21 19. The Parties hereby agree to settle Jensen's PAGA claim on behalf of all Managers
22 ("the PAGA Settlement") for a total payment of \$15,000.00 in exchange for dismissal of Jensen's
23 PAGA claim with prejudice. All 10 Managers during the PAGA Period are covered by this
24 PAGA Settlement.

25 20. The Released Parties pursuant to this Stipulation are Defendants and all of their
26 predecessors, successors, beneficiaries, representatives, partners, shareholders, officers, directors,
27 employees, independent contractors, assigns, parents, affiliates, subsidiaries, companies, insurers,
28 members, agents, brokers, spouses, children, relatives, trustees, and attorneys (collectively, the

1 “Released Parties”).

2 21. Upon the Court’s Approval of this Stipulation, the LWDA and each of the
3 Managers, including Jensen, hereby voluntarily and knowingly release and forever discharge any
4 and all PAGA claims against the Released Parties that could have been premised or predicated on
5 any claims, causes of action, or legal theories of relief described or pleaded in the operative
6 complaint filed in this action and the written notice of any such claims submitted to the LWDA by
7 Jensen, arising from September 8, 2019 through the date of the Court’s order.

8 22. The distribution of individual settlement payment checks pursuant to this
9 Stipulation shall not constitute consideration offered or exchanged for the release of any private
10 rights of action.

11 23. This Stipulation shall not operate as a waiver of any of Jensen’s individual (i.e.,
12 non-PAGA) claims, which are to be resolved by a separate agreement. However, approval by the
13 Sacramento Superior Court of this Stipulation is a condition precedent to the Parties’ agreement to
14 settle Plaintiff’s individual claims against Defendants.

15 24. The PAGA Settlement shall be administered by Simpluris (“Administrator”).

16 25. Administrator has verified that, as a condition of appointment, it agrees to be bound
17 by this Stipulation and to perform, as a fiduciary, all duties specified in this Stipulation in
18 exchange for payment of the Administration Expenses Payment, as defined below. The Parties
19 and their counsel represent that they have no interest or relationship, financial or otherwise, with
20 the Administrator other than a professional relationship arising out of prior experiences
21 administering settlements.

22 26. “Administration Expenses Payment” means the total amount of \$4,000.00 that the
23 Administrator will be paid by Defendants for Administrator’s reasonable fees and expenses.

24 27. The PAGA Settlement sum of \$15,000.00 (the “Gross Settlement Amount”) shall
25 be allocated as follows:

- 26 a. \$3,750.00 or 25 percent (25%) of the Gross Settlement Amount will be distributed
27 by Administrator to Jensen and the other nine Managers who provided services to
28 Defendants during the PAGA Period. Each Manager will receive one tenth (1/10th)

1 of the \$3,750.00 amount. Administrator will send all of the Managers their portion
2 of the settlement by mail to their last known address. Settlement checks issued
3 pursuant to this Stipulation shall expire 180 days from the date they are issued.
4 Any unclaimed funds after the 180 days shall be remitted to the LWDA.

5 b. \$11,250.00 or 75 percent (75%) of the Gross Settlement Amount shall be paid to
6 the LWDA in accordance with Section 2699(i) of the Labor Code.

7 28. In no event shall Defendants pay more than \$15,000.00 pursuant to this Stipulation
8 for full and final dismissal of Jensen's PAGA claim.

9 29. On the condition that the Court approves this Stipulation and enters the
10 attached Order, the Gross Settlement Amount will be paid as follows:

- 11 a. Defendants shall fully fund the Gross Settlement Amount by transmitting the
12 funds to the Administrator no later than fifteen (15) days after entry of the
13 Court's Order.
- 14 b. Within ten (10) calendar days after receipt of the Gross Settlement Amount,
15 Administrator shall issue all payments of the Gross Settlement Amount
16 consistent with the terms specified in Section 27 above.
- 17 c. All individual settlement payments shall be sent by U.S. First Class mail. It
18 will be conclusively presumed that a check was received if the payment check
19 has not been returned within thirty (30) days of the original mailing of the
20 payment check.
- 21 d. Settlement checks shall remain valid for one hundred eighty (180) calendar
22 days from the date of their issuance. If there are uncashed checks following
23 this period, Administrator will ensure that uncashed funds shall be forwarded to
24 the LWDA in the name of the Manager who did not cash his or her individual
25 settlement payment, if practicable.
- 26 e. The settlement payments set forth above will be reported on IRS Form 1099s.
27 The Parties acknowledge and agree that all settlement payments set forth under
28 this Stipulation are attributable as penalties. None are attributable as wages.

Accordingly, the Parties acknowledge and agree that Defendants are not responsible for any employer-side taxes in connection with any PAGA settlement payments under this Stipulation, and Jensen and all other Managers shall be solely responsible for the reporting and payment of their share of any federal, state, and/or municipal taxes on payments made pursuant to this Stipulation. No party has made any representation to any of the other Parties as to the taxability of any payments pursuant to this Stipulation or otherwise as to the tax implications of any provision of this Stipulation.

30. The Parties jointly request that the Court approve the penalties sought as part of this Stipulation and PAGA Settlement and approve the dismissal of Jensen's PAGA claim with prejudice.

31. This Stipulation is made for the sole purpose of settling this action. This Stipulation and the settlement it evidences are made in compromise of disputed claims. Because this case was pleaded as a PAGA action, this Stipulation must receive approval by the Court. Accordingly, the Parties enter into this Stipulation and associated settlement on a conditional basis.

32. If the Court does not enter an order granting approval of this Stipulation, this Stipulation shall be deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and the negotiation, terms and entry of the Stipulation shall remain subject to the provisions of California Evidence Code sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable.

33. All Parties shall bear their own costs and attorneys' fees relating to the filing, prosecution, defense, litigation, settlement, and dismissal of Jensen's PAGA claim.

34. The Parties jointly agree and request that the Court maintain jurisdiction over the Parties to enforce this Stipulation and PAGA Settlement pursuant to Code of Civil Procedure section 664.6. The Parties further agree and request that to the extent the Court enters an order granting approval of this Stipulation, the Court shall also maintain jurisdiction over the Parties to

DOWNEY BRAND LLP

1 enforce the separate settlement agreement of Jensen's individual claims against Defendants.

2 **IT IS SO STIPULATED.**

3 DATED: November 21, 2022

DOWNEY BRAND LLP

5 By: 

6 CASSANDRA M. FERRANNINI
ALEXANDRA K. LAFOUNTAIN

7 Attorneys for Defendants/Cross-Complainants
8 NORMAN R. LEAL, CAROL R. LEAL, and
9 SHIN TAKESHIMA; and Defendants NORMAN
10 R. LEAL AND CAROL R. LEAL, TRUSTEES
OF THE LEAL FAMILY TRUST DATED
MARCH 30, 2021

12 DATED: _____

LAW OFFICE OF KENNETH F. MOSS

14 By: _____

15 KENNETH F. MOSS
16 Attorney for Plaintiff
DEBORAH JENSEN

DOWNEY BRAND LLP

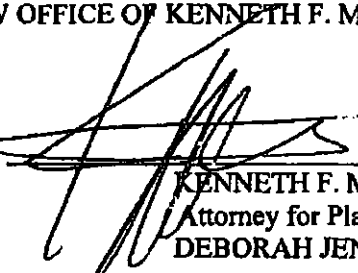
1 enforce the separate settlement agreement of Jensen's individual claims against Defendants.

2 IT IS SO STIPULATED.

3 DATED: _____ DOWNEY BRAND LLP

4
5 By: _____
6 CASSANDRA M. FERRANNINI
7 ALEXANDRA K. LAFOUNTAIN
8 Attorneys for Defendants/Cross-Complainants
9 NORMAN R. LEAL, CAROL R. LEAL, and
10 SHIN TAKESHIMA; and Defendants NORMAN
11 R. LEAL AND CAROL R. LEAL, TRUSTEES
12 OF THE LEAL FAMILY TRUST DATED
13 MARCH 30, 2021

14 DATED: 4/20/22 LAW OFFICE OF KENNETH F. MOSS

15 By: 
16 KENNETH F. MOSS
17 Attorney for Plaintiff
18 DEBORAH JENSEN

28

1 PROPOSED ORDER

2 Upon review of the foregoing Stipulation of Settlement Under Private Attorneys General
3 Act of 2004 (the "PAGA Settlement"), the Court finds that the PAGA Settlement is fair,
4 reasonable, and adequate.

5 IT IS HEREBY ORDERED that the Parties' PAGA Settlement is approved in its entirety
6 pursuant to Labor Code section 2699(1)(2). The Parties shall effectuate the PAGA Settlement
7 according to the terms set forth therein.

8 IT IS FURTHER ORDERED that the PAGA Settlement is not an admission of any fault,
9 wrongdoing, or liability by Defendants or by any other Released Parties, nor is this Order a
10 finding of the validity of any allegations or of any wrongdoing by Defendants or any of the other
11 Released Parties. Neither this Order nor the PAGA Settlement, nor any action taken to carry out
12 the PAGA Settlement, may be construed as, or may be used as, an admission of any fault,
13 wrongdoing, omission, concession, or liability whatsoever by or against Defendants or any of the
14 Released Parties.

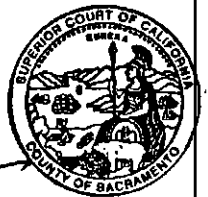
15 IT IS FURTHER ORDERED that the PAGA claim in this action is hereby dismissed with
16 prejudice. All Parties shall bear their own costs and attorneys' fees relating to the filing,
17 prosecution, defense, litigation, settlement, and dismissal of the PAGA claim in this action.

18 IT IS FURTHER ORDERED that the Court shall maintain jurisdiction over the Parties
19 pursuant to Code of Civil Procedure section 664.6 to enforce the terms of this PAGA Settlement
20 and the separate settlement agreement of Jensen's individual claims against Defendants.

21 IT IS SO ORDERED, ADJUDGED, AND DECREED.

22
23 DATED: 11/23/2022

24
25 
26 JUDGE OF THE SUPERIOR COURT
27 STEVEN M. GEVERCER
28



PROOF OF SERVICE

**Deborah Jensen v. Norman R. Leal, et al.
Case No. 34-2020-00285215**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Sacramento, State of California. My business address is 621 Capitol Mall, 18th Floor, Sacramento, CA 95814.

On November 21, 2022, I served true copies of the following document(s) described as **STIPULATION OF SETTLEMENT UNDER PRIVATE ATTORNEYS GENERAL ACT OF 2004; [PROPOSED] ORDER** on the interested parties in this action as follows:

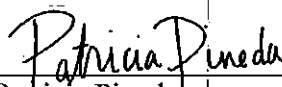
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Attorneys for Plaintiff
DEBORAH JENSEN

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Downey Brand LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 21, 2022, at Sacramento, California.



Patricia Pineda