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Attorneys for Plaintiffs Maria Acosta-Mendoza and Jacob Sanchez, on behalf of themselves and all
“aggrieved employees” pursuant to Labor Code § 2698 *et seq.*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

MARIA ACOSTA-MENDOZA, on behalf of
herself and all “aggrieved employees”
pursuant to Labor Code § 2698 *et seq.*,

Plaintiffs,

v.

MAS MANAGEMENT SERVICES, LLC,
an Arizona limited liability company, and
DOES 1 through 10, inclusive,

CASE NO: 34-2020-00290305

Assigned to Hon. Jill H. Talley, Dept. 27

**DECLARATION OF DANIEL F. GAINES
IN SUPPORT OF REQUEST FOR
DISMISSAL OF CLASS AND
REPRESENTATIVE ACTION**

[Filed Concurrently: Request for Dismissal]

Complaint Filed: December 9, 2020

FAC Filed: July 16, 2021

SAC Filed: July 24, 2023

1 I, Daniel F. Gaines, declare as follows:

2 1. I am an attorney duly admitted to practice law in the State of California and I am a
3 managing shareholder at Gaines & Gaines, APLC, counsel of record for Plaintiffs Maria Acosta-
4 Mendoza and Jacob Sanchez ("Plaintiffs") in this matter. The matters set forth herein are of my own
5 personal knowledge, and if sworn as a witness, I could and would testify competently thereto.

6 2. On December 9, 2020 Plaintiff Maria Acosta-Mendoza ("Plaintiff Mendoza") filed her
7 Complaint against Defendant Mas Management Services, LLC ("Defendant"), on behalf of herself
8 and Defendant's current and former non-exempt California employees. Plaintiff Mendoza asserted a
9 single cause of action under PAGA, alleging a variety of Labor Code violations stemming from
10 Defendant's alleged failure to properly compute commission wages and other non-base hourly wages
11 earned by its employees into their regular rate of pay, provide meal and rest periods, or premium
12 compensation in lieu thereof, issue wage statements that were fully and accurately itemized,
13 reimburse for necessary business expenses incurred, timely pay all wages due at the separation of
14 employment.

15 3. On April 28, 2021, after Defendant did not file a responsive pleading within the
16 timeframes as authorized by the California Code of Civil Procedure, Plaintiff Mendoza requested
17 entry of default of Defendant, which was denied on or about June 16, 2021.

18 4. On July 16, 2021, Plaintiff Mendoza filed a First Amended Complaint which added
19 Plaintiff Jacob Sanchez ("Plaintiff Sanchez") as an additional plaintiff.

20 5. Thereafter, Defendant again did not file a responsive pleading within the timeframes
21 as authorized by the California Code of Civil Procedure, and Plaintiffs requested entry of default of
22 Defendant, which was entered on or about January 19, 2022.

23 6. On or about March 10, 2022, the Parties filed a Joint Stipulation and [Proposed] Order
24 to Vacate Default Against Defendant MAS Management Services, LLC. It was entered on or about
25 April 7, 2022 and Defendant filed its Answer to Plaintiffs' FAC on or about May 6, 2022.

26 7. On or about July 21, 2023, the Court granted Plaintiffs' motion for leave to file a
27 second amended complaint and on July 24, 2023, Plaintiffs filed their Second Amended Complaint
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1 which added direct class claims for the various violations of the Labor Code alleged in the First
2 Amended Complaint.

3 8. After a review of Defendant's financial condition and conversations with Defendant's
4 Counsel, I have determined that Defendant does not have the financial ability to defend and pay for a
5 Class and PAGA-wide settlement as Defendant has ceased its operations. Furthermore, liability is
6 disputed. This determination is based on information provided by Defendant in this matter and an
7 independent investigation by my office.

8 9. The Parties have negotiated a settlement of Plaintiffs' individual claims only, and the
9 Class and PAGA claims will be dismissed without prejudice. A true and correct copy of the Settlement
10 is attached hereto as **Exhibit A**.

11 10. The settlement of this Action does not provide for any consideration to any putative
12 class member in the Action nor does it provide for the waiver, settlement, or release of any class
13 claims asserted on behalf of any putative class member in the Action other than Plaintiffs. Further,
14 the settlement does not contemplate the waiver of any claims by anyone other than Plaintiffs and does
15 not provide for the waiver of PAGA claims asserted on behalf of any employee or the State, such that
16 there is no allocation of civil penalties in the Settlement.

17 11. No notice is required to be given to the putative class because no notice of the pending
18 Action was ever given; there has been no publicity of which the Parties are aware; neither Plaintiffs
19 nor my office have communicated with any absent class members about the Action; there is no other
20 pending action, of which the Parties are aware, brought by a member of the putative class or including
21 an overlapping putative class; and the putative class is not reasonably ascertainable at the present
22 time; consequently, no absent putative class member will suffer prejudice as a result of this dismissal.

23 12. Plaintiffs, therefore, request that the Court enter a dismissal of this action *with*
24 *prejudice* as to Plaintiffs' individual claims and dismissal *without prejudice* of the class and
25 representative action claims, pursuant to the request submitted concurrently herewith.

26 13. Concurrent with the filing of this Request for Dismissal, the Parties have submitted
27 the Settlement Agreement to the LWDA in compliance with Labor Code section 2699(1)(2).

28 ///

1 I declare under penalty of perjury under the laws of the State of California that the foregoing
2 is true and correct and was executed on August 28, 2023 at Westlake Village, California.

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4 *Daniel F. Gaines*
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6 DANIEL F. GAINES
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EXHIBIT A

CONFIDENTIAL SETTLEMENT AGREEMENT
AND GENERAL RELEASE OF CLAIMS

This Confidential Settlement Agreement and General Release of Claims ("Agreement") is made and entered into by and between the undersigned parties (the "Parties"), Maria Acosta-Mendoza and Jacob Sanchez (collectively "Plaintiffs") on the one hand, and Mas Management Services, LLC, its past and present owners, members, managers, principals, partners, affiliates, subsidiaries, divisions, predecessors, successors, assigns, insurers, employees, attorneys, officers, directors, agents, affiliates and representatives (collectively "Company"), on the other.

RECITALS

WHEREAS Plaintiffs are former employees of the Company; and

WHEREAS Plaintiffs, via their attorney have filed a claim with the Labor & Workforce Development Agency (LWDA), Case No. LWDA-CM-807112-20, where they have asserted various claims under the California Labor Code for damages deriving from their employment with the Company; and

WHEREAS Plaintiffs subsequently filed an Action in the Sacramento County Superior Court for the State of California, Case No. 34-2020-00290305, in which they allege class and representative PAGA claims against the Company ("Action");

WHEREAS the Company denies any wrongdoing on its part, and specifically denies any liability deriving from the claims asserted against it by Plaintiffs; and

WHEREAS the Parties now wish to resolve their differences without incurring the uncertainty and cost of litigation proceedings;

NOW THEREFORE in consideration of the foregoing recitals, the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties do hereby agree as follows:

AGREEMENT

1. Recitals. The foregoing recitals are true and correct and form a material part of this Agreement, and may be used as competent and relevant evidence in the interpretation and/or enforcement of any part of this Agreement.
2. Settlement Payment. In consideration for Plaintiffs' execution of this Confidential Settlement Agreement and General Release of Claims, and for their compliance with the

promises made herein, Company agrees to and shall, within fourteen (14) calendar days following the execution of this Agreement by Plaintiffs, and subject to the prior provision by each of them and Gaines & Gaines, APLC of an IRS Form W-9, issue payment in the total gross sum amount of **\$65,000.00** ("Settlement Sum"), payable as follows:

- a. A check payable to **Jacob Sanchez** in the amount of **\$8,091.37**.
 - b. A check payable to **Maria Acosta-Mendoza** in the amount of **\$13,975.99**.
 - c. A check payable to **Gaines & Gaines, APLC** in the amount of **\$42,932.64**.
 - d. Each check will be mailed to Gaines & Gaines, APLC, at 4550 E. Thousand Oaks Blvd., Suite 100, Westlake Village, CA 91362.
 - e. The foregoing payments will be reported on IRS Form 1099s, with no withholdings or deductions. They shall compensate the Plaintiffs in full for any and all claims which each has asserted or could have asserted against Company, including without limitation any claim to reimbursement of attorneys' fees incurred by either Plaintiff if they had filed and then prevailed in a lawsuit against Company.
 - f. In this event the Court refuses to dismiss the Action as contemplated in Paragraph 10 below, this Agreement shall become null and void and Plaintiffs shall return the Settlement Sum to the Company within ten (10) days of the Court's refusal to dismiss the Action.
3. Responsibility for Tax Obligations. Plaintiffs understand and agree that each of them is solely responsible for all tax obligations, including all reporting and payment obligations that may arise as a consequence of this Agreement and payment of the settlement amount recited above. Plaintiffs agree to indemnify and hold harmless Company and any person or entity affiliated with Company, from any tax liability or penalties that may arise from this payment. Plaintiffs further acknowledge and agree that neither Company nor any of its representatives or attorneys has made any promise, representation, or warranty, express or implied, regarding the tax consequences of any consideration paid to Plaintiffs pursuant to this Agreement. Plaintiffs further acknowledge and agree that Company has no obligation to indemnify or defend him in any tax proceedings or from any tax consequences that could result from payment made in accordance with this agreement.
4. Entire Compensation. Plaintiffs agree that the payment set forth in Paragraph 2, above, shall constitute the entire consideration due to each of them in full and complete

satisfaction of any and all claims, demands, and/or causes of action each of them has or may have against Company, and that Plaintiffs will not seek any further compensation for any other claimed damages, costs, or attorneys' fees in connection with the matters encompassed in this Agreement. Plaintiffs acknowledge and agree that each of them would not be entitled to receive the payment recited herein if each of them did not make and comply with the promises each of them is making in this Agreement.

5. General Release. Subject to Company's payment of the Settlement Sum, Plaintiffs knowingly and voluntarily release and forever discharge Company of and from any and all claims or causes of action, known and unknown ("Claims"), that Plaintiffs have or may have against Company as of the date of their execution of this Agreement and General Release. By signing this Agreement, Plaintiffs knowingly and voluntarily release all Claims, including, but not limited to, any alleged violation of:

- Title VII of the Civil Rights Act of 1964, as amended;
- The Civil Rights Act of 1991;
- Sections 1981 through 1988 of Title 42 of the United States Code, as amended;
- The Employee Retirement Income Security Act of 1974, as amended (except for any vested benefits under any tax qualified benefit plan);
- The Immigration Reform and Control Act, as amended;
- The Americans with Disabilities Act of 1990, as amended;
- The Federal Family Medical Leave Act, as amended;
- The California Business and Professions Code
- The Occupational Safety and Health Act, as amended, and the California Occupational Safety and Health Act, as amended;
- The California Fair Employment and Housing Act, as amended;
- The California Family Rights Act, as amended;
- Any other federal, California state or local civil, employment, or human rights law or any other local, state, or federal law, regulation or ordinance;
- Any public policy, contract, tort, or common law; or
- Any allegation for costs, fees, or other expenses including attorneys' fees incurred in these matters.

Nothing herein is intended to or shall preclude Plaintiffs from filing a complaint or charge with any appropriate federal, state, or local government agency, or from cooperating with said agency in any investigation. However, because Plaintiffs have entered into this Confidential Settlement Agreement and General Release of Claims, Plaintiffs acknowledge and agree that each of them shall not be entitled to receive any relief,

recovery, or monies in connection with any complaint or charge brought against Company, without regard as to who brought such complaint or charge.

6. Waiver of Civil Code Section 1542. In order to effect a full and complete release of claims as described above, Plaintiffs expressly waive and relinquish all rights and benefits afforded them by California Civil Code section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH 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.

Plaintiffs affirm and warrant that each of them has consulted counsel or has had the opportunity to consult counsel about this Agreement and specifically about the waiver of Section 1542, and that each of them understands this Agreement and this Section 1542 waiver. Plaintiffs acknowledge that each of them may later discover facts different from or in addition to those facts each of them now knows or believes to be true regarding the matters released or described in this Agreement and, even so, Plaintiffs agree that the releases and agreements contained in this Agreement shall remain effective in all respects notwithstanding any later discovery of any different or additional facts. Notwithstanding the foregoing, this release does not apply to enforcement of the terms of this Agreement.

7. Guarantee of No Further Action. Plaintiffs affirm that they have not filed, caused to be filed, nor are presently a party to a claim, complaint, or action against Company in any forum or form, other than the Action and the LWDA claim addresses in the Recitals above. In the event that any claim, complaint, or action is later found to have been initiated contrary to this provision, Plaintiffs expressly understand and affirm that any such claim, complaint, or action shall be deemed void *ab initio* by operation of this Agreement.
8. Guarantee of Non-Cooperation. Plaintiffs agree that each of them will not cause or encourage any private lawsuits to be maintained or instituted against Company, nor will either of them assist any individual in the preparation or filing of, or otherwise participate in any manner in any such private legal proceedings against Company, except where required to do so by law.

9. Confidentiality. Except as may be necessary to enforce the provisions of this Agreement and to the full extent permitted by law, Plaintiffs expressly agree to maintain the terms and conditions of this Agreement, and the facts, claims asserted, filings, and settlement discussions related to their dispute with Company, including without limitation the fact that there was a settlement and the Settlement Amount, in the strictest confidence. Plaintiffs may disclose the terms and conditions of this Agreement, including the Settlement Amount, only to their legal counsel, accountant or financial advisor, and spouse or domestic partner, all on the further condition that Plaintiffs advise such individuals in advance of disclosure that the terms and conditions of this Agreement are strictly confidential. Plaintiffs understand and agree that this paragraph and its confidentiality requirements constitute an essential and material component of this Agreement, and Company would not enter into this Agreement without Plaintiffs' promise to maintain it in confidence. Nothing in this agreement prevents Plaintiffs from discussing or disclosing information about unlawful acts in the workplace, such as harassment, discrimination or any other conduct that Plaintiffs believe are unlawful. Plaintiffs shall submit this Agreement to the Court in connection with their request to dismiss the Action.
10. Dismissal of the Action. No later than ten (10) calendar days after the Company pays the Settlement Sum, Plaintiffs shall dismiss the Action, with prejudice as to their individual claims and without prejudice as to all class and PAGA representative claims alleged therein. Plaintiffs shall submit this Agreement to the Court and the LWDA in connection with the dismissal.
11. Mutual Non-Disparagement. Plaintiffs warrant and covenant that each of them will not disparage Company's products, services, agents, representatives, owners, shareholders, attorneys, employees, vendors, affiliates, associates, successors, or assigns, or any person acting by, through, under, or in concert with any of them, with any written or oral statement, including without limitation statements or postings made via social media. Company's agents and employees having knowledge of this confidential Agreement likewise agree, warrant and covenant that they will make no disparaging comments regarding Plaintiffs. Nothing in this paragraph shall prohibit Plaintiffs from providing truthful information in response to a subpoena or other legal process. Plaintiffs understand and agrees that this paragraph and its non-disparagement requirements constitute an essential and material

component of this Agreement, and Company would not enter into this Agreement without a guarantee against disparagement by Plaintiffs.

12. Liquidated Damages. Plaintiffs acknowledge and agree that it would be extremely difficult and impractical to determine the actual damage and cost to Company that would result from Plaintiffs' violation of the covenants of Non-Cooperation, Confidentiality, or Non-Disparagement as set forth in paragraphs 8, 9, and 11 of this Agreement, above. The Parties accordingly agree that, in each and every instance where any of the above named Plaintiffs breach paragraphs 8, 9, and 11 of this Agreement, the breaching Plaintiffs shall pay to Company the sum of \$1,000.00 (One Thousand and 00/100 Dollars) as liquidated damages. The Parties each agree that this is a reasonable present estimate of the likely harm that would result from a breach by Plaintiffs of paragraphs 8, 9 or 11 herein. Nothing contained herein shall limit the right of the Company to seek and obtain injunctive or other equitable relief to enforce the provisions of 8, 9, and/or 10 of this Agreement, in addition to liquidated damages as provided in this paragraph.
13. Compromise / No Liability Admission. This Agreement and the general releases contained herein are the result of a compromise and negotiated settlement of disputed claims. Nothing contained herein shall be construed as an admission of misconduct by Company, nor of any liability whatsoever to Plaintiffs.
14. Retention of Jurisdiction / Enforcement / Attorneys' Fees. The Court shall retain jurisdiction to enforce this Agreement pursuant to Code of Civil Procedure section 664.6 and as otherwise allowed by law. In the event of any future litigation brought by a Party in order to enforce any component of this Agreement, the prevailing Party shall be entitled to recovery of their reasonable costs, including without limitation attorneys' fees, incurred by that Party in bringing or defending against such litigation.
15. Entire Agreement. This Agreement constitutes the entire agreement between the Parties herein. This Agreement may not be altered, amended, or modified except in a writing signed by both Parties herein, or by their duly authorized representative.
16. Ambiguities / Voluntary Agreement. Plaintiffs acknowledge that, in signing this Agreement, each of them has had an opportunity to seek and obtain independent legal advice from an attorney of their choosing, with respect to the advisability of executing this Agreement. Each Party knows and understands the content of this Agreement and signs the

same as their own free act. This Agreement is the product of negotiation and preparation by and among the Parties and/or their respective attorneys. Accordingly, this Agreement shall not be deemed prepared or drafted by one party or another, or their attorneys, and it will be construed accordingly. The rule of law to the effect that ambiguities in any agreement shall be construed against the drafting party shall not apply to the construction or interpretation of this Agreement.

17. Governing Law. This Agreement shall be governed by, construed in, and enforced in accordance with the laws of the State of California, without regard to conflict of law provisions.
18. Severability. If any provision of this Agreement is later determined to be invalid or unenforceable, the remaining provisions of this Agreement shall nevertheless be construed, performed, and enforced as if the invalid or unenforceable provision had not been included in the text of this Agreement.
19. Time is of the Essence. Time is of the essence with respect to all provisions of this Agreement.
20. Counterparts. This Agreement may be executed in counterpart. An original signature transmitted by facsimile, email, or electronic signature technology, may be used to expedite the execution of this Agreement pursuant to California Civil Code Section 1633.7. Such signatures shall be deemed originals.
21. Attorneys' Fees and Costs. Each Party shall bear their own attorneys' fees and costs incurred through and including the execution of this Agreement, except as provided for in paragraph 14 herein.
22. Authority. The Parties each represent and warrant that they have full power, authority, and capacity to execute this Agreement and to perform the obligations incurred hereunder.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned do hereby execute this Confidential Settlement Agreement and Release of Claims.

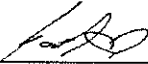
for MAS MANAGEMENT, LLC
SERVICES

Signature

Printed Name

Date

JACOB SANCHEZ



Signature

08 / 08 / 2023

Date

MARIA ACOSTA-MENDOZA

Signature

Date

IN WITNESS WHEREOF, the undersigned do hereby execute this Confidential Settlement Agreement and Release of Claims.

for MAS MANAGEMENT, LLC
SERVICES

JACOB SANCHEZ

Signature

Signature

Printed Name

Date

Date

MARIA ACOSTA-MENDOZA

Maria Acosta Mendoza

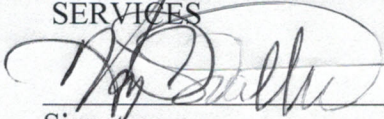
Signature

08 / 09 / 2023

Date

IN WITNESS WHEREOF, the undersigned do hereby execute this Confidential Settlement Agreement and Release of Claims.

for MAS MANAGEMENT, LLC
SERVICES


Signature

Harry Watters member LLC
Printed Name

10/11/2023
Date

JACOB SANCHEZ

Signature

Date

MARIA ACOSTA-MENDOZA

Signature

Date

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(For messenger) my business address is:

Ryan L. Eddings, Esq.
reddings@littler.com
Alejandra Gallegos, Esq.
agallegos@littler.com
LITTLER MENDELSON, P.C.
5200 North Palm Avenue, Suite 302
Fresno, CA 93704
Cc: Laura Aispuro
LAispuro@littler.com

____ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or other facility regularly maintained by the express service carrier or delivered the sealed envelope to an authorized carrier or driver authorized by the express carrier to receive documents.

X (UPLOADED TO LWDA WEB PORTAL) I caused the above-described documents to be delivered to the Labor & Workforce Development Agency via online process at the PAGA Filing website (www.dir.ca.gov) in accordance with the procedure imposed by the LWDA.

I certify that the above document was printed on recycled paper.

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

Executed on August 28, 2023, at Westlake Village, California.

Katherine Soriano
KATHERINE SORIANO