

PRIVATE ATTORNEY GENERAL ACT (LABOR CODE SECTION 2698 ET SEQ.)
SETTLEMENT AGREEMENT AND RELEASE

Trevor Wipf, et al. v. ASI Hastings, Inc.
(San Diego County Superior Court, Case Number 37-2020-00043643-CU-OE-CTL)

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned Parties, subject to the approval of the Court, that the settlement of this action shall be effectuated upon and subject to the following terms and conditions. Capitalized terms used herein shall have the meanings set forth in Article I or elsewhere in this Private Attorney General Act (Labor Code section 2698 *et seq.*) ("PAGA") Settlement Agreement and Release ("Agreement").

This Agreement is made by and between named representative Plaintiffs Trevor Wipf, Robert Peters, and Richard Simmons ("Plaintiffs"), for themselves and in their capacity as representatives of the State of California on behalf of other aggrieved employees, and Defendant ASI Hastings, Inc. ("Defendant"). This Agreement shall be effective upon the last date upon which it is signed by the Parties.

The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and fully concluded by this Agreement, which is intended to effect and complete a full resolution and compromised settlement of this matter.

Article I.

Definitions.

Section 1.01 **Definitions.**

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

- i. "Action" shall mean the civil action entitled *Trevor Wipf, et al. v. ASI Hastings, Inc.*, filed in the Superior Court for the County of San Diego on or about November 30, 2020, designated as Case No. 37-2020-00043643-CU-OE-CTL.
- ii. "Agreement," or "Settlement Agreement," means this Private Attorney General Act (Labor Code section 2698 *et seq.*) Settlement Agreement and Limited Release.
- iii. "Aggrieved Employees" means all of Defendant's current and former non-exempt employees employed in California between September 7, 2019 and March 8, 2021.
- iv. "Complaint" means Plaintiffs' Complaint filed in San Diego Superior Court on November 30, 2020, which is the operative Complaint.
- v. "Court" means the Superior Court for the State of California, County of San Diego.
- vi. "Defendant" means ASI Hastings, Inc.

vii. "Defense Counsel" or "Counsel for Defendant" is:

Michael J. O'Connor, Jr.
Sarkis A. Atoyan, Esq.
Atkinson, Andelson, Loya, Ruud & Romo
210 S. Lake Ave.
Pasadena, CA 91101

- viii. "Effective Date" refers to the date upon which the following have occurred: (a) approval of the Settlement is granted by the Superior Court of California for the County of San Diego, or other court assuming jurisdiction of this matter; (b) the Court's Judgment approving the Settlement becomes Final; and (c) the date of the time for filing or noticing any appeal of the Judgment has expired. If there is an appeal of the Court's Judgment, the date the Judgment is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for writ of certiorari to the California Supreme Court shall be the date the Settlement is Final. If there is an intervener, but no appeal is filed, the expiration date of the time for filing or noticing any appeal of the Judgment shall be the date the Settlement is Final. If there is no intervener in the Action, the date the Court enters an order approving this Settlement shall be the date the Settlement is Final. For purposes of this Agreement, "becomes final and is no longer appealable" shall mean the later of: (a) the day after the last date by which a notice of appeal to the applicable Court of Appeal of the order and judgment approving this Agreement may be timely filed and none is filed (*i.e.*, 60 days from notice of entry of judgment); (b) if an appeal is filed, and the appeal is finally disposed of by ruling, dismissal, denial, or in any other manner that confirms the validity of the order and judgment, the day after the last date for filing a request for further review of the order and judgment approving this Agreement passes, and no further review is requested; or (c) if an appeal is filed and the order approving this Agreement is affirmed and further review of the order is requested, the day after the review is finally resolved and the order and judgment approving this Agreement is affirmed.
- ix. "Fee Amount" is the amount in fees Plaintiffs' Counsel is free to request that the Court award them up to one-third (1/3) of the PAGA Settlement Amount, per Section 3.01 as compensation for their attorneys' fees.
- x. "Cost Amount" is the total amount of litigation costs incurred by Plaintiffs' counsel in connection with the Action, including filing fees, mediation expenses and fees, travel and hotel costs, etc., up to a maximum of \$15,000, which shall be paid from the PAGA settlement amount as reimbursement of litigation costs.
- xi. "Individual PAGA Payment" is the amount in Labor Code Section 2699 penalties to be paid to Aggrieved Employees, which will be 25% of the Net PAGA Payment (as defined below in Section 1.01(xiv)), unless the Court determines otherwise.
- xii. "LWDA" refers to the California Labor & Workforce Development Agency.

- xiii. "LWDA Payment" is the amount in Labor Code Section 2699 penalties to be paid to the LWDA, which will be 75% of the Net PAGA Payment (as defined below in Section 1.01(xiv)), unless the Court determines otherwise.
- xiv. "Net PAGA Payment" means the amount remaining from the Settlement Sum after the deduction of the Settlement Administration Fee, Plaintiffs' Counsel's Fee Amount and Plaintiffs' Counsels' Cost Amount.
- xv. "Notice of PAGA Settlement" means the Notice of PAGA Settlement (attached hereto as Exhibit A) the Settlement Administrator shall mail, along with each Individual PAGA Payment, to all Aggrieved Employees by first-class United States mail, postage prepaid, to the last known address of each Aggrieved Employee with directions to the Postmaster to forward the Notice and return all undeliverable Notices to the Settlement Administrator.
- xvi. "PAGA" refers to the Labor Code Private Attorneys General Act of 2004, California Labor Code Sections 2698 *et seq.*
- xvii. "PAGA Period" means the time period from September 7, 2019 through March 8, 2021.
- xviii. "Parties" refers to Plaintiffs, Aggrieved Employees, and Defendant.
- xix. "Pay Period" means each bimonthly period in which Aggrieved Employees received wages during their employment at Defendant's, during the PAGA Period.
- xx. "Plaintiffs" refer to Trevor Wipf, Robert Peters, and Richard Simmons, individually and in their capacity as representatives of the State of California on behalf of other aggrieved employees.

xxi. "Plaintiffs' Counsel" are as follows:

Norman B. Blumenthal
Nicholas De Blouw
BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
2255 Calle Clara
La Jolla, CA 92037

Shani O. Zakay
ZAKAY LAW GROUP APLC
3990 Old Town Ave. Suite C204
San Diego, CA 92110

- xxii. "Released Claims" means any and all claims for civil penalties under PAGA, of whatever kind or nature, whether known or unknown, arising during the PAGA Period, based on the facts alleged in the operative complaint, as well as Plaintiffs' notice letters to the LWDA, and any resulting claim for attorneys' fees and costs under PAGA, which occurred during the PAGA Period. The release shall also exclude claims for wrongful termination,

discrimination, unemployment insurance, disability, workers' compensations, and claims outside of the PAGA Period. In no event shall the Released PAGA Claims in this Agreement release any class claims or release any individual claims.

- xxiii. "Released Parties" means Defendant and all of its owners, officers, directors, principals, operators, managers, employees, agents, representatives, subsidiaries, parents, affiliates, predecessors, successors, joint venturers, co-owners, co-employers, joint employers, clients, payroll providers, benefits providers, attorneys, insurers, and reinsurers (collectively the Released Parties, each of which shall be deemed intended third party beneficiaries therein).
- xxiv. "Settlement Administrator" means a third-party administrator the Parties will jointly select, and that the Court approves, to administer the notice and payments called for in this Agreement. The Settlement Administrator shall be selected by the parties based on the bid most agreeable to all parties after considering bids from ILYM, and/or Simpluris.
- xxv. "Settlement Administration Fee" means costs incurred by the Settlement Administrator in connection with the current Agreement, whether foreseen or not, which are anticipated not to exceed \$3,500.
- xxvi. "Settlement Sum" means the total of One Hundred and Eighty Five Thousand Dollars And Zero Cents (\$185,000.00) Defendant has agreed to pay pursuant to Section 3.01, below.
- xxvii. "Individual Settlement Payments" means the payment by Defendant to Plaintiffs in accordance the separate individual settlement agreements entered into between the Parties and attached hereto as Exhibit B, Exhibit C, and Exhibit D."

Article II.

Background.

- (a) On September 3, 2020, Plaintiff Trevor Wipf gave written notice to the Labor and Workforce Development Agency ("LWDA") of his intent to assert a claim under the Private Attorneys General Act of 2004 ("PAGA") and his alleged basis for the claim. More than 65 days passed after the letter was sent to the LWDA, and the LWDA has not indicated that it intends to investigate the alleged violations referenced in the letters.
- (b) On November 30, 2020, Plaintiff Wipf filed the Action, a class action complaint against Defendant in the Superior Court of San Diego County, Case No. 37-2020-00043643-CU-OE-CTL, alleging a sole cause of action for Violations of the Private Attorneys General Act Pursuant to Labor Code Section 2698, *et seq.*
- (c) On March 8, 2021, the Parties engaged in mediation with reputable jurist and wage and hour mediator Hon. William C. Pate (Ret). At the conclusion of the full-day mediation,

the Parties reached an agreement for settlement. The Parties' agreement was memorialized in a Memorandum of Understanding, which this Agreement now replaces.

- (d) Counsel for all Parties have thoroughly investigated the facts relating to the claims alleged in the operative complaint and have made a thorough study of the legal principles applicable to the claims asserted against Defendant. Based on their investigation and evaluation of the case, Plaintiffs' Counsel has concluded that the settlement is fair, reasonable, and adequate in light of all known facts and circumstances, including the defenses asserted by Defendant, potential adverse findings regarding liability, and numerous potential appellate issues.
- (e) This Agreement contemplates the (a) entry of an order by the Court approving the payment allocated for settlement of the Settlement Sum provided herein; (b) an order entering PAGA Judgment in the Action; and (c) all Parties bearing their respective fees and costs except as expressly provided in this Agreement. These terms are material provisions of this Agreement.

Defendant denies, and continues to deny, each and every claim and contention alleged in the Action, and has always maintained that it never engaged in any unlawful acts regarding any of the matters alleged in the Action.

Article III.

Non-Admission of Liability

Section 3.01 Based on the factual and legal issues involved, the expense and time necessary to prosecute the Action through trial, the risks, uncertainty and costs of further prosecution, the difficulty of proof necessary to establish manageability for purposes of liability, and the relative benefits to the Aggrieved Employees of an expeditious resolution to the Action, the Parties have concluded that the terms set forth in this Settlement are fair, reasonable, adequate and in the best interests of the Aggrieved Employees.

Section 3.02 By entering into this Settlement, Defendant denies any liability for any of the claims in the Action, as well as any other potential or unknown claims based on wage and hour violations under state or federal law. Neither this Settlement, nor any document referred to or contemplated herein, nor any action taken to carry out this Settlement, is, may be construed as, or may be used as, an admission, concession, or indication by or against Defendant of any unlawful conduct, fault, wrongdoing or liability whatsoever. Defendant specifically denies that it has engaged in any unlawful or wrongful conduct Plaintiffs or the Aggrieved Employees.

Article IV.

Terms of Agreement.

Section 4.01 Settlement Sum.

Defendant agrees to pay **One Hundred and Eighty Five Thousand Dollars And Zero Cents (\$185,000.00)** as a full, complete and final settlement of the Action. This sum includes the following: (i) any payment to the LWDA; (ii) any payment to Aggrieved Employees; (iii) the payment of fees and costs to Plaintiffs' counsel, as approved by the Court; and (v) all fees, costs, and expenses of administration of this Agreement. This sum excludes the Individual Settlement Payments to Plaintiffs.

Section 4.02 Non-Monetary Relief.

Intentionally Omitted.

Section 4.03 Fee Amount.

Plaintiffs' Counsel will apply to the Court for an award of attorneys' fees not to exceed 1/3 of the Settlement Sum (i.e. Sixty-One Thousand Six-Hundred and Sixty Dollars and Fifty Cents (\$61,660.50), and Plaintiffs' Counsel will also seek reimbursement of reasonable litigation costs not to exceed \$15,000 (attorneys' fees and reasonable litigation costs are referred to as "Plaintiffs' Counsel Payment"). Defendant will not oppose or object to Plaintiffs' Counsel's application for Plaintiffs' Counsel Payment. In the event that the Court does not approve an award of attorneys' fees equal to the requested amount, or the Court alters the payment methodology described herein, Plaintiffs' Counsel agrees not to seek additional review of the Court's decision regarding attorneys' fees, and this Settlement will be enforceable. Any reduction in this payment by the Court is not grounds to void this Agreement and any funds requested but not awarded as attorneys' fees or trust will be distributed to the State and eligible employees pursuant to the distribution terms of the Agreement or any terms imposed by the Court. Plaintiffs' Counsel Payment shall be allocated between Plaintiffs' Counsel as follows: Blumenthal Nordrehaug Bhowmik De Blouw LLP's share will be 40%, and Zakay Law Group ALPC's share will be 60%.

Section 4.04 Settlement Administration Fees and Costs.

Settlement administration shall be done by a qualified, third-party Settlement Administrator. The parties agree that this Settlement Administrative Fee shall be paid from the Settlement Sum. The Settlement Administrative Fee includes all fees and costs for postage, envelopes, and computer searches to locate addresses; and expenses of the Settlement Administrator to implement and complete the settlement process according to the terms of this Settlement, to calculate payments to individual Aggrieved Employees, and cost associated with the escheatment process or an any uncashed or undeliverable settlement checks, to prepare any necessary tax documents for Aggrieved Employees, and any other related fees and costs. Any reductions by the Court or any unused amount shall revert to the Net PAGA Payment.

The Settlement Administrator shall establish a Qualified Settlement Fund pursuant to Section 468B(g) of the Internal Revenue Code for purposes of administering the Settlement. The Settlement Administrator

Section 4.05 PAGA Payment - Allocation.

The Net PAGA Payment shall represent Labor Code Section 2699 penalties, of which 75% of the payment will be paid to the LWDA as the LWDA Payment and 25% will be paid to Aggrieved Employees as Individual PAGA Payments, unless the Court determines otherwise. A reallocation of the settlement funds amongst PAGA claims directed by the Court shall not be a basis for either side to void the agreement. Aggrieved Employees will be issued Form 1099 for their share of the PAGA payments. The Individual PAGA Payment for each Aggrieved Employee shall be based on the number of bimonthly payroll periods each Aggrieved Employees worked during the PAGA Period as a percentage of the total pay periods worked by all Aggrieved Employees during the PAGA Period.

Article V.

Approval and Implementation of Agreement.

Section 5.01 Cooperation.

The Parties will cooperate in obtaining through an unopposed motion, an Order from the Court approving the terms of this Agreement at the earliest possible date. The Parties agree to use their best efforts to expedite the preparation and submission of the Agreement documents. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents reasonably necessary to be prepared or filed in order to obtain approval of this Agreement.

Section 5.02 Court Approval.

The Parties will seek to obtain the Court's approval of this Agreement by way of a motion to be filed by Plaintiffs' counsel. Defendant shall provide a declaration under penalty of perjury as to the number of Aggrieved Employees and pay periods worked by the Aggrieved Employees prior to the filing of the motion for PAGA approval. Defendant provided an estimate to Plaintiffs of 198 Aggrieved Employees who worked an aggregate of 5,174 pay periods during the PAGA Period. The Settlement Sum will increase proportionally with added pay periods if the declaration states that the actual number of pay periods during the PAGA Period is more than 10% (i.e. more than 5,692 pay periods) of the estimate provided by Defendant at the mediation. In the event this provision is triggered, the Settlement Sum will automatically increase accordingly, the Plaintiff's Counsel Fee Amount requested will increase proportionally, the Administration costs will increase as necessary, and all such changes will be incorporated into the Notice mailed to the Aggrieved Employees without the need for further/additional approval of the Court. The Court's approval of this Agreement shall be embodied in a written Order. Should the Court not grant approval of terms set forth in Section 3.01 of this Agreement, then the entirety of this Agreement shall be null and void.

After approval is granted, Defendant shall pay Plaintiffs the Individual Settlement Payments in accordance the separate individual settlement agreement entered into between the Parties and attached hereto as Exhibit B, Exhibit C, and Exhibit D.

Section 5.03 Notice to Aggrieved Employees.

(a) Notice.

Notice shall be provided to the Aggrieved Employees in the following manner:

- (1) No later than Fifteen (15) days after Effective Date, Defendant shall provide the Settlement Administrator with a list of all Aggrieved Employees ("Aggrieved Employees List"). The Aggrieved Employees List shall state the first name and last name in separate columns for each Aggrieved Employee, the last known home address for each such Aggrieved Employee, each Aggrieved Employee's social security number, and each Aggrieved Employee's respective number of Pay Periods employed by Defendant in California during the PAGA Period. The contact information is being provided confidentially to the Settlement Administrator only, and the Settlement Administrator shall treat the information as private and confidential and take all necessary precautions to maintain the confidentiality of contact information of the Aggrieved Employees. This information is to be used only to carry out the Settlement Administrator's duties and specified in this Settlement.
- (2) The Settlement Administrator shall conduct one National Change of Address ("NCOA") search for all Aggrieved Employees identified on the Aggrieved Employees List. No later than ten (10) business days after its receipt of the information described in Section 5.03(a)(1), above, the Settlement Administrator shall mail the Notice of PAGA Settlement (attached hereto as Exhibit A) and the First Payment as defined below in Section 5.04(b) to all Aggrieved Employees by first-class United States mail, postage prepaid, to the last known address of each Aggrieved Employee with directions to the Postmaster to forward the Notice and Individual PAGA Payment and return all undeliverable Notices and Individual PAGA Payments to the Settlement Administrator. For each Notice and Individual PAGA Payment that is returned as undeliverable, the Settlement Administrator shall promptly attempt to locate the Aggrieved Employee by using an address refresher database. No later than ten (10) business days after its receipts of the Second Payment as defined below in Section 5.04(b), Settlement Administrator shall mail the Second Payment in the same manner it mailed the First Payment, but without mailing the Notice of PAGA Settlement again.
- (3) All costs incurred by the Settlement Administrator in connection with the current settlement, whether foreseen or not, shall be paid out of the Settlement Sum.

Section 5.04 Settlement Payment And Administration Procedures.

(a) Settlement Sum

The Settlement Administrator shall establish a Qualified Settlement Fund pursuant to Section 468B(g) of the Internal Revenue Code for purposes of administering the Settlement. The Settlement Administrator shall furnish the Qualified Settlement Fund with its own Employer ID number and calculate all settlement checks and withholdings required under the law based on the information that will be confidentially furnished by Defendant. There are no payroll deductions to be calculated under this Settlement, since no part of the Settlement will be classified as wages.

(b) Payment of Aggrieved Employee Payment.

For purposes of distributing each Individual PAGA Payment, all distribution payments will be made according to the number of Pay Periods each Aggrieved Employee was employed by Defendant in California during the PAGA Period (partial Pay Periods will be counted as full Pay Periods), with each Aggrieved Employee being entitled to a share of the Net PAGA Payment allocated to the Aggrieved Employees based upon the Aggrieved Employee's number of Pay Periods employed with Defendant during the specified period as a numerator and the total number of Pay Periods all Aggrieved Employees were employed with Defendant in California during the PAGA Period as the denominator. Defendant's records shall be determinative for purposes of calculating the number of Pay Periods worked and any payments to Aggrieved Employees.

The Individual PAGA Payments are considered penalties and will not be subject to local, state or federal tax withholdings. All Aggrieved Employees who cash their settlement check will receive an IRS Form 1099 from the Settlement Administrator reflecting this portion of the settlement.

The settlement checks issued to Aggrieved Employees shall remain valid for one hundred eighty (180) days ("Void Date"). If any Aggrieved Employee does not cash his or her settlement payment check(s) before the Void Date, the Settlement Administrator will send the amount represented by the check to the California State Controller Unclaimed Property, with the identity of the Aggrieved Employee to whom the funds belong, to be held for Aggrieved Employee per California Unclaimed Property Law, in the interest of justice. The money paid to the California State Controller Unclaimed Property will remain the Aggrieved Employee's property. This will allow the Aggrieved Employee who did not cash their checks to collect their settlement check at any time in the future. Therefore, there will be no unpaid residue or unclaimed or abandoned funds, and the California Code of Civil Procedure section 384 shall not apply. The funds will be held by the State until claimed by the Aggrieved Employee and the uncashed check will never cease to be the Aggrieved Employee's property.

(c) Payment Schedule

Defendant shall pay the full Settlement Amount within ten (10) calendar days of the Effective Date. Payment shall be distributed by the Settlement Administrator at the time the Notice of PAGA Settlement is mailed in accordance with Section 5.03(a). The Settlement Administrator will send the Individual Payment to the PAGA Aggrieved Employees by postmarked First Class U.S. Mail. Payments to the PAGA Aggrieved Employees, the LWDA, Plaintiffs, and Plaintiffs' counsel shall be made by the Settlement Administrator within twenty-one (21) business days of Defendant's funding of the Settlement Sum as described in this section.

(d) Uncashed Checks

To provide the best notice and delivery of Individual Payments practicable, any Individual Payment returned to the Settlement Administrator as non-delivered shall be sent by postmarked First Class U.S. Mail to the forwarding address affixed thereto, if any. If no forwarding address is provided for an Individual Payment that is returned as non-deliverable, the Settlement Administrator shall use the best available technology accessible (i.e. skip tracing, address verification, etc.) to the Settlement Administrator or other mutually agreeable method to locate Aggrieved Employees and will then mail the Individual Payment to the address identified by the best available technology accessible to the Settlement Administrator or other mutually agreeable method. If no current address is located, the Individual Payment for that individual will be deemed undeliverable. If any Aggrieved Employee cannot be located within two attempts at mailings by the Settlement Administrator, the Individual Payment for that individual will be deemed undeliverable.

The Settlement Administrator shall maintain a list of the postmark date for the original mailing of the Individual Payment to the Aggrieved Employees, and a list of Aggrieved Employees who did not receive the Individual Payment due to the inability to locate a valid address using the procedures described herein or who otherwise could not be located within two attempts at mailing.

All settlement checks will remain valid and negotiable for 180 days from the date of their mailing by the Settlement Administrator. After 180 days from the date of their mailing by the Settlement Administrator, any uncashed checks shall be sent to the California State Controller Unclaimed Property per Section 5.04(b).

No later than January 31 of the year following payment of their individual portion of the Settlement Sum, the Settlement Administrator will prepare and issue IRS Form 1099 to Aggrieved Employees who receive a payment.

Section 5.05 LWDA Notice.

Pursuant to California Labor Code section 2699(l), Plaintiffs will provide a copy of this Agreement to the LWDA concurrently with the filing of the motion for settlement approval. Plaintiffs will also file a declaration in support of their Motion for Settlement Approval confirming that they have submitted the Agreement to the LWDA in compliance with Labor Code section 2699(l). In addition, Plaintiffs shall submit to the LWDA a copy of the Court's judgment and order approving the Agreement within ten (10) days after entry of the judgment or order.

Section 5.06 Submission of Judgment.

Upon payment of the entire Settlement Sum by Defendant and distribution of the Settlement Sum by the Settlement Administrator in accordance with this Agreement, Plaintiffs and Defendant will jointly submit a Notice of Satisfaction of Judgment.

Article VI.

Limitations On Use Of This Agreement.

Section 6.01 No Admission.

This Agreement and compliance with this Agreement shall not be construed as an admission by Defendant of any liability whatsoever, or as admission by Defendant of any violations of Plaintiffs' rights, violation of any order, law, statute, duty or contract whatsoever. Defendant specifically disclaims any liability to Plaintiffs or any other allegedly Aggrieved Employee for any alleged violation of his/her rights, or for any alleged violation of any order, law, statute, duty or contract. This Agreement, and the terms herein, shall not be used or introduced for any purpose other than by a Party to enforce the terms contained herein, as necessary to seek approval of the Parties' PAGA Settlement with the Court, or by a Party to effectuate the terms of this Agreement as an affirmative defense or bar, in whole or in part, to any other or future claim(s), actions, charges, or disputes. The Parties further agree and understand that each party to this Agreement shall bear their own respective attorneys' fees, costs, expenses related to the Action, unless otherwise specified herein. Further, with regard to any action by a Party to enforce or interpret the terms of this Agreement, the prevailing Party in any such action shall be entitled to recover its reasonable and actual attorney's fees and costs.

Section 6.02 Nullification.

- (a) If the Court should for any reason fail to approve this Agreement, then (a) this Agreement shall be considered null and void, (b) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect, and (c) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court.
- (b) Invalidation of any material portion of this Agreement shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect. Material terms of this Agreement include: the definition of Aggrieved Employees (Section 1.01(iv)); the definition of Effective Date (Section 1.01(viii)); the definition of PAGA Period (Section 1.01(xiv)); the definition of Released Claims (Section 1.01(xviii)); the definition of Released Parties (Section 1.01(xix)); the definition of Settlement Sum (Section 1.01(xxii)); the requirement for entry of an order by the Court approving this Agreement and entering PAGA Judgment as contemplated in Article II(g). The following terms are not material to this Agreement: the allocation of Fee Amount (Sections 1.01(ix) and 3.03); the amount of the Settlement Administration Fee (Section 1.01(xxi)); the allocation within the Net PAGA payment (Section 3.04).

Article VII.

Section 7.01 Release and Wavier of Claims. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge the the Released Claims as defined hereinabove in Paragraph Section 1.01(xxii). Upon entry of the Order and Final Judgment approving payment of PAGA penalties as described in this Agreement, and upon funding of the

Gross Settlement Amount by Defendant, Plaintiffs and the State of California shall be bound by this Agreement and shall have recourse exclusively to the benefits, rights, and remedies provided hereunder. Plaintiffs and the State of California shall be deemed to have, and by operation of the Order and Final Judgment granting approval of this Agreement, shall have fully, finally, and forever released, relinquished, and discharged each and all of the Released Parties from the Released Claims that arose during the PAGA Period. As a result of this release, Aggrieved Employees will be unable to bring a claim under, or recover in any other claim brought under, the California Private Attorneys General Act, California Labor Code § 2698 *et seq.*, for any violations of the Released Claims that took place during the PAGA Period.

Section 7.01 **Tax Treatment and Tax Indemnification.** Aggrieved Employees will assume any tax obligations or consequences which may arise from this Settlement. Aggrieved Employees release any and all claims that they have or may have against Defendant for any claims, demands, deficiencies, levies, assessments, executions, judgments, penalties, taxes, indemnification, and any other recoveries related to any payments made under this Settlement Agreement or any compensation provided at any time by Defendant or any of the Released Parties. If any state or federal taxing authority contacts, investigates, or pursues any action against any Aggrieved Employees for their individual share of taxes related to any payments made under this Settlement, each Aggrieved Employees shall be responsible for their own defense of and payment for any claim of unpaid taxes, interest, or penalties brought by any state or federal taxing authority for the PAGA Settlement Member's share of any state or federal tax obligation. If a PAGA Settlement Member has questions about any liability to any state or federal taxing authority, they shall contact the Settlement Administrator. The Aggrieved Employees shall not contact Defendant, any of the Released Parties, or Defense Counsel.

Article VIII.

Miscellaneous Provisions.

Section 8.01 **Voluntariness.**

This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any of the Parties, or of any other person, firm or other entity.

Section 8.02 **Parties' Authority.**

The signatories hereto represent that they are fully authorized to enter into this Settlement.

Section 8.03 **Amendments.**

The terms and provisions of this Agreement may be amended only by a written agreement that is both (a) signed by Plaintiffs, Plaintiffs' Counsel, Defendant and Defense Counsel who executed this Agreement and (b) approved by the Court. Any waiver of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement unless expressly so indicated otherwise.

Section 8.04 Assignment.

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Aggrieved Employee, Plaintiffs' Counsel, or Defense Counsel without the express written consent of each other Party and their respective counsel hereto. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement, and shall not be construed to confer any right or to avail any remedy to any other person. Plaintiffs expressly warrant that they have not transferred to any person or entity any right or cause of action, or claim released by this Agreement.

Section 8.05 Governing Law.

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California, and shall in all cases be interpreted in accordance with the plain meaning of its terms and not strictly for or against any of the Parties hereto.

Section 8.06 Entire Agreement.

This Agreement, including the Exhibits referred to herein, which form an integral part hereof, contains the entire understanding of the Parties hereto in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings among the Parties hereto with respect to the settlement of the Action.

Section 8.07 Joint Drafting Of Settlement Documents.

Plaintiffs' Counsel and Defense Counsel have arrived at this Settlement as a result of a series of arm's-length negotiations, taking into account all relevant factors, present and potential. The Settlement Agreement has been drafted jointly by Plaintiffs' Counsel and Defense Counsel; therefore, in any construction or interpretation of this Settlement Agreement, the same shall not be construed against any of the Parties.

Section 8.08 No Press Release Or Publicity Regarding The Terms Of The Settlement.

Plaintiffs and Plaintiffs' Counsel, as well as Defendant and Defense Counsel, agree that they will not issue any media or press release, initiate any contact with the media or the press, respond to any media or press inquiry, or have any communications with the media or the press about the fact, amount, or terms of this Settlement Agreement. Plaintiffs and Plaintiffs' Counsel shall not advertise or publicize or refer to the fact or amount of the Settlement, on their websites, social media, any other marketing materials, or legal publication. Plaintiffs and Plaintiffs' Counsel will not state on their websites, social media, any marketing materials, or legal publications that Defendant engaged in any act contrary to California law, or denied payment owed to individuals, whether classified as independent contractors or employees, or otherwise disparage Defendant, or otherwise identify Defendant. Defendant shall be allowed to report the Settlement or results of this lawsuit if required to do so by public disclosure regulatory requirements or with respect to any financial or other disclosures which in their judgment are necessary. Nothing in this paragraph

shall limit Plaintiffs' Counsel's ability to discuss the terms of the Settlement with Aggrieved Employees.

Section 8.09 Representations and Warranties

Plaintiffs and their counsel represent and warrant that neither have informed nor will inform any persons not a Party to this Agreement of the terms or existence of this Agreement except as specifically authorized in Section 1.01(xx) above. Plaintiffs' counsel further agrees that they are not currently representing any other parties adverse to the Defendant and will not solicit any current or former employees of Defendant or Defendant to assert claims against the Defendant or the Released Parties through Plaintiffs' counsel or any other attorney.

Plaintiffs and their counsel represent and warrant that neither they nor anyone acting on their behalf (including without limitation their current or past counsel) are aware of any individual or entity who has considered or intends to file claims of any nature against the Defendant, and will not encourage, cooperate or otherwise voluntarily participate in any claims of any nature against the Defendant or the Released Parties.

Plaintiffs represent and warrant that, with the exception of their individual wage and hour claims and the PAGA Lawsuit, they have not filed or participated in any actual or potential claims, complaints, charges, lawsuits or other proceedings brought by them against the Defendant and/or any of the Released Parties with any governmental agency, third party or any court.

Section 8.10 Non-Cooperation

Unless compelled by a validly issued subpoena or court order, Plaintiffs agree not to invite, solicit, initiate, participate, or otherwise cooperate in any way in any legal or adversary proceedings, or in any other public or private activity, taken against Defendant or any of the Released Parties, which may be contemplated or initiated by any persons or entities not a party to this Agreement. Nothing within this Agreement is intended to prevent or interfere with Plaintiffs participating in any investigation, hearing, or proceeding conducted by any governmental agency (although it does preclude Wipf, Simmons, or Peters from recovering individual monetary or other relief in any such proceeding).

Section 8.11 Continuing Jurisdiction Of The Court.

Pursuant to California Code Of Civil Procedure section 664.6, the Parties agree that the Court shall retain jurisdiction over the Parties, and over this Settlement Agreement, in order to: (i) monitor and enforce compliance of this Settlement Agreement, and/or resolve any disputes over this Settlement Agreement or the administration of the benefits of this Settlement Agreement.

Section 8.12 Counterparts.

This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all

of which counterparts taken together shall constitute but one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

Section 8.13 Dispute(s).

Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, the Parties agree to submit any such dispute(s) first to Mediator Hon. William C. Pate (Ret.), and if Mediator Hon. William C. Pate (Ret.) is unable to resolve the dispute(s), then to the Court.

IN WITNESS WHEREOF, the Parties have executed this Private Attorney General Act Settlement Agreement and Limited Release on the date set forth.

APPROVED AND ACCEPTED.

Dated: August 25, 2021

By 
Trevor Wipf (Aug 25, 2021 12:54 PDT)
TREVOR WIPF

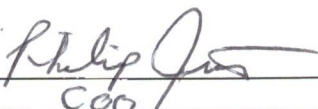
Dated: _____, 2021

By _____
ROBERT PETERS

Dated: _____, 2021

By _____
RICHARD SIMMONS

Dated: 8/30, 2021

By 
Its: CEO
FOR ASI HASTINGS, INC.

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APPROVED AND ACCEPTED.

Dated: _____, 2021

By _____
TREVOR WIPF

Dated: August 25, 2021

By 
By Robert Peters (Aug 25, 2021 13:05 PDT)
ROBERT PETERS

Dated: _____, 2021

By _____
RICHARD SIMMONS

Dated: _____, 2021

By _____
Its: _____
FOR ASI HASTINGS, INC.

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APPROVED AND ACCEPTED.

Dated: _____, 2021

By _____
TREVOR WIPF

Dated: _____, 2021

By _____
ROBERT PETERS

Dated: August 25, 2021

By ~~____~~
Richard Simmons (Aug 25, 2021 13:12 PDT)
RICHARD SIMMONS

Dated: _____, 2021

By _____
Its: _____
FOR ASI HASTINGS, INC.

**APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONS ONLY**

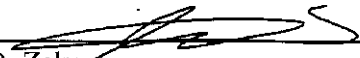
Dated: 8/25, 2021

BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP

By 
Norman B. Blumenthal
Nicholas J. De Blouw
Attorneys for Plaintiffs and the Aggrieved
Employees

Dated: August 25, 2021

ZAKAY LAW GROUP, APC

By 
Shani O. Zakay
Attorney for Plaintiffs and the Aggrieved
Employees

Dated: August 30, 2021

ATKINSON, ANDELSON, LOYA, RUUD &
ROMO

By 
Michael J. O'Connor, Jr.
Sarkis A. Atoyan
Attorneys for Defendant ASI Hastings, Inc.

EXHIBIT A

NOTICE OF SETTLEMENT - REPRESENTATIVE ACTION

Trevor Wipf, et al. v. ASI Hastings, Inc. (San Diego County Superior Court, Case No. 37-2020-00043643-CU-OE-CTL)

«Barcode»

«BarcodeString»

SIMID «SIMID»

«FirstName» «LastName»

«Address1» «Address2»

«City» «State» «Zip»

P.O. Box

Telephone

You are receiving this notice and check as a result of a recent lawsuit brought on a representative basis under the Private Attorneys General Act, Labor Code § 2698 et seq. ("PAGA") ("the Action"), *Trevor Wipf v. ASI Hastings, Inc.* in San Diego County Superior Court, Case Number 37-2020-00043642-CU-OE-CTL, that has been settled. The named representative plaintiffs in the lawsuit are Trevor Wipf, Robert Peters, and Richard Simmons ("Plaintiffs"), the defendant is ASI Hastings, Inc. ("Defendant"). According to Defendant's records, and per the time period and definitions used by or contained in Plaintiffs' Action, you are considered an "Aggrieved Employee," meaning that you were employed by ASI Hastings, Inc. as an hourly, non-exempt employee at any time during the time period from September 7, 2019 and March 8, 2021.

This notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the truth of the allegations raised in the Action or the merits of the claims or defenses asserted. In fact, the Court has made no determination as to whether the claims alleged by Plaintiffs have any merit. In other words, the Court has not determined whether any laws have been violated, nor has the Court decided in favor of Plaintiffs or Defendant. Instead, both parties agreed to resolve the Action with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, the parties are attempting to buy their respective peace and avoid the risks and costs associated with trial.

Defendant views this settlement as a compromise, to which it has agreed in order to avoid the risks and costs associated with litigation. Defendant is not admitting to any allegations of wrongdoing in this case, and in fact expressly denies that any of its practices at issue in this lawsuit were or are unlawful. Specifically, Defendant contends, among other things, that it correctly compensated all employees; provided all employees with proper meal and rest periods or paid required premiums for missed or non-compliant breaks; reimbursed all employees for all business expenses; provided all employees with compliant wage statements; paid employees for reporting time pay; provided suitable seating for its employees; and timely paid all employees all wages owing at the time of termination. Defendant has entered into the settlement solely for purposes of resolving this dispute and avoiding continuing litigation, time, and costs.

By the settlement of the Action, each Aggrieved Employee is releasing the Released Claims against Defendant. The "Released Claims" are any and all claims for civil penalties under PAGA arising during the period of September 7, 2019 to March 8, 2021 ("PAGA Period"), based on the facts alleged in the operative complaint at the time of approval by Plaintiff in the Action, as well as Plaintiff's notice letter to the LWDA, and any resulting claim for attorneys' fees and costs under PAGA, which occurred during the PAGA Period.

By Order dated [REDACTED] 2021, the Superior Court approved the Settlement of the PAGA claims. According to Defendant's records, you are an Aggrieved Employee and therefore entitled to a share of the PAGA settlement based upon the Court approved allocation. Enclosed with this Notice is your check for your share, there is no action required of you in this matter. The settlement check shall remain valid for 180 days.

Please Note: One hundred percent (100%) of your Individual PAGA Payment under this Settlement will be considered penalties and will be reported on an IRS Form 1099. You should rely on your own tax advisors as to the tax consequences of your Individual PAGA Payment. Neither Counsel for Plaintiff, Counsel for Defendant, Defendant, nor the Settlement Administrator may legally provide you with advice regarding the tax implications of the receipt of this settlement payment. Nothing within this notice or any other communication shall constitute or be construed or relied upon as tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended). Enclosed are the appropriate tax forms pertaining to your payment.

Do not call or write the Court or Office of the Clerk to ask questions about the settlement, about the claims process, or to ask any tax-related questions. If you have any questions, you may call or write to Simpluris (the Settlement Administrator) using the contact information at the top of this correspondence. Alternatively, if you wish to find out more about the settlement, you may refer to the pleadings and other papers filed in the Action, which are available at the San Diego County Superior Court.

EXHIBIT B

The individual settlements are confidential, but can be submitted to the Court for in camera review upon request.