

PAGA SETTLEMENT AGREEMENTⁱ

This PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Todd Truesdell (“Plaintiff”) and defendants Fusiform, Inc. DBA FactoryFour, Alex Mathews and Warren Turner (collectively “Defendants,” Fusiform Inc. is “Fusiform”). The Agreement refers to Plaintiff and Defendants collectively as “Parties,” or individually as “Party.”

1. **DEFINITIONS.**

- 1.1. “Action” means the Plaintiff’s PAGA lawsuit alleging wage and hour violations against Defendants captioned: Todd Truesdell, on behalf of himself and all others similarly situated, vs. Fusiform, Inc. DBA FactoryFour, a Delaware Corporation; Alex Mathews, an individual; Warren Turner, an individual; and DOES 1-10, inclusive, Superior Court of the State of California for the County of Los Angeles, Case No. 21SMCV00463 initiated on March 8, 2021 and pending in Superior Court of the State of California, County of Los Angeles.
- 1.2. “Aggrieved Employee” means all persons who have been employed by Fusiform as an exempt Sales Development Representative in California (“SDR”) at any time during the period of January 3, 2020 through the Effective Date. There are 5 SDRs.
- 1.3. “Court” means the Superior Court of California, County of Los Angeles.
- 1.4. “Defense Counsel” means:
- TOREY JOSEPH FAVAROTE (SBN: 198521)
GLEASON & FAVAROTE, LLP
4014 Long Beach Blvd., Suite 300
Long Beach, California 90807
Telephone: (213) 452-0510
Facsimile: (213) 452-0514
tfavarote@gleasonfavarote.com
- 1.5. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. The Judgment is final as of the following occurrence: the day the Court dismisses the PAGA claims in their entirety with prejudice.
- 1.6. “Gross Settlement Amount” means \$4,000.00 which is the total amount Defendants agree to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, and the PAGA Counsel Fees and Costs Payment.
- 1.7. “Individual PAGA Payment” means the Aggrieved Employees’ pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.
- 1.8. “Judgment” means the judgment entered by the Court based upon the Final Approval.

- 1.9. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.10. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.11. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: the LWDA PAGA Payment and the PAGA Counsel Fees and Costs Payment. The remainder is to be paid to the Aggrieved Employees as Individual PAGA Payments.
- 1.12. “PAGA Counsel” means:
- Grainne Callan (SBN 318962)
GRAINNE CALLAN, ESQ.
1030 E. El Camino Real #374
Sunnyvale, CA 94087
408-982-6224
- 1.13. “PAGA Counsel Fees and Costs Payment” mean the amount allocated to PAGA Counsel for reimbursement of reasonable attorneys’ fees and expenses incurred to prosecute the Action.
- 1.14. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Fusiform, Inc. for at least one day during the PAGA Period.
- 1.15. “PAGA Period” means the period from January 3, 2022 to the date of Judgment.ⁱⁱ
- 1.16. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.17. “PAGA Notice” means Plaintiff’s October 16, 2020 letter to Defendants and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.18. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$650.00) and the 75% to LWDA (\$1,875.00) in settlement of PAGA claims.
- 1.19. “Plaintiff” means Todd Truesdell, the named plaintiff in the Action.
- 1.20. “Approval Order” means the proposed Court Order Granting Approval of PAGA Settlement.
- 1.21. “Released PAGA Claims” means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.
- 1.22. “Released Parties” means: Defendants and each of their former and present directors, officers, shareholders, owners, parent companies, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.
- 1.23. “Settlement” means the disposition of the Action effected by this Agreement and the

Judgment.

1.24. Defendants means Fusiform, Inc. DBA FactoryFour, Alex Mathews and Warren Turner.

2. RECITALS.

2.1. On March 8, 2021, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendants for: 1) Failure to Produce Wage and Personnel Records Under Labor Code § 1198.5; 2) Failure to Produce Wage and Personnel Records under Labor Code § 226(b),(f) and (h); 3) Failure to Furnish Compliant Wage Statements Under Labor Code §§ 226 and 226.3; 4) Failure to Pay Overtime Premium Wages in Violation of Labor Code §§ 510 and 1194; 5) Failure to Pay Earned Wages Under Labor Code §§ 204, 206, 218.5, 218.6; 6) Failure to Provide All Wages Due Upon Termination Under Labor Code § 203; 7) Failure to Provide Adequate Meal Periods and Rest Breaks Under Labor Code § 226.7; 8) Solicitation Misrepresentation Under Labor Code § 970; 9) Intentional Misrepresentation; 10) Negligent Misrepresentation; 11) Retaliation Under Labor Code §§ 232.5 and 1102.5; 12) Wrongful Termination in Violation of Public Policy; 13) Violation of California's Unfair Business Practices Act; and 14) Private Attorneys General Act Labor Code §§ 2698 et. seq.

2.2. On August 16, 2021, Plaintiff filed a First Amended Complaint alleging causes of action against Defendants for: 1) Failure to Produce Wage and Personnel Records Under Labor Code § 1198.5; 2) Failure to Produce Wage and Personnel Records under Labor Code § 226(b),(f) and (h); 3) Failure to Furnish Compliant Wage Statements Under Labor Code §§ 226 and 226.3; 4) Failure to Pay Overtime Premium Wages in Violation of Labor Code §§ 510 and 1194; 5) Failure to Pay Earned Wages Under Labor Code §§ 204, 206, 218.5, 218.6; 6) Failure to Provide All Wages Due Upon Termination Under Labor Code § 203; 7) Failure to Provide Adequate Meal Periods and Rest Breaks Under Labor Code § 226.7; 8) Solicitation Misrepresentation Under Labor Code § 970; 9) Intentional Misrepresentation; 10) Negligent Misrepresentation; 11) Retaliation Under Labor Code §§ 232.5 and 1102.5; 12) Wrongful Termination in Violation of Public Policy; 13) Violation of California's Unfair Business Practices Act; 14) Recission; and 15) Private Attorneys General Act Labor Code §§ 2698 et. seq. (the "Operative Complaint"). Defendants deny the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.

2.3. Prior to negotiating the Settlement, Plaintiff obtained, documents through formal discovery, as well as verified discovery responses, and the parties litigated a motion for summary judgment.

2.4. The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Fusiform

promises to pay \$4,000 and no more as the Gross Settlement Amount. Fusiform has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1 of this Agreement.ⁱⁱⁱ Defendants disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.

3.2. Payments from the Gross Settlement Amount. Defendants will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. To PAGA Counsel: A PAGA Counsel Fees and Costs Payment of \$1,500.

Defendants will not oppose this request for Court approval of this payment provided that it does not exceed this amount. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees and Costs Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, Fusiform will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. Fusiform will pay the PAGA Counsel Fees and Costs Payment using one IRS 1099 Form. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees and Costs Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of this Payment.

3.2.2. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$2,500.00 to be paid from the Gross Settlement Amount, with 75% (\$1,850) allocated to the LWDA PAGA Payment and 25% (\$650.00) allocated to the Individual PAGA Payments.

3.2.2.1. Defendants will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$650.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.2.2. If the Court approves PAGA Penalties of less than the amount requested, the Defendants will allocate the remainder to the Net Settlement Amount. The Defendants will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT PAYMENTS.

4.1. Aggrieved Employee Pay Periods. Based on a review of its records to date, Fusiform estimates there are 5 Aggrieved Employees who worked approximately 93 PAGA Pay Periods.

4.2. Payments from the Gross Settlement Amount. Within 15 days after effective date

Defendants will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the PAGA Counsel Litigation Fees and Costs Payment. Disbursement of the PAGA Counsel Litigation Fees and Costs Payment shall not precede disbursement of Individual PAGA Payments.

4.2.1. Defendants will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The checks will be valid for 180 days from mailing. Defendants will cancel all checks not cashed within 180 days and submit them to the California State Controllers Unclaimed Property Fund in the name of the aggrieved employee.

4.2.2. Defendants will take reasonable efforts to locate any Aggrieved Employees whose checks are returned without a forwarding address.

4.2.3. The payment of Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS. Effective on the date Defendants mail the payments under this Settlement Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:

5.1 Release by Aggrieved Employees: All Aggrieved Employees, including Plaintiff, are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in Plaintiff's original complaint, the First Amended Complaint and the PAGA Notice.

5.2 Release by PAGA Counsel: PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns, the Released Parties from all claims for PAGA Fees and costs incurred in connection with Plaintiff's original complaint, First Amended Complaint and the PAGA Period, based on the allegations stated in the original complaint, First Amended Complaint and the PAGA Notice.

6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT. Plaintiff's counsel will prepare and file a motion for approval of this Settlement. Defendants will not oppose Plaintiff's motion.

6.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (1)(1)), this Agreement (Labor Code section 2699, subd. (1)(2))).

6.2 Responsibilities of PAGA Counsel. PAGA Counsel is responsible for expeditiously

finalizing and filing the motion for approval of this Settlement no later than 30 days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion.

6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. **CONTINUING JURISDICTION OF THE COURT**. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

7.1 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees and Costs Payment, the Parties, their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs, or appeals. If another party appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

8. ADDITIONAL PROVISIONS.

8.1. No Admission of Liability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Defendants reserve all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendants' defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

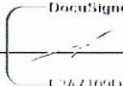
8.2. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the

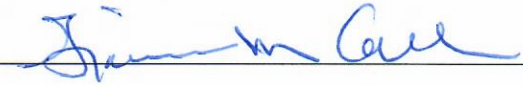
Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

- 8.3. Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 8.4. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 8.5. No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 8.6. No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendants nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 8.7. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 8.8. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 8.9. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 8.10. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 8.11. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

- 8.12. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 8.13. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 8.14. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed to PAGA Counsel and Defense Counsel.
- 8.15. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 8.16. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Todd Truesdell

DocuSigned by:

 For Plaintiff _____ For Defendants _____



 Plaintiff Counsel _____ Counsel For Defendants _____

ⁱ This Form PAGA Settlement Agreement has been approved by the Court, the complex litigation judges and a 2022 Ad Hoc Wage and Hour Committee co-chaired by Judge David Cunningham and Judge Amy Hogue and comprised of 16 attorneys who regularly represent plaintiffs and defendants in wage and hour cases. It was drafted for settlements of single plaintiff PAGA claims against a single employer (XYZ). The parties will need to revise this form if there are multiple Plaintiffs or multiple Defendants. For settlements of wage and hour class actions that include PAGA claims, please use the Form Class Action and PAGA Settlement Agreement and Class Notice.

ⁱⁱ See endnote ii above. THE COURT ASKS ALL COUNSEL USING THIS MODEL AGREEMENT TO ATTACH A REDLINED VERSION TO THEIR MOTIONS OR APPLICATIONS FOR APPROVAL SO THAT THE COURT CAN EASILY SEE EXACTLY HOW THE PARTIES HAVE MODIFIED THIS MODEL AGREEMENT.

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DocuSigned by:

Warren Turner

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For Plaintiff

warren Turner

For Defendants_____
Counsel For Plaintiff_____
Torey Joseph Favarote_____
Counsel For Defendants

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ⁱⁱⁱ The Parties are free to negotiate a payment plan structure, if appropriate, and payment deadlines may fall earlier as necessary thereto.