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5 *Counsel for Plaintiff Maria Bernabe*

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

06/28/2021 at 10:58:00 AM

Clerk of the Superior Court
By E- Filing, Deputy Clerk

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SAN DIEGO

10 MARIA BERNABE,

11 Plaintiff,

12 v.

13 MERAKEY ALLOS; and DOES 1-100,
14 inclusive,

15 Defendants.

Case No.: 37-2020-00037390-CU-OE-NC

NOTICE OF ENTRY OF ORDER

[IMAGED]

17 Complaint Filed: 10/13/2020
18 Dept.: N-31
19 Judge: Blaine K. Bowman

1 TO ALL PARTIES, THEIR ATTORNEYS OF RECORDS, AND OTHER INTERESTED
2 PERSONS:

3 NOTICE IS HEREBY GIVEN that the Court's order ["Stipulation and Order Approving the
4 Settlement of Plaintiff's Private Attorneys General Act ("PAGA") Claim Pursuant to Labor Code §
5 2699(1)(2)"] approving the settlement of Plaintiff's PAGA claims was entered on June 24, 2021.
6 Attached hereto as Exhibit A is a true and accurate copy of the Court's order.

7 Respectfully submitted,

8 Date: 06/28/2021

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10 Jason Whooper (SBN 279972)

11 W LAW

12 Counsel for Plaintiff Maria Bernabe
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EXHIBIT A

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5 *Counsel for Plaintiff Maria Bernabe*

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

06/24/2021 at 08:00:00 AM
Clerk of the Superior Court
By Gregory Hornick, Deputy Clerk

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SAN DIEGO

11 MARIA BERNABE,

12 Plaintiff,

13 v.

14 MERAKEY ALLOS; and DOES 1-100,
inclusive,

15 Defendants.

Case No.: 37-2020-00037390-CU-OE-NC

**STIPULATION AND ~~PROPOSED~~
ORDER APPROVING THE
SETTLEMENT OF PLAINTIFF'S
PRIVATE ATTORNEYS GENERAL
ACT ("PAGA") CLAIM PURSUANT TO
LABOR CODE § 2699(l)(2)**

Complaint Filed: 10/13/2020
Dept.: N-31
Judge: Blaine K. Bowman

28 Stipulation and ~~Proposed~~ Order Approving the Settlement of Plaintiff's Private Attorneys
General Act ("PAGA") Claim Pursuant to Labor Code § 2699(l)(2)

1 1. Plaintiff Maria Bernabe (“Plaintiff” or “Bernabe”) filed a complaint in the above-
2 captioned matter on October 13, 2020, against Defendant Merakey Allos (“Defendant” or
3 “Merakey”) (Plaintiff and Defendant hereafter may be collectively referred to as the “Parties”).

4 2. Pursuant to Labor Code § 2699, Plaintiff alleged a Private Attorneys General Act
5 (“PAGA”) claim on behalf of herself and 11 other current or former employees (“allegedly
6 aggrieved employees”) against whom Defendant allegedly committed violations of wage and hour
7 laws by misclassifying them as administrative exempt. The Parties have entered into an agreement
8 to resolve the PAGA claim for \$10,000.00 (33% of the \$10,000.00 is allocated to attorney’s fees)
9 and now seek Court approval (the “PAGA Settlement”). A true and accurate fully executed copy
10 of the PAGA Settlement is incorporated herein by reference and attached as Exhibit 1.

11 3. Plaintiff also asserted individual claims against Defendant based on various alleged
12 discrimination, retaliation, and wage and hour violations. The Parties have entered into a separate
13 individual settlement agreement to resolve Plaintiff’s individual claims which is contingent on the
14 Court’s approval of the PAGA Settlement.

15 4. Defendant is a not-for-profit operator of residential care facilities, a.k.a. group
16 homes, for people with disabilities. Defendant hired Plaintiff on or about February 10, 2020, as a
17 salary exempt Program Administrator for one of Defendant’s group homes until Defendant
18 terminated Plaintiff’s employment on or about April 16, 2020. Plaintiff alleges that Defendant
19 misclassified Plaintiff as exempt. Plaintiff alleges that she rarely performed exempt Program
20 Administrator duties, and that Defendant required Plaintiff to perform nonexempt Direct Care staff
21 duties a substantial majority of the time because Plaintiff was still training and studying to take a
22 test to obtain a certification required before she could actually take over the exempt Program
23 Administrator duties of the group home.

24 5. As a result of the misclassification Plaintiff also alleges that Defendant committed
25 several wage and hour violations against Plaintiff such as failure to pay minimum wages for all the
26 overtime hours Plaintiff worked, failure to pay overtime rates, failure to record the hours Plaintiff
27 worked and meal periods Plaintiff took, and failure to provide compliant wage statements with all
28 required information.

1 6. Defendant has denied, and continues to deny, any liability and wrongdoing of any
2 kind associated with any of Plaintiff's allegations, and further denies that the lawsuit is appropriate
3 for representative treatment for any purpose other than for settlement purposes only. After
4 extensive informal discovery and discussions, the Parties were unable to find evidence suggesting
5 any of the other allegedly aggrieved employees were misclassified or suffered wage and hour
6 violations. Plaintiff admits that if she already had the full certification required for the Program
7 Administrator position while she worked for Defendant, she would have performed exempt duties
8 a substantial majority of the time and likely would not have a basis to make any wage and hour
9 claims derived from misclassification. Plaintiff's circumstance was unique.

10 7. "[A]ny provision of this code that provides for a civil penalty... for a violation of
11 this code, may as an alternative, be recovered through a civil action brought by an aggrieved
12 employee on behalf of himself or herself and other current or former employees[.]" (Labor Code
13 § 2699(a).) Pursuant to Labor Code § 2699(l)(2), "[t]he superior court shall review and approve
14 any settlement of any civil action filed pursuant to this part." "[A] court may award a lesser amount
15 than the maximum civil penalty amount specified by this part if, based on the facts and
16 circumstances of the particular case, to do otherwise would result in an award that is unjust,
17 arbitrary and oppressive, or confiscatory." (Labor Code § 2699(e)(2).) The Parties agree that it
18 would be unjust, arbitrary, and oppressive, or confiscatory to require Defendant to pay more than
19 \$10,000.00 for the PAGA Settlement because Defendant is a not-for-profit and Plaintiff does not
20 believe Plaintiff will find evidence supporting wage and hour violations outside of Plaintiff's own
21 unique circumstances during her two-month duration of employment with Defendant.

22 **IT IS HEREBY STIPULATED AND AGREED THAT:**

- 23 1. The Court should approve the PAGA Settlement in Exhibit 1.
- 24 2. The Court should order that the Parties comply with all of the terms and conditions
25 of the PAGA Settlement.
- 26 3. The Court should have and retain jurisdiction to enforce the terms of the PAGA
27 Settlement pursuant to Civil Code § 664.6.

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4. The Court should set a status conference approximately 120 days out.

DATED: June 22, 2021

W LAW

By: 

Jason Whooper
Counsel for Plaintiff, Maria Bernabe

DATED: June 22, 2021

FAEGRE DRINKER BIDDLE & REATH LLP

By: 

Pascal Benyamini
Counsel for Defendant, Merakey Allos

~~PROPOSED~~ ORDER

The Court, having reviewed the terms of the foregoing Stipulation and [Proposed] Order Approving the Settlement of Plaintiff's Private Attorneys General Act ("PAGA") Claim Pursuant to Labor Code § 2699(l)(2), and having reviewed the terms of the PAGA Settlement in Exhibit 1, and for good cause appearing, GRANTS and APPROVES the PAGA Settlement between the Parties.

NOW, THEREFORE, the Court hereby ORDERS:

1. The Court approves the PAGA Settlement in Exhibit 1 which is incorporated herein by reference.
2. The Court directs that the Parties comply with all of the terms and conditions of the PAGA Settlement.
3. The Court shall have and retain jurisdiction to enforce the terms of the PAGA Settlement pursuant to Civil Code § 664.6.
4. The Court shall set a status conference approximately 120 days out which is scheduled for 10-22-21 @ 9:00am.

IT IS SO ORDERED.

DATED: 6-24-21


Honorable Blaine K. Bowman

EXHIBIT 1

PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This Settlement Agreement and Release of All Claims (“Agreement”) is made and entered into between Plaintiff MARIA BERNABE (“BERNABE” or “PLAINTIFF”), in a representative capacity on behalf of all current and former aggrieved employees, on the one hand, and Defendant MERAKEY ALLOS (“MERAKEY” or “DEFENDANT”) on the other. From time to time herein, BERNABE and DEFENDANT may collectively be referred to as the “Parties.”

This Settlement shall be binding on BERNABE and the allegedly aggrieved employees (“PAGA Members”) (as defined below) who BERNABE purports to represent; and on DEFENDANT and any present and former parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity which could be jointly liable with DEFENDANT, subject to the terms and conditions hereof and the approval of the Court.

RECITALS

A. WHEREAS, on or about October 13, 2020, BERNABE sent a letter to the California Labor and Workforce Development Agency (“LWDA”) and to DEFENDANT giving notice of her intent to pursue a representative action pursuant to the California Labor Code Private Attorneys General Act of 2004, codified at Labor Code § 2699 *et seq.* (“PAGA”), on behalf of herself and the State of California as well as on behalf of a proposed group of allegedly aggrieved employees. In the letter, BERNABE claimed DEFENDANT violated Industrial Welfare Commission (“IWC”) Wage Order 5-2001, sections 3, 4, 7, 11, 12, 20; and California Labor Code sections 7, 98, 98.6, 98.7, 200, 201, 202, 203, 204, 210, 212, 215, 216, 218.6, 221, 222, 223, 224, 225, 225.5, 226, 226.3, 226.7, 230.8, 232.5, 233, 246, 246.5, 247, 247.5, 248.5, 256, 351, 500, 510, 512, 516, 558, 558.1, 1102.5, 1174, 1174.5, 1175, 1182.12, 1193.6, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 1199, 2502, 2751, 2802, 2698, 2699, 2699.3, and 2699.5;

B. WHEREAS, on or about October 13, 2020, BERNABE commenced an action against DEFENDANT in the Superior Court of the State of California for the County of San Diego, Case No. 37-2020-00037390-CU-OE-NC, alleging: (1) Private Attorneys General Act Claim – Labor Code § 2699; (2) Failure to Pay Minimum Wage – Labor Code § 1194; (3) Failure to Pay Overtime Wages – Labor Code § 1194; (4) Failure to Provide Compliant Wage Statements and Keep Records – Labor Code § 226; (5) Waiting Time Penalties – Labor Code § 203; (6) Failure to Indemnify Business Expenses – Labor Code § 2802; (7) Unfair Business Practices – Business & Professions Code § 17200; (8) Retaliation – Labor Code § 98.6; (9) Retaliation – Labor Code § 1102.5; (10) Disability-Based Association Discrimination – Government Code § 12940; (11) Gender Discrimination – Government Code § 12940; (12) Marital Status Discrimination – Government Code § 12940; (13) Wrongful Termination in Violation of Public Policy (“Original Complaint”). On or about January 6, 2021, BERNABE filed a First Amended Complaint against DEFENDANT asserting the same claims in her Original Complaint (the “Action”);

C. WHEREAS, DEFENDANT denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, and denies that the lawsuit is appropriate for representative treatment for any purpose other than settling this Action. DEFENDANT contends,

among other things, that DEFENDANT has complied at all times with the California Labor Code and all other state and federal wage laws. DEFENDANT has denied and continues to deny each and every material factual allegation and alleged claim asserted against them in the Action;

D. WHEREAS, the Parties desire to fully and finally resolve, settle, compromise, and discharge all differences and controversies between and among themselves, so as to avoid any further disputes, costs, inconveniences or expenses of litigation, and substantially increased risks created by COVID-19;

E. WHEREAS, the Parties have separately entered into a Confidential Settlement Agreement in full satisfaction of BERNABE's individual claims against DEFENDANT ("Individual Settlement Agreement");

F. WHEREAS, this Agreement relates solely to the PAGA claims raised by BERNABE and the PAGA Members whom BERNABE purports to represent in the Action. For purposes of this settlement, the "PAGA Members" are defined as: all 12 individuals employed by MERAKEY as Program Administrators from October 13, 2019 to the Effective Date of the Settlement ("Covered Period") identified by their employee ID numbers 8984311, 8981690, 8986022, 8983878, 8981948, 8984641, 8984760, 8980254, 8981309, 8981678, 8986208, and 8981688 (the "PAGA Members"). This includes BERNABE. The Effective Date of the Settlement will be the date the Court has signed the order approving settlement of the PAGA claim (the "Effective Date"); and

G. WHEREAS, because BERNABE alleges claims under PAGA, the Parties acknowledge this Agreement must be approved by the San Diego Superior Court. Accordingly, the Parties enter into this Agreement on a conditional basis subject to the terms and conditions below.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and mutual agreements hereinafter set forth, it is hereby agreed by and among the Parties as follows:

1. Incorporation of Recitals. The above recitals are incorporated herein by this reference and are hereby made part of this Agreement.

2. PAGA Settlement Amount. As consideration for the settlement described herein and the release contained in this Agreement, MERAKEY agrees to pay the total sum of Ten Thousand Dollars and Zero Cents (\$10,000.00) ("Total Settlement Amount"). Except for any Settlement Administrator Fees and Expenses in the amount of Seven Hundred Fifty Dollars and Zero Cents (\$750.00) that MERAKEY will pay to the Settlement Administrator separately, the Total Settlement Amount is the maximum that MERAKEY shall be obligated to pay under this Agreement, and includes: (i) all Settlement Shares to PAGA Members, (ii) the LWDA Payment to the LWDA, and (iii) Attorneys' Fees and Costs to BERNABE's counsel. The Total Settlement Amount will be allocated in accordance with Labor Code section 2699 as follows:

2.1 A check made payable to "W Law Inc." in the amount of Three Thousand Three Hundred Dollars and Zero Cents (\$3,300.00), for attorneys' fees and costs ("Attorneys' Fees

and Costs"). The Settlement Administrator will prepare an Internal Revenue Service Form 1099, reflecting this payment to BERNABE's counsel, to be issued during the appropriate tax reporting period. BERNABE's counsel will not seek, or be entitled to, any attorneys' fees or costs related to the claims encompassed by this Agreement other than those specified herein.

2.2 Of the remaining Six Thousand Seven Hundred Dollars (\$6,700.00), which consist of the PAGA civil penalties ("PAGA Penalties Amount"), the amount of One Thousand Six Hundred Seventy-Five Dollars and Zero Cents (\$1,675.00) (25% of the PAGA Penalties Amount) ("Settlement Shares") shall be paid evenly to all 12 PAGA Members and the amount of Five Thousand Twenty-Five Dollars and Zero Cents (\$5,025.00) (75% of the PAGA Penalties Amount), to the LWDA, as PAGA penalties pursuant to Labor Code section 2699(i) ("LWDA Payment"), which will be sent to the Department of Industrial Relations, Accounting Unit, 455 Golden Gate Avenue, 10th Floor, San Francisco, CA 94102. In the event the Court approves an LWDA Payment in an amount less than 75% of the PAGA Penalties Amount, the remainder will be retained as part of the PAGA Penalties Amount to be distributed as part of the Settlement Shares. The Settlement Share payments are intended to settle claims for civil penalties. Accordingly, no payroll tax withholdings or deductions will be taken from such payments, and the Settlement Administrator will issue an IRS Form 1099 reflecting the payment to each PAGA Member.

2.3 The Total Settlement Amount shall be deposited by DEFENDANT into to the account established by the Settlement Administrator within forty-five (45) calendar days after counsel for DEFENDANT has received all of the following from BERNABE's attorneys: (1) this Agreement fully executed by BERNABE and her counsel; (2) a W-9 Form completed by BERNABE's counsel; and (3) an Order from the Court approving the PAGA settlement. To be clear, MERAKEY's payment obligations under this Agreement do not arise until the Court approves the PAGA settlement. Within ten (10) calendar days after the Court's Order approving the PAGA settlement, the Settlement Administrator will provide MERAKEY with wire transfer information for an account into which the Total Settlement Amount will be deposited by MERAKEY. The Settlement Shares (along with the Settlement Cover Letter pursuant to Section 12 below), LWDA Payment, and Attorneys' Fees and Costs shall be distributed by the Settlement Administrator within sixty-five (65) calendar days after the Court's Order approving the PAGA settlement.

2.4 Within ten (10) calendar days after the Settlement Administrator distributes the Total Settlement Amount under the terms in Section 2.3 above, the Settlement Administrator shall provide to BERNABE's counsel a Declaration that all payments for the Total Settlement Amount have been sent pursuant to with the terms in Section 2.3 above.

2.5 BERNABE's attorney agrees to provide the LWDA with a copy of this Agreement on the same day as the filing the Joint Stipulation Requesting Approval of PAGA Settlement; and [Proposed] Order in the San Diego Superior Court. BERNABE's attorney also agrees to provide the LWDA a copy of the Court's Order approving the PAGA settlement, as may be required.

3. Settlement Administrator. The Parties agree to using Phoenix Settlement Administrators as the Settlement Administrator ("Settlement Administrator"), the third-party vendor firm jointly chosen by the Parties to mail the Settlement Cover Letter to the PAGA

Members; distribute the Total Settlement Amount, and otherwise perform the administrative tasks required to implement the Settlement.

4. Reasonableness and Allocation of Settlement. The Parties believe that this is a fair, reasonable and adequate settlement of BERNABE's PAGA Claim, and have arrived at this settlement through arms-length negotiations, taking into account all relevant factors, present and potential, including the legal issues involved, evidence available to establish PAGA Claim violations, DEFENDANT's ability to pay, COVID-19, and the uncertainty of trial. The Parties recognize and agree that the value of the claims in the PAGA Claim are difficult to determine with any certainty, and are subject to differing calculations. The Parties hereby agree that the formula for allocating the Total Settlement Payment is reasonable and that the payments provided herein are designed to provide fair settlement with respect to the PAGA Claim.

5. Approval of Settlement. The Parties, by Joint Stipulation Requesting Approval of PAGA Settlement; and [Proposed] Order, shall apply for approval of this Agreement by the San Diego Superior Court in accordance with Labor Code section 2699(l) and for the Court to retain jurisdiction pursuant to Civil Code section 664.6 to enforce the terms of the Agreement for purposes of effectuating this Agreement. If, for any reason, the Court declines to approve this Agreement, the Parties agree to use their best efforts to address the issues raised by the Court and renew their request for court approval. If, for any reason, the Court does not ultimately approve this Agreement, this Agreement shall be null and void, and shall not be referred to or utilized for any purpose. In that event, DEFENDANT shall have no obligation to make any payment under this Agreement or its Individual Settlement Agreement with BERNABE. DEFENDANT also does not waive but rather expressly reserves all rights to challenge BERNABE's PAGA claims and allegations on all procedural, legal and factual grounds, and to assert all applicable defenses if this Agreement is not approved by the Court. A modification of the amounts payable as Attorneys' Fees and Costs to BERNABE's counsel shall not be deemed a material modification of the Settlement.

6. Tax Treatment. BERNABE and the PAGA Members shall be exclusively liable for any and all of their respective tax liabilities, if any, with respect to the payments they receive under this Agreement. BERNABE and the PAGA Members should consult with their tax advisors concerning the tax consequences of such payments. BERNABE and the PAGA Members will be responsible for paying all applicable federal, state, and local income taxes due on the amounts he or she receives pursuant to this Agreement. BERNABE and the PAGA Members agree to indemnify and hold harmless MERAKEY and the Released Parties from and against any and all tax liabilities, penalties, assessments, interest payments, attorneys' fees and costs that may be found due as a result of the payments made to each of them under this Agreement..

CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS AGREEMENT ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) BERNABE (A) HAS RELIED

EXCLUSIVELY UPON HER OWN, INDEPENDENT LEGAL AND TAX ADVISERS FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON HER; AND (3) NO ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISOR'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY BERNABE OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

7. Dismissal of Pending Action/Attorneys' Fees and Costs.

7.1 The Parties, by Joint Stipulation Requesting Approval of PAGA Settlement; and [Proposed] Order, shall apply for approval of this Agreement by the San Diego Superior Court in accordance with Labor Code section 2699(l) and for the Court to retain jurisdiction pursuant to Civil Code section 664.6 to enforce the terms of the Agreement for purposes of effectuating this Agreement.

7.2 Within ten (10) business days of the San Diego Superior Court approving this Agreement BERNABE shall provide DEFENDANT's counsel a fully-executed Request for Dismissal with prejudice of the Action as to all parties and all causes of action. DEFENDANT's counsel will maintain custody of the original fully-executed Request for Dismissal with prejudice, and agrees not to file the Request for Dismissal with prejudice until after BERNABE's counsel provides DEFENDANT's counsel confirmation of receipt of all payments under this Agreement and BERNABE's Individual Settlement Agreement and confirmation of receipt of the Declaration by the Settlement Administrator pursuant to Section 2.4 above that the Total Settlement Amount in PAGA civil penalties have been transmitted to all PAGA members and the LWDA in Section 2 above. Thereafter, DEFENDANT's counsel shall have the authority to immediately file the Request for Dismissal with prejudice with the Court.

7.3 The Parties agree that this Agreement resolves any claims for attorneys' fees and costs incurred in the Action or otherwise as between BERNABE and DEFENDANT, with each party to bear its own costs and fees except as otherwise stated in this Agreement.

8. Scope of Release of Claims.

8.1 Subject to the Court entering an Order approving the PAGA settlement, and in consideration for DEFENDANT entering into this Agreement, BERNABE, on behalf of herself and the State of California, and the PAGA Members as defined above, fully release and discharge the DEFENDANT and its present or former parent and affiliated companies, subsidiaries, partners, agents, insurers and each of their respective officers, directors, shareholders, representatives

successors and assigns ("Released Parties") from any and all claims, causes of action, debts, liabilities, demands, damages, penalties, costs, and attorneys' fees, whether known or unknown, secured or unsecured, suspected or unsuspected, contingent or vested, arising from or based on a claim for civil penalties under the Labor Code Private Attorneys General Act of 2004 ("PAGA") for any violations of the Labor Code or Wage Orders that were alleged by BERNABE in the Action, or that could have been alleged based on the facts asserted in the Action, including but not limited to claims for the alleged failure to provide meal breaks, rest periods, accurate itemized wage statements and waiting time penalties; failure to compensate for all regular or overtime hours worked; failure to reimburse for business expenses; failure to maintain required records; and failure to timely pay wages during employment (the "Released Claims"). BERNABE, PAGA Members, and the State of California shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits they otherwise may have had related to the Released Claims. The res judicata effect of the Order approving the PAGA settlement will be the same as that of a release.

8.2 BERNABE understands and agrees that the Released Claims include not only claims presently known to BERNABE, but also include all unknown or unanticipated claims, rights, demands, actions, obligations, liabilities, and causes of action of every kind and character that would otherwise come within the scope of the released claims, as described in Section 7.1.

8.3 BERNABE expressly agrees not to bring or prosecute a representative action under PAGA against DEFENDANT for any claim that could have been raised in this action at any time in the future.

8.4 BERNABE understands that she may hereafter discover facts different from what she now believes to be true, which if known, could have materially affected this Agreement, but she nevertheless waives any claims or rights based on different or additional facts. BERNABE knowingly and voluntarily waives any and all rights or benefits that she may now have, or in the future may have, under the terms of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT 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.

To the extent it is applicable, the State of California and the Aggrieved Employees also waive the protections of section 1542.

8.5 The Parties hereto represent and warrant that they have the authority to enter into this Agreement on their own behalf and to bind all persons or entities who may claim through them.

9. No Admission of Liability. DEFENDANT denies all claims alleged in this Action and deny any wrongdoing whatsoever by DEFENDANT. Neither this Agreement, nor any of its terms and conditions, nor any of the negotiations connected with it, is a concession or admission,

and none shall be used against DEFENDANT as an admission or indication with respect to any claim of any fault, concession, or omission by DEFENDANT. The Parties agree that this Agreement will not be admissible in this or any other proceeding as evidence that DEFENDANT liable to PLAINTIFF or any PAGA MEMBER, other than according to the terms of this Agreement and the Individual Settlement Agreement.

10. Appointment and Duties of Settlement Administrator. The Parties will propose to the Court the appointment of a Settlement Administrator which shall be bound by this Agreement with respect to performance of its duties and compensation. The Settlement Administrator's duties shall include preparing, printing, and mailing the Settlement Cover Letter and Settlement Share checks to the PAGA Group Members, conducting a National Change of Address search and using other reasonable and cost-effective skip trace methods to locate any PAGA Members whose Settlement Cover Letter and Settlement Share check are returned by the U.S. Postal Service as non-deliverable, and re-mailing the Settlement Cover Letter and Settlement Share check to that PAGA Member's new address; issuing and distributing all payments due under the Settlement, and otherwise administering the Settlement pursuant to this Agreement.

11. PAGA Member Information. Within twenty (20) calendar days after the Court's Order approving the PAGA settlement, MERAKEY will send to the Settlement Administrator the full names, last known addresses, telephone numbers, Social Security Numbers for all PAGA Members (collectively, "PAGA Member Information"). The PAGA Member Information shall remain confidential, and shall not be disclosed to anyone except in order to carry out the reasonable efforts for mailing the Settlement Cover Letter described in this Agreement, or pursuant to MERAKEY's express written authorization or by order of the Court.

12. Notice and Payment of Settlement Shares to PAGA Members. After the Court enters an Order approving the PAGA Settlement, each PAGA Member shall be sent the Settlement Cover Letter in the form attached hereto as "Exhibit A", together with a check for his or her Settlement Share, in accordance with the following procedure:

(1) Consistent with the timeframes set forth in Section 2.3 above, the Settlement Administrator will send to each PAGA Member, by first-class regular U.S. mail, the Settlement Cover Letter and a check constituting his or her Settlement Share. The Settlement Administrator will mail the Settlement Cover Letter and Settlement Share checks to all identified PAGA Members using the mailing address information provided by MERAKEY, unless modified by any updated address information that the Settlement Administrator obtains in the course of administering the Settlement. Prior to mailing the Settlement Cover Letters and Settlement Share checks, the Settlement Administrator will use the U.S. Postal Service's National Change of Address database to locate updated addresses for PAGA Members and use the updated addresses that are located, for the mailing of the Settlement Cover Letter and Settlement Share checks.

(2) If a Settlement Cover Letter and Settlement Share check are returned by the U.S. Postal Service because of an incorrect address, within sixty (60) calendar days of mailing, then within ten (10) calendar days from receipt of the returned mail, the Settlement Administrator will search for a more current address for the PAGA Member and re-mail the Settlement Cover Letter and Settlement Share check to him or her. The Settlement Administrator will use the U.S. Postal Service's National Change of Address database and skip traces to attempt to find the current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the

mailing address of any PAGA Group Member for whom a Settlement Cover Letter and Settlement Share check are returned by the U.S. Postal Service as undeliverable. These steps shall include, at a minimum, the tracking of all undelivered mail, performing address searches for all mail returned without a forwarding address, and promptly re-mailing the Settlement Cover Letter and Settlement Share check to PAGA Members for whom new addresses are found. If the Settlement Cover Letter and Settlement Share check are re-mailed, the Settlement Administrator will note for its own records the date and address of each such re-mailing as part of a weekly status report provided to the Parties' respective counsel.

13. No Opt Out Right or Objection Right. The Parties acknowledge and agree that by law, non-party aggrieved employees have no right to opt out of or object to the settlement of PAGA claims, that the settlement of PAGA claims is subject to Court approval, and that a Court Order approving the settlement with respect to PAGA claims is binding with respect to non-party aggrieved employees upon Court approval, pursuant to California Labor Code section 2699(l) and *Arias v. Superior Ct.* (2009) 46 Cal. 4th 969. As such, the Parties further acknowledge and agree that no PAGA Member will have any right to opt out or otherwise exclude himself or herself from the Settlement or object to the Settlement, and upon approval of the Settlement by the Court, all PAGA Members will have released and discharged MERAKEY and the Released Parties from the Released Claims and be entitled to receive payment in accordance with the Settlement.

14. Uncashed Settlement Share Checks. Settlement Share checks will remain valid for no less than one hundred and eighty (180) calendar days after the Settlement Administrator mails the checks. If, after mailing, a check is returned to the Settlement Administrator, the Settlement Administrator shall make all reasonable efforts to re-mail the check to the PAGA Member at his or her correct address. If any check is not redeemed or deposited within ninety (90) calendar days after it is initially mailed, the Settlement Administrator will send the PAGA Member a letter or postcard informing him or her that unless the check is redeemed or deposited within the next ninety (90) calendar days, it will expire and become nonnegotiable, and offer to replace the check if it was lost or misplaced. If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will cancel said checks and distribute the funds associated with such cancelled checks to the LWDA.

15. No Impact on Benefit Plans. The receipt of a Settlement Share will not entitle any PAGA Member to additional compensation or benefits under any company bonus, contract, incentive plan, contest or other compensation or benefit plan or agreement in place during the Covered Period, nor will it entitle any PAGA Member to any increased 401(k) retirement or matching benefits. The Parties agree that any payments made to PAGA Members under this Agreement do not represent any modification of previously credited length of service or other eligibility criteria under any bonus plan, incentive plan, contract, employee pension benefit plan or employee welfare plan sponsored by MERAKEY or any Released Parties or to which any Released Parties are required to make contributions.

16. General Provisions.

16.1 This Agreement has been reviewed by the Parties hereto and their respective attorneys, and the Parties have had a full opportunity to negotiate the contents hereof. The Parties

hereto expressly waive any common law or statutory rule of construction that ambiguities should be construed against the drafter of this Agreement.

16.2 The Parties agree that this Agreement constitutes a compromise of and full accord and satisfaction of doubtful and disputed claims and shall not be treated as an admission of liability by anyone at any time, for any purpose.

16.3 The Parties to this Agreement agree to execute such other documents and to take such other action as may reasonably be necessary to implement the terms of this Agreement.

16.4 The Parties agree that this Agreement, along with the Individual Settlement Agreement, contains the entire agreement between them, contains full and the only consideration for the terms agreed to herein, and that the terms of this Agreement are contractual and not a mere recital.

16.5 The Parties agree that upon the occurrence of the entry of judgment or dismissal pursuant to the terms of this Agreement, this Agreement shall be enforceable by the Court pursuant to Code of Civil Procedure section 664.6, and the Court shall retain exclusive and continuing equity jurisdiction of this Action of all Parties to the fullest extent to interpret, enforce, and effectuate the terms, conditions, intents and obligations of the Agreement.

16.6 Following BERNABE's submission of the Joint Stipulation Requesting Approval of PAGA Settlement; and [Proposed] Order with the Court, the Parties agree that they and their respective counsel shall not have any communications with the media about this Settlement, other than (and only in response to any unsolicited inquiry from such media) to direct them to the public records of the Action on file with the Court. The Parties and their respective counsel further agree not to use the Settlement or the terms of this Agreement for any marketing purposes, including but not limited to, posting the Settlement or notice thereof on any websites, blogs, or social media.

16.7 Should any court action be filed by either party as a result of the breach of this Agreement, the prevailing party in such action shall be entitled to full reimbursement of its attorneys' fees and costs incurred in such action.

16.8 No waiver by any party hereto of any breach of this Agreement by any other party shall operate or be construed as a waiver of any other or subsequent breach. No waiver by any party hereto of any breach of this Agreement by any other party hereto shall be effective unless it is in writing and signed by the party claimed to have waived such breach.

16.9 This Agreement may be amended only by a written instrument executed by the Parties hereto.

16.10 Should any court of competent jurisdiction determine that any term or provision of this Agreement is unenforceable, such term or provision shall be deemed to be deleted as though it had never been a part of this Agreement, and the validity, legality and enforceability of the remaining terms and provisions shall not be in any way affected or imperiled thereby.

16.11 This Agreement shall be construed in accordance with the laws of the State of California.

16.12 If any of the dates in this Agreement fall on a weekend or court holiday, the time to act shall be extended to the next business day.

16.13 This Agreement may be signed in counterparts by the Parties, and if so executed, each counterpart shall have the full force and effect of an original. With respect to the execution of this Agreement, a facsimile copy of a signatory's signature shall suffice and be treated as an original signature.

IN WITNESS HEREOF, the Parties have executed this Agreement as of the date this Agreement is signed.

DATED: 06/11/2021



MARIA BERNABE
Plaintiff

DATED: _____

MERAKEY ALLOS

By: _____

Its: _____
Defendant

Approved As To Form:

DATED: 06/16/2021

W LAW



JASON WHOOPER
Attorneys for Plaintiff
MARIA BERNABE

DATED: _____

FAEGRE DRINKER BIDDLE & REATH LLP

PASCAL BENYAMINI
Attorneys for Defendant
MERAKEY ALLOS

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IN WITNESS HEREOF, the Parties have executed this Agreement as of the date this Agreement is signed.

DATED: _____

MARIA BERNABE
Plaintiff

DATED: 6/14/21

MERAKEY ALLOS

By: Terrence McNelis

Its: EVP and Managing Director Merakey IDD
Defendant

Approved As To Form:

DATED: _____

W LAW

JASON WHOOPER
Attorneys for Plaintiff
MARIA BERNABE

DATED: 06/15/2021

FAEGRE DRINKER BIDDLE & REATH LLP

P. Benymini
PASCAL BENYAMINI
Attorneys for Defendant
MERAKEY ALLOS

EXHIBIT A
[PROPOSED SETTLEMENT COVER LETTER]

To: [First Name] [Last Name]

Date: []

Address

City, State Zip

Re: Settlement Payment from *Bernabe v. Merakey Allos*
 State of California for the County of San Diego
 Case No. 37-2020-00037390-CU-OE-NC

Dear [First Name] [Last Name]:

Please find enclosed a check in the amount of [amount of payment] ("Settlement Share"). This check is your payment from the settlement of a lawsuit entitled *Bernabe v. Merakey Allos*, Case No. 37-2020-00037390-CU-OE-NC ("Action"), pending in the Superior Court of California for the County of San Diego ("Court").

The lawsuit was commenced by Maria Bernabe ("Plaintiff"), a former employee of Merakey Allos ("Merakey") in California, for herself and on behalf of the State of California and other alleged aggrieved employees, pursuant to the California Private Attorneys General Act of 2004, California Labor Code § 2698, et seq. ("PAGA"). Prior to commencing the lawsuit, Plaintiff submitted a letter to the State of California Labor & Workforce Development Agency ("LWDA") on October 13, 2020, providing notice of her intent to pursue her a lawsuit under PAGA ("Notice to LWDA"). On January 6, 2021, Plaintiff filed the First Amended Complaint and operative complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698 ("Complaint"). Plaintiff alleges that Merakey violated the wage and hour rights of salaried employees in California from October 13, 2019 to [approval date] ("Covered Period"). Merakey denies these allegations and denies that it owes any penalties to the government or to you. The other aggrieved employees on whose behalf the lawsuit was filed are: all current and former as salaried exempt Program Administrators who worked for Merakey during the Covered Period ("PAGA Members"). You have been identified as a PAGA Member.

On [approval date], the settlement was approved by the Court with a portion to be paid to the State of California and a portion to be paid to the PAGA Members. You are receiving a portion of the settlement (your "Settlement Share") based on an even distribution to all PAGA Members. The Settlement Share is for civil penalties recoverable under PAGA. You are responsible for paying any and all taxes that may be due as a result of any payment issued to you under the settlement, and should consult a tax advisor regarding the tax consequences of such payment.

As a result of the settlement, Plaintiff, PAGA Members, and the State of California (only with respect to Plaintiff and PAGA Members) are hereby deemed to release and discharge any and all claims or causes of action for civil penalties under PAGA, whether known or unknown, that they had, now have, have asserted, or may hereafter assert against Merakey or any of its present or former parent and affiliated companies, subsidiaries, partners, agents, insurers and each of their respective officers, directors, shareholders, representatives, successors and assigns, that are based upon or arise from the factual allegations in the Complaint or Notice to LWDA, for the Covered Period, including but not limited to, PAGA claims and all claims for attorneys' fees and costs and statutory interest associated with the

aforementioned claims. Plaintiff, PAGA Members (such as yourself), and the State of California shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits they otherwise may have had related to these claims.

Do **not** call or write the Court or Office of the Clerk of the Court to ask questions about the settlement. If you have any questions, you may call the Settlement Administrator: [telephone number].