

PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 ET SEQ.)
SETTLEMENT AGREEMENT

Erika Maldonado and Cynthia Soriano v. Broker Solutions, Inc. dba New American Funding (Orange County Superior Court Case No. 30-2020-01175149-CU-OE-CJC)

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 will be effectuated upon and subject to the following terms and conditions. Capitalized terms used herein will have the meanings set forth in Article I or elsewhere in this Private Attorneys General Act (*Labor Code* § 2698 *et seq.*) Settlement Agreement (“Settlement” or “Settlement Agreement”).

This Settlement Agreement is made by and between Defendant Broker Solutions, Inc. dba New American Funding (“Defendant”) and Plaintiffs Erika Maldonado and Cynthia Soriano (“Plaintiffs”), for themselves and on behalf of the State of California (collectively, the “Parties”).

The Parties agree that the action entitled *Erika Maldonado. et al. v. Broker Solutions, Inc.*, Orange County Superior Court, Case Number 30-2020-01175149-CU-OE-CJC (the “Action”) will be, and hereby is, ended, settled, resolved, and concluded by agreement of Defendant to pay the total sum of Six Hundred Thousand Dollars (\$600,000) (the “Settlement Sum”) for settlement of the Private Attorneys General Act (“PAGA”) penalties, which will be inclusive of Attorneys’ Fees and Costs to Plaintiffs’ Counsel, Enhancement Payments to Plaintiffs, and Administration Costs to the Settlement Administrator.

Article I.

Definitions.

Section 1.01 Definitions.

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

- (a) “Aggrieved Employees” means all current or former California employees of Defendant classified as exempt pursuant to the outside sales exemption at any time during the Release Period. Defendant represents that, as of June 2021, the number of Aggrieved Employees was approximately 381, who worked a total of 11,620 Pay Periods during the Release Period.
- (b) “Complaint” means the Complaint for Enforcement Under the Private Attorney General Act, California Labor Code § 2698, Et Seq filed by Plaintiffs on December 18, 2020 in Orange County Superior Court, Case No. 30-2020-01175149-CU-OE-CJC.
- (c) “Court” means the Superior Court for the State of California, County of Orange.
- (d) “Defense Counsel” or “Counsel for Defendant” is:

Todd R. Wulffson, Esq.
Amy S. Williams, Esq.
Ashley A. Halberda, Esq.
CDF Labor Law LLP
18300 Von Karman Avenue, Suite 800
Irvine, California 92612

(e) "Effective Date" means the date the Court enters the order approving the settlement of the PAGA penalties as described in this Settlement Agreement.

(f) "Plaintiffs' Counsel" is:

Babak Semnar, Esq.
Jared R. Hartman, Esq.
SEMNR HARTMAN
41707 Winchester Road, Suite 201
Temecula, CA 92590

Matthew R. Wilson, Esq.
Michael J. Boyle, Jr., Esq.
MEYER WILSON CO., LPA
305 W. Nationwide Blvd.
Columbus, OH 43215

(g) "Release Period" means the time period from October 2, 2019 through the Effective Date.

(h) "Released Claims" means all claims for PAGA civil penalties, which occurred during the Release Period, pursuant to Labor Code Section 2698 *et seq.* alleged or that could have been alleged based on the allegations asserted in the Complaint on behalf of the Aggrieved Employees including, but not limited to, claims for the failure to pay all wages, the failure to pay minimum wage, the failure to pay overtime wages, unreimbursed business expenses, failure to provide compliant meal periods and/or pay meal period premiums, failure to authorize and permit compliant rest periods and/or pay rest period premiums, failure to provide and maintain accurate wage statements, failure to pay timely wages at termination of employment, failure to timely pay wages during employment, including but not limited to claims arising under California *Labor Code* sections 201-204, 205.5, 210, 218.5, 218.6, 221, 223, 225.5, 226, 226.3, 226.7, 246, 247.5, 510, 512, 551, 552, 558, 1174, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2698 *et seq.*, 2699 *et seq.*, 2800, 2802; Cal. Code of Regulations, Title 8, Section 11040, the applicable Industrial Welfare Commission Wage Orders, and the *Business & Professions Code* §17200, *et seq.* as it relates to the underlying *Labor Code* claims referenced above and permissible pursuant to *Labor Code* Section 2699, *et seq.*, and California *Code of Civil Procedure* § 1021.5 to the extent permissible pursuant to *Labor Code* Section 2699, *et seq.*, interest, attorneys' fees and costs.

- (i) "Released Parties" means Defendant and all its present and former parent corporations, affiliates, subsidiaries, divisions, predecessors, insurers, successors, and assigns, and their current and former employees, attorneys, officers, directors, and agents thereof, both individually and in their business capacities, and their employee benefit plans and programs and the trustees, administrators, fiduciaries, and insurers of such plans and programs, and any other individual or entity which could be liable for any of the Released Claims in the Action.

Article II.

Background.

Section 2.01 Background.

- (a) On or about October 2, 2020 Plaintiffs submitted a letter to the California Labor and Workforce Development Agency ("LWDA") to notify the LWDA pursuant to PAGA of Plaintiffs' intent to seek civil penalties under PAGA and all other remedies available under PAGA for Defendant's alleged violations of various provisions of the California Labor Code and all applicable Industrial Welfare Commission Wage Orders.
- (b) On December 18, 2020, Plaintiffs filed the Complaint in the Superior Court of the State of California for the County of Orange on a representative basis under PAGA on behalf of Plaintiffs, the State of California and other allegedly aggrieved employees, based on alleged violations of various provisions of the California Labor Code and all applicable Industrial Welfare Commission Wage Orders.
- (c) On June 21, 2021, the Parties mediated the Action during a full-day mediation with mediator Joel Grossman, Esq.
- (d) Through this Action, the Parties have engaged in informal discovery and fully shared the information necessary for all sides to conduct a legitimate investigation into the allegations of the Action and potential defenses thereto. The Parties have reached this Settlement only after sufficient discovery and investigation was performed.
- (e) This Settlement contemplates the (a) entry of an order by the Court approving the Settlement; (b) dismissal of the Action with prejudice; and (c) all parties bearing their respective fees and costs except as expressly provided by this Settlement Agreement.

Article III.

Approval and Implementation of Settlement.

Section 3.01 Cooperation.

The Parties will cooperate in obtaining an order from the Court approving this Settlement and distribution of the Settlement Sum as described in Section 3.04 herein. The Parties will seek

to obtain Court approval of this Settlement Agreement by way of an unopposed motion to be filed by Plaintiffs' Counsel.

Plaintiffs' Counsel shall request and be paid one-third (33.33%) of the Settlement Sum, or Two Hundred Thousand Dollars (\$200,000) for attorneys' fees and an amount not to exceed Ten Thousand Dollars (\$10,000) for reimbursement of actual litigation costs (together, "Attorneys' Fees and Costs") from the Settlement Sum, and Defendant will not oppose these requests. Plaintiffs shall request and be paid from the Settlement Sum Five Thousand Dollars (\$5,000) each as enhancement payments ("Enhancement Payments"), and Defendant will not oppose this request. The Parties agree to use their best efforts to expedite the preparation and submission of the settlement documents. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to the approval and implementation of the distribution of the Settlement Sum as described in this Settlement Agreement.

Section 3.02 Interim Stay of Proceedings

The Parties agree to stay all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement Agreement, pending the Court's approval of the Settlement Agreement.

Section 3.03 Court Approval.

The Parties will seek to obtain Court approval of this Settlement Agreement by way of an unopposed motion to be filed by Plaintiffs' Counsel. Plaintiffs' Counsel and Defense Counsel will jointly lodge this Settlement Agreement with the Court for its approval. The Court's approval of the payment of the Settlement Sum as described herein will be embodied in a written order.

Section 3.04 Deposit of Settlement Sum with Settlement Administrator

- (a) The Parties agree to retain Simpluris to serve as the settlement administrator ("Settlement Administrator"). The Parties each represent they do not have a financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that creates or could create a conflict of interest.
- (b) No later than thirty (30) calendar days after the Effective Date, Defendant shall deposit the Settlement Sum with the Settlement Administrator.

Section 3.05 Settlement Payments.

- (a) Payment to the Aggrieved Employees and the LWDA.

Payment will be provided to the Aggrieved Employees in the following manner:

- (1) No later than thirty (30) calendar days after the Effective Date, Defendant will provide to the Settlement Administrator a list in Microsoft Excel format containing each Aggrieved Employee's (i) full name, (ii) last known mailing address, (iii) Social Security number, and (iv) dates worked for Defendant in California during the Release Period ("Settlement List").
- (2) Within fifteen (15) calendar days of receipt of the Settlement List, the Settlement Administrator will update the mailing addresses contained in the Settlement List using the NCOA database and mail the Individual Settlement Payments (defined below) to the Aggrieved Employees.
- (3) The Settlement Administrator shall concurrently submit the LWDA Payment (defined below) to the LWDA.
- (4) For each Individual Settlement Payment that is returned as undeliverable, the Settlement Administrator will perform a skip-trace search to locate an updated mailing address for the Aggrieved Employee, and re-mail the Notice and Individual Settlement Payment within five (5) calendar days.
- (5) All costs incurred by the Settlement Administrator in connection with the current Settlement, including mailing of the Notice described herein ("Administration Costs") will be paid out of the Settlement Sum. Administration Costs are not expected to exceed Eight Thousand Dollars (\$8,000); to the extent they exceed this amount, they will be paid from the Net Settlement Amount (as defined herein); to the extent they fall below this amount, the difference will be added to the Net Settlement Amount.

Section 3.06 Settlement Payment Procedures.

(a) Payment of PAGA Penalties.

The total sum available for payment of PAGA penalties will be calculated by deducting Attorneys' Fees and Costs (\$200,000 and \$10,000, respectively), Enhancement Payments (\$10,000), and Administration Costs (\$8,000) from the Settlement Sum ("Net Settlement Amount"). The Net Settlement Amount is estimated to be approximately Three Hundred Seventy-Two Thousand and Two Hundred Dollars (\$372,000).

Seventy-five percent (75%) of the Net Settlement Amount will be paid to the LWDA ("LWDA Payment"); the remaining twenty-five percent (25%) of the Net Settlement Amount ("Employee Net Settlement Amount") will be paid to the Aggrieved Employees *pro rata* based on the number of weeks each of them worked during the Release Period ("Pay Period(s)"). Pay Periods will be calculated based on the number of pay periods an employee worked for Defendant as a non-exempt employee in California October 2, 2019 to the date the Court enters the order approving this Settlement. All Aggrieved Employees will be credited with at least one Pay Period.

The Settlement Administrator will calculate each Aggrieved Employee's Individual Settlement Payment as follows:

- The Settlement Administrator will determine the number of Pay Periods worked by each Aggrieved Employee based on the dates of employment provided in the Settlement List.
- The Settlement Administrator will divide each Aggrieved Employee's individual number of Pay Periods by the total aggregate number of Pay Periods for all Aggrieved Employees.
- The Settlement Administrator will multiply the resulting amount by the Employee Net Settlement Amount to yield each Aggrieved Employee's Individual Settlement Payment.

One hundred percent (100%) of the Individual Settlement Payments are considered penalties and will not be subject to local, state or federal tax withholdings. All Aggrieved Employees who cash their Individual Settlement Payment check may receive an IRS Form 1099 for their Individual Settlement Payment, if deemed required by the Settlement Administrator (in compliance with IRS guidelines).

The expiration date on the Individual Settlement Payment checks will be one hundred eighty (180) calendar days from the date the settlement checks are issued. If any Aggrieved Employee does not cash or deposit his/her settlement check within one hundred eighty (180) calendar days, the check will be void and the uncashed funds associated with each settlement check will escheat to the State Controller to be deposited in the California Unclaimed Property Fund in the Aggrieved Employee's name.

(b) Attorneys' Fees and Costs and Enhancement Payment.

Within fifteen (15) calendar days after receipt of the Settlement Sum, the Settlement Administrator shall distribute the Attorneys' Fees and Costs to Plaintiffs' Counsel and the Enhancement Payments to Plaintiffs.

(c) Settlement Administrator Expenses.

Within five (5) business days following the distribution of Attorneys' Fees and Costs to Plaintiffs' Counsel, Enhancement Payments to Plaintiffs, LWDA Payment to the LWDA, and the Employee Net Settlement Amount to Aggrieved Employees, the Settlement Administrator shall pay the Administration Costs to itself for its administration fees.

Article IV.

Limitations on Use of This Settlement.

Section 4.01 No Admission.

This Settlement Agreement and compliance with this Settlement Agreement shall not be construed as an admission by Defendant of any liability whatsoever, or as admission by Defendant

of any violations of Plaintiffs' or the Aggrieved Employees' rights, violation of any order, law, statute, duty or contract whatsoever. Defendant specifically disclaims any liability to Plaintiffs, the Aggrieved Employees, 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.

Section 4.02 Non-Evidentiary Use.

Neither this Settlement Agreement nor any of its terms will be offered or used as evidence by any of the Parties, or their respective counsel in the Action or in any other action or proceeding; provided, however, this will not prevent this Settlement Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Settlement Agreement.

Section 4.03 Nullification.

(a) If the Court should for any reason fail to approve the payment of PAGA penalties as described in this Settlement Agreement, then, at the sole discretion of Defendant (a) this Settlement Agreement shall be considered null and void, (b) neither this Settlement Agreement nor any of the related negotiations or proceedings will be of any force or effect, and (c) all Parties to this Settlement Agreement shall stand in the same position, without prejudice, as if the Settlement Agreement had been neither entered into nor filed with the Court.

(a) Invalidation of any material portion of this Settlement Agreement will, at the sole discretion of Defendant, invalidate this Settlement Agreement in its entirety.

Article V.

Release and Waiver of Claims.

Section 5.01 Release by Aggrieved Employees.

Upon the Effective Date of this Settlement Agreement, Plaintiffs, all Aggrieved Employees, and the State of California shall be deemed to have fully, finally, and forever released, relinquished, and discharged each and all of the Released Parties from the Released Claims that arose during the Release Period.

Article VI.

Miscellaneous Provisions.

Section 6.01 Voluntariness.

This Settlement 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 6.02 Amendments.

The terms and provisions of this Settlement Agreement may be amended only by a written agreement that is (a) signed by both Parties or their counsel, and (b) approved by the Court. Any waiver of any provision of this Settlement Agreement will not constitute a waiver of any other provision of this Settlement Agreement unless expressly so indicated otherwise.

Section 6.03 Assignment.

None of the rights, commitments, or obligations recognized under this Settlement 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 Settlement Agreement are for the sole benefit of the Parties under this Settlement Agreement, and will not be construed to confer any right or to avail any remedy to any other person. Plaintiffs expressly warrants that he has not transferred to any person or entity any right or cause of action, or claim released by this Settlement Agreement.

Section 6.04 Governing Law.

This Settlement Agreement will be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California.

Section 6.05 Entire Agreement.

This Settlement Agreement contains the entire understanding of the Parties hereto in respect of the subject matter contained herein. This Settlement Agreement supersedes all prior agreements and understandings among the Parties hereto with respect to the settlement of the Action.

Section 6.06 Waiver of Compliance.

Any failure of any Party, Defense Counsel, and/or Plaintiffs' Counsel hereto to comply with any obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the extent permitted under applicable law, by the Party or Parties and their respective counsel hereto entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or condition will not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

Section 6.07 Counterparts.

This Settlement 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 will be deemed to be an original and all of which counterparts taken together will constitute but one and the same instrument. It will not

be necessary in making proof of this Settlement Agreement or any counterpart hereof to produce or account for any of the other counterparts.

Section 6.08 Attorneys' Fees and Costs.

Except as expressly provided herein, Defendant and Plaintiffs shall each bear their own attorney's fees and costs.

Section 6.09 Dispute(s).

Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Settlement Agreement, the Parties agree to submit any such dispute(s) to the Court. To the extent any Party seeks to enforce any of the terms of this Settlement Agreement in Court or before the Court, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

Section 6.10 Binding.

This Settlement Agreement will bind and inure to the benefit of the Parties hereto and to their respective successors, assigns, legatees, heirs, and personal representatives.

Section 6.11 Continuing Jurisdiction.

The Parties agree that upon the occurrence of the dismissal of this case pursuant to the terms of this Settlement Agreement, this Settlement Agreement will 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 over all Parties and Aggrieved Employees to interpret and enforce the terms, conditions and obligation of the Settlement Agreement.

Section 6.12 No Public Disclosure.

Except as necessary to obtain Court approval, Plaintiffs and Plaintiffs' Counsel will not make any public disclosure of this Settlement. Plaintiffs' Counsel will take all steps necessary to ensure Plaintiffs are aware of, and will encourage them to adhere to, the restriction against any public disclosure of this Settlement. Plaintiffs' Counsel will not include, use or comment upon the settlement for any marketing or promotional purposes.

Plaintiffs and Plaintiffs' Counsel will not initiate any communications with and, if contacted by the media, will only discuss information publicly available. Plaintiffs' Counsel will take all steps necessary to ensure Plaintiffs are aware of, and will encourage them to adhere to, the restriction against initiating any media comment. Plaintiffs' Counsel further agrees not to use the settlement of the Action or any of their terms for any marketing purposes. Nothing herein will restrict Plaintiffs' Counsel from including publicly available information regarding this Settlement in future judicial submissions regarding Plaintiffs' Counsel's qualifications and experience.

Section 6.13 Right to Reopen Proceedings.

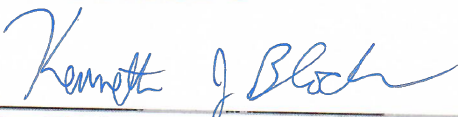
The Parties agree that, in the event the Settlement is not approved by the Court, or if the Settlement is terminated by either Party under the provisions of the long-form Settlement and Release of PAGA Claim, the Parties will request that the Court reopen proceedings within thirty (30) calendar days.

IN WITNESS WHEREOF, the Parties have executed this Private Attorneys General Act Settlement Agreement on the date set forth.

[Signatures on next page]

Dated: November 24, 2021

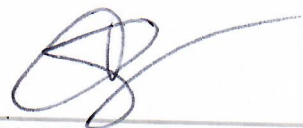
BROKER SOLUTIONS, INC. dba NEW
AMERICAN FUNDING

By: 
Ken Block
General Counsel

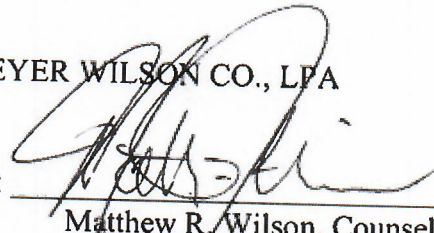
Dated: _____, 2021

ERIKA MALDONADO

Dated: Nov 8, 2021


CYNTHIA SORIANO

Dated: Nov. 8, 2021

MEYER WILSON CO., LPA
By: 
Matthew R. Wilson, Counsel for
Plaintiffs Erika Maldonado and Cynthia
Soriano

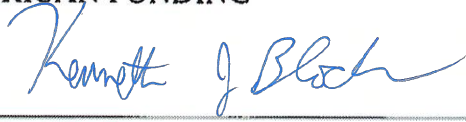
Dated: _____, 2021

CDF LABOR LAW LLP

By: _____
Amy S. Williams, Counsel for Defendant
Broker Solutions, Inc. dba New American
Funding

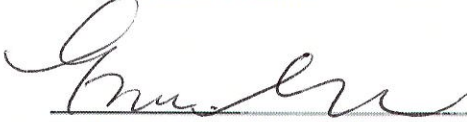
Dated: November 24, 2021

BROKER SOLUTIONS, INC. dba NEW
AMERICAN FUNDING

By: 

Ken Block
General Counsel

Dated: Nov 8, 2021

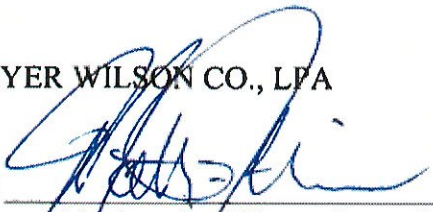

ERIKA MALDONADO

Dated: _____, 2021

CYNTHIA SORIANO

Dated: Nov. 8, 2021

MEYER WILSON CO., LPA

By: 

Matthew R. Wilson, Counsel for
Plaintiffs Erika Maldonado and Cynthia
Soriano

Dated: Nov. 29, 2021

CDF LABOR LAW LLP

By: 

Amy S. Williams, Counsel for Defendant
Broker Solutions, Inc. dba New American
Funding