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9 MICHAEL JOHNSON, on behalf of himself and all others similarly situated, and on behalf of the
10 general public.

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21 TALLEY, INC.

22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

23 **FOR THE COUNTY OF SACRAMENTO**

24 MICHAEL JOHNSON, on behalf of himself
25 and all others similarly situated, and on behalf
26 of the general public,

27 Plaintiff,

28 vs.

TALLEY, INC., a California Corporation, and
DOES 1 through 10, inclusive.

Defendants.

Case No. 34-2021-00296361

**PRIVATE ATTORNEYS GENERAL ACT
STIPULATION OF SETTLEMENT
AGREEMENT AND RELEASE**

Complaint Filed: March 12, 2021

PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AND RELEASE

This Private Attorneys General Act Settlement Agreement and Release ("Stipulation of Settlement") is made and entered into by and between MICHAEL JOHNSON, on behalf of himself and all others similarly situated, and the California Labor and Workforce Development

1 Agency, (“Plaintiff” or the “PAGA Employees”) and TALLEY, INC. (“Defendant”). Plaintiff and
2 Defendant are collectively referred to herein as the “Parties” and may be individually referred to
3 as a “Party.” This Stipulation of Settlement is made in consideration of the following facts:

4 **A. WHEREAS**, on March 16, 2021, Plaintiff filed the representative action entitled
5 *Michael Johnson, on behalf of himself and all others similarly situated, and on behalf of the*
6 *general public v. Talley, Inc.*, alleging PAGA violations pursuant to Labor Code § 2698 *et seq.*
7 (“PAGA”) for alleged violations of Labor Code §§ 226.7, 512, 558, 510, 1194, 1194.2, 226(a), (e),
8 201-203, and 204(a)(b) (the “Lawsuit”). Plaintiff gave notice to the Labor and Workforce
9 Development Agency (“LWDA”) of the alleged Labor Code violations and the facts and theories
10 to support such violations. Defendant denies all of the allegations in the Lawsuit and in the LWDA
11 notice, and denies that it has committed any misconduct, statutory or regulatory violation,
12 wrongdoing, or any other actionable conduct.

13 **B. WHEREAS**, the Parties understand, acknowledge, and agree that this Stipulation of
14 Settlement constitutes a compromise of the claims asserted in the Lawsuit and that it is the desire
15 and intention of the Parties to effect a final and complete resolution of such claims that Plaintiff,
16 the LWDA, and all aggrieved employees have against Defendant arising under PAGA. The Parties
17 further acknowledge that this Stipulation of Settlement is a negotiated compromise between them,
18 and that it is intended to settle all disputes, including any *bona fide* dispute between the Parties
19 regarding whether the PAGA Employees were entitled to PAGA penalties arising prior to entry
20 into this Stipulation of Settlement.

21 **C. WHEREAS**, following a mediation with Honorable William C. Pate on September 21,
22 2021, the Parties believe and agree that this Stipulation of Settlement provides for a fair, adequate,
23 and reasonable resolution of the Representative PAGA claims, and have arrived at the settlement
24 in extensive, arms-length negotiations, ultimately resolved by a “Mediator’s Proposal” to break
25 the impasse, taking into account all relevant factors, present and potential.

26 **D. WHEREAS**, California Labor Code section 2699(1)(2) requires Court approval of a
27 settlement of any action filed under PAGA.
28

1 E. **THEREFORE**, in consideration of the promises and agreements contained herein, the
2 Parties agree and covenant as follows:

3 1. EFFECTIVE DATE: The effective date shall be the date the Court enters the order
4 approving this Stipulation of Settlement (“Effective Date”).

5 2. RELEASE: Upon entry of an Order approving the Settlement, all PAGA Employees will
6 release any and all right to civil penalties under PAGA that were or could have been asserted in
7 Plaintiff’s Lawsuit (including Labor Code Section 558), based on the facts alleged. In particular,
8 the Released Claims are claims for civil penalties under PAGA for violations of Labor Code §§
9 226.7, 512, 558, 510, 1194, 1194.2, 226(a), (e), 201-203, and 204(a)(b) (“Released Claims”)
10 against Defendant and its present and former officers, directors, members, managers, shareholders,
11 agents, parents, subsidiaries, affiliates, employees, insurers, operators, partners, joint ventures,
12 consultants, attorneys, successors or assigns (all of the foregoing are referred to as the
13 “Releasees”). The PAGA Period for purposes of the release shall be January 6, 2020 through the
14 date the Court approves the PAGA settlement. Additionally, the Parties agree that Plaintiff’s
15 counsel will seek to dismiss voluntarily and without prejudice Plaintiff’s putative Class Action
16 lawsuit against Talley, Inc., entitled *Michael Johnson, on behalf of himself and all others*
17 *similarly situated, and on behalf of the general public v. Talley, Inc*, Case No. 34-2021-00302541,
18 and take all reasonable steps necessary (including the filing of a detailed declaration under CRC
19 3.770) to achieve such dismissal. Should the Court not approve the dismissal of the Class Action
20 complaint or not approve the PAGA settlement, the parties will revert to the “status quo” as they
21 were prior to entering into the instant agreement.

22 3. The Parties agree and acknowledge that, to the maximum extent permitted by law, the
23 final order entered pursuant to this settlement will bind all those who would be bound by a
24 judgment if the action had been brought by the LWDA, including Michael Johnson, the LWDA,
25 and the PAGA Employees, with respect to the recovery of civil penalties asserted in the PAGA
26 claim against the Released Parties.

27 4. IRS 1099: With regard to settlement payments to PAGA Employees and penalties owing
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1 to Plaintiff, IRS Form 1099s will be issued. Nothing in this Settlement is intended to constitute
2 legal advice regarding federal, state, and/or local tax obligations. Plaintiff acknowledges that he
3 has obtained no tax advice from Defendant and that neither Defendant nor its attorneys have made
4 any representation concerning the tax consequences, if any, of the Settlement Amount in this
5 Agreement or any payment to be made pursuant to this Agreement.

6 5. NOTICE

7 5.1. Defendant shall provide Plaintiff's counsel with a spreadsheet showing the
8 calculations of workweeks with the names employees partially redacted. Defendant estimates that
9 the total number of pay periods in the PAGA period up to March 12, 2021 is: 3,112. If the actual
10 pay periods as of March 12, 2021 is more than 10% greater than this number, the PAGA
11 Employees shall have the right to a pro-rata increase in the settlement due from Defendant.

12 6. PAGA SETTLEMENT PAYMENT PROCEDURES:

13 6.1. In exchange for the dismissal of the Lawsuit and Plaintiff's individual release pursuant
14 to California Labor Code § 2699 For Violations of Labor Code Sections as alleged in the Lawsuit,
15 *et. seq.* (including PAGA penalties payable in part to the State of California) against the Released
16 Parties, Defendant, agrees to pay, in accordance with the terms specified below, the total gross
17 sum of \$96,000.00 (the "Settlement Sum") to Plaintiff to be apportioned as set forth herein.

18 6.1.a. ATTORNEYS' FEES: An award to Plaintiff's Counsel of attorneys' fees will
19 be subtracted from the Settlement Sum in an amount to be set by the Court taking into account the
20 settlement award that has been made available for the PAGA Employees by the efforts of
21 Plaintiff's Counsel. The amount awarded shall not exceed 33.33%. Court approval of the
22 settlement shall not be contingent on the Court's approval of attorney's fees. Defendant agrees not
23 to dispute or otherwise object to Plaintiff's request for attorney's fees in an amount not to exceed
24 33.33% of the Settlement Sum. Fees approved by the Court shall be paid to Plaintiff's counsel
25 following Defendant's receipt of a W-9 form and ten (10) days after the Court's approval and the
26 dismissal of the Class Action. The Court may retain jurisdiction after its approval under C.C.P.
27 section 664.6 to enforce the settlement terms.

1 6.1.c. ATTORNEYS' COSTS AND EXPENSES: Plaintiff's Counsel will be
2 reimbursed from the Settlement Sum in an amount to be set by the Court for documented out-of-
3 pocket litigation costs and expenses, not to exceed ten thousand dollars (\$10,000.00). Defendant
4 agrees not to object or dispute costs in an amount of up to \$10,000.00 for Plaintiff's Counsel's
5 costs.

6 6.1.d. NO CLAIMS ADMINISTRATOR PAYMENT: Defendant will calculate and
7 determine the amount of settlement penalties owing the the PAGA Employees based on the
8 employee's proportionate amount of time working in the PAGA Period. These calculations will
9 be shared with and approved by Plaintiff's counsel. Defendant shall then mail payments to the
10 PAGA Employees within ten (10) days of the Order approving the settlement and dismissal of the
11 aforementioned Class Action. Defendant will make reasonable efforts to locate the proper
12 addresses of employees whose checks are returned as undeliverable and re-mail such checks.

13 6.1.e. PAYMENT TO PAGA EMPLOYEES: After deducting Plaintiffs' attorney's
14 fees and costs, and the payment to Plaintiff for his Civil Code section 1542 release, 25% of the
15 remaining funds shall be paid and distributed to PAGA Employees (hereinafter called the "PAGA
16 Employee Fund"). The pro-rata share for each PAGA Employee shall be calculated by dividing
17 the PAGA Employee's number of pay periods worked during the PAGA Period by the total
18 number of pay periods worked by all PAGA Employees and multiplying that ratio by the total
19 amount in the PAGA Employee Fund.

20 6.1.f. After deducting Plaintiff's attorney's fees and costs and the payment to
21 Plaintiff for his Civil Code section 1542 release, 75% of the remaining funds shall be paid and
22 distributed by Defendant to the LWDA (hereinafter called the "LWDA Payment").

23 6.1.g. Settlement Checks issued to PAGA Employees pursuant to this Stipulation
24 of Settlement will expire one hundred and twenty (120) days from the date they are first issued.
25 Any unclaimed funds after the one hundred and twenty (120) day period shall be paid to the State
26 of California Unclaimed Wages Fund.

27 8. COURT APPROVAL: Should the Court not approve this Stipulation of Settlement or
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1 the Class Action not be dismissed upon request, the Parties shall request leave and work jointly to
2 attempt to remedy the Stipulation of Settlement in order to obtain the Court's approval. If despite
3 the Parties best efforts, the Court still does not approve the Stipulation of Settlement or the Class
4 Action not be dismissed upon request, the Settlement shall become null and void and have no
5 force and effect. The parties will jointly submit a proposed order to be entered by the Court to
6 enforce this Stipulation of Settlement, to grant approval of the PAGA payments, and dismiss the
7 Lawsuit with prejudice. The Proposed Order will be submitted concurrently with the documents
8 asking the Court to approve the settlement. If the Court fails to take action on the Proposed Order
9 within fourteen (14) days, Plaintiff will prepare and file an unopposed Motion for Approval of the
10 PAGA Settlement.

11 9. REPRESENTATIONS AND WARRANTIES: In further consideration for payment of
12 the PAGA settlement amounts, Plaintiff represents and warrants that he has the right and exclusive
13 authority to execute this Stipulation of Settlement. Each Party to this Stipulation of Settlement also
14 represents and warrants to, and agrees with, each other Party hereto as follows:

15 9.1. Each Party has carefully read, and knows and understands the full contents of this
16 Stipulation of Settlement and is voluntarily entering into this Stipulation of Settlement after having
17 received independent legal advice from his or its attorneys with respect to the advisability of
18 making the settlement provided for herein and the advisability of executing this Stipulation of
19 Settlement.

20 9.2. In executing this Stipulation of Settlement and in making the settlement provided
21 for herein, no Party relies or has relied on any statement, representation, omission, inducement, or
22 promise of any other Party (or any officer, agent, employee, representative, or attorney for any
23 other Party), except as expressly stated in this Stipulation of Settlement.

24 9.3. Each Party to this Stipulation of Settlement has investigated the facts relevant to
25 this settlement and this Stipulation of Settlement, and all matters pertaining thereto, to the full
26 extent that each Party deems necessary.

27 9.4. Each separately-numbered term of this Stipulation of Settlement is contractual, not
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1 merely a recital.

2 9.5. Each of the Parties has participated in the drafting of all provisions of this
3 Stipulation of Settlement, has had an adequate opportunity to read, review, and consider the effect
4 of the language of this Stipulation of Settlement, and has agreed to its terms.

5 10. CONFIDENTIALTY: Plaintiff and Plaintiff's Counsel agree that they have not and
6 will not publish the Stipulation of Settlement to anyone outside of the Court and the LWDA. In
7 response to any inquiries, Plaintiff will state that "the case was resolved with Court approval;"
8 Plaintiff's Counsel shall not report the Settlement or its content in any medium or in any
9 publication, shall not post or report anything regarding the claims of Plaintiff or the PAGA
10 Employees on their website, and shall not contact any reporters or media regarding the Settlement,
11 the PAGA Claims, or their content. However, Plaintiff's Counsel is authorized to make a limited
12 disclosure to the Court and the LWDA for the purposes of obtaining the approval of the
13 settlement. This disclosure is limited to court filings and electronic submission of settlement
14 documents to the LWDA. Plaintiff and Plaintiff's counsel, or their representatives, are not
15 permitted to disseminate or publish, distribute or discuss the information provided to the Court in
16 those filings outside the filings themselves and any hearing held on those filings, unless ordered
17 otherwise by the Court.

18 11. CHOICE OF LAW: The rights and obligations of the Parties under this Stipulation of
19 Settlement shall be construed and enforced in accordance with, and governed by, the laws of the
20 State of California. California law shall govern the interpretation of this Stipulation of Settlement
21 even if a choice of law analysis under state or federal law would dictate that another forum's law
22 be applied.

23 12. COOPERATION: Each Party agrees that they will abide by this Stipulation of
24 Settlement and will do all such acts, and prepare, execute, and deliver all such documents, as may
25 be reasonably required to carry out the stated objectives of this Stipulation of Settlement.

26 13. SEVERANCE: If any provision of this Stipulation of Settlement is held to be invalid
27 by a court of competent jurisdiction, that provision shall be deemed severed and deleted from this
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1 Stipulation of Settlement, and neither that provision nor its severance and deletion shall affect the
2 validity of the remaining provisions. Notwithstanding the foregoing, no portion of any release
3 contained herein may be deemed severed or deleted from this Stipulation of Settlement, except
4 upon waiver in writing by the applicable Released Party.

5 14. NON-ADMISSION OF WRONGDOING: The Parties agree that this Stipulation of
6 Settlement does not constitute an admission of Defendant or any Released Party, of any of the
7 matters alleged in the Lawsuit or of any violation by any of them of any federal, state or local law,
8 ordinance or regulation, or of any violation of any policy or procedure, or of any liability or
9 wrongdoing whatsoever. Neither this Stipulation of Settlement nor anything in this Stipulation of
10 Settlement shall be construed to be or shall be admissible in any proceeding as evidence of
11 liability or wrongdoing the Parties, subsidiaries, divisions, affiliated corporations, trustees,
12 directors, officers, shareholders, agents, attorneys, insurers, or employees.

13 15. ADDITIONAL TERMS:

14 15.1 This Stipulation of Settlement is binding upon and shall inure to the benefit of, the
15 Parties hereto and their respective agents, employees, representatives, officers, directors, parents,
16 subsidiaries, assigns, heirs, executors, administrators, insurers, and successors in interest.

17 15.2 Given that all Parties hereto had the opportunity to draft, review, and edit the
18 language of this Stipulation of Settlement, no presumption for or against any Party arising out of
19 drafting all or any part of this Stipulation of Settlement may be applied in any action relating to,
20 connected to, or involving this Stipulation of Settlement. Accordingly, the Parties hereby waive
21 the benefit of any legal principle or rule providing that, in cases of uncertainty, the language of a
22 contract should be interpreted against the Party who caused the uncertainty to exist.

23 15.3 This Stipulation of Settlement may be executed in counterparts. A signature by
24 way of e-mail, facsimile, or Doc-u-Sign shall serve as an original for all purposes.

25 15.4 Headings in this Stipulation of Settlement are included solely for convenience and
26 shall not control the meaning or interpretation of any provision of this Stipulation of Settlement.

27 16. ENTIRE AGREEMENT: This Stipulation of Settlement sets forth the entire agreement
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1 between the Parties hereto and fully supersedes any and all prior and/or supplemental
2 understandings, whether written or oral, between the Parties concerning the subject matter of this
3 Stipulation of Settlement. Plaintiff acknowledged that she has not relied on any representations,
4 promises or agreements of any kind made to them in connection with their decision to accept the
5 terms of this Stipulation of Settlement, except for the representations, promises, and agreements
6 herein. Any modification to this Stipulation of Settlement must be in writing and signed by
7 Plaintiff and an authorized officer of Defendant.

8 IN WITNESS WHEREOF, the parties knowingly and voluntarily executed this Private
9 Attorneys General Act Settlement Agreement and Release as of the date set forth below.

10 10/9/2021

11 Dated: October ____, 2021

DocuSigned by:
MICHAEL JOHNSON
D4C0750B79B04BC...

12 Plaintiff MICHAEL JOHNSON, on behalf of
13 himself and all others similarly situated, and on
14 behalf of the general public and the State of
15 California

16 Dated: October ____, 2021

17
18 Defendant TALLEY, INC.

19 By: Karen Frankenberg

20 Its: Chief Financial Officer and Vice President
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Approved as to form and content:

10/9/2021

Dated: October ____, 2021

OTKUPMAN LAW FIRM, ALC

DocuSigned by:

Roman Otkupman

018FE032D1EA4AD

ROMAN OTKUPMAN

Attorneys for MICHAEL JOHNSON, on
behalf of himself and all others similarly
situated, and on behalf of the general public

Dated: October ____, 2021

GORDON REES SCULLY MANSUKHANI,
LLP

L. GEOFFREY LEE

MINNEY THIND

Attorneys for TALLEY, INC.

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3 Stipulation of Settlement. Plaintiff acknowledged that she has not relied on any representations,
4 promises or agreements of any kind made to them in connection with their decision to accept the
5 terms of this Stipulation of Settlement, except for the representations, promises, and agreements
6 herein. Any modification to this Stipulation of Settlement must be in writing and signed by
7 Plaintiff and an authorized officer of Defendant.

8 IN WITNESS WHEREOF, the parties knowingly and voluntarily executed this Private
9 Attorneys General Act Settlement Agreement and Release as of the date set forth below.

10
11 Dated: October ____, 2021

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13 Plaintiff MICHAEL JOHNSON, on behalf of
14 himself and all others similarly situated, and on
15 behalf of the general public and the State of
16 California

17
18 Dated: October ____, 2021

19
20 KAREN

21
22 FRANKENBERG

Digitally signed by KAREN
FRANKENBERG
DN: cn=KAREN FRANKENBERG,
o=TALLEY INC, ou,
email=KFRANKENBERG@TALLEYCOM.C
OM, c=US
Date: 2021.10.11 19:06:09 -07'00'

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24 Defendant TALLEY, INC.

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26 By: Karen Frankenberg

27
28 Its: Chief Financial Officer and Vice President

1 **Approved as to form and content:**

2
3 Dated: October ____, 2021

4 OTKUPMAN LAW FIRM, ALC

5
6

ROMAN OTKUPMAN
7 Attorneys for MICHAEL JOHNSON, on
8 behalf of himself and all others similarly
situated, and on behalf of the general public

9 Dated: October 12, 2021

10 GORDON REES SCULLY MANSUKHANI,
11 LLP

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L. GEOFFREY LEE
14 MINNEY THIND
15 Attorneys for TALLEY, INC.
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