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10 Attorneys for Plaintiff KATHLEEN CUMMINGS,
11 on behalf of herself and all other aggrieved employees

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF LOS ANGELES

14 KATHLEEN CUMMMINGS, an individual, on
15 behalf of herself and all other AGGRIEVED
16 EMPLOYEES,

17 Plaintiff,

18 vs.

19 A COMMUNITY OF FRIENDS, a California
20 Corporation; and DOES 1 through 100,
21 inclusive.

22 Defendants.

CASE NO. 21STCV09262

Hon. Dennis J. Landin
Dept. 51

**~~[PROPOSED]~~ ORDER APPROVING
REPRESENTATIVE PAGA
SETTLEMENT**

*[Filed Concurrently with Joint Stipulation
Requesting Approval of Representative
PAGA Settlement; Declaration of Haig B.
Kazandjian In Support Thereof; Declaration
of Haig B. Kazandjian In Support Thereof;
Declaration of William Robinson in Support
Thereof; And [Proposed] Final Judgement]*

Complaint Filed: March 9, 2021
Trial Date: None

1 Pursuant to Stipulation by the parties and good cause appearing: Having considered the
2 Parties' submissions, and all legal authorities and documents submitted in support thereof,
3 including the PAGA Settlement Agreement ("PAGA Settlement Agreement" or "Settlement"),
4 attached hereto as **Exhibit 1**, and good cause appearing, IT IS HEREBY ORDERED that the
5 Parties' request is GRANTED, subject to the following findings and orders:

6 a) All terms used herein shall have the same meaning as defined in the PAGA Settlement
7 Agreement attached hereto as **Exhibit 1**.

8 b) The Court hereby approves the terms set forth in the PAGA Settlement Agreement and finds
9 that the PAGA Settlement Agreement is, in all respects, fair, adequate, and reasonable and
10 directs the Parties to effectuate the PAGA Settlement Agreement according to its terms. The
11 Court finds that the PAGA Settlement Agreement has been reached as a result of informed
12 and non-collusive arm's-length negotiations. The Court further finds that the Parties were able
13 to reasonably evaluate their respective positions. The Court also finds that settlement now will
14 avoid additional and potentially substantial litigation costs, as well as delay and risks if the
15 Parties were to continue to litigate the case. The Court has reviewed the monetary recovery
16 being provided as part of the Settlement and recognizes the value accorded to the state of
17 California and Aggrieved Employees.

18 c) The PAGA Settlement Agreement is not an admission by Defendants or by any other
19 Released Party, nor is this Order a finding of the validity of any allegations or of any
20 wrongdoing by Defendants. Neither this Order, the PAGA Settlement Agreement, nor any
21 document referred to herein, nor any action taken to carry out the PAGA Settlement
22 Agreement, may be construed as, or may be used as, an admission of any fault, wrongdoing,
23 omission, concession or liability whatsoever by or against Defendants or any of the other
24 Released Parties.

25 d) Defendant shall pay the Aggrieved Employees pursuant to the procedure described in the
26 PAGA Settlement Agreement attached hereto as **Exhibit 1**.

27 e) The payments to the Aggrieved Employees shall be mailed to the Aggrieved Employees with
28 the Notice attached hereto as **Exhibit 2**.

- 1 f) After reviewing the proposed PAGA Settlement Agreement, the Declaration of Haig B.
2 Kazandjian In Support of Joint Stipulation For Approval of Representative PAGA Action
3 Settlement, and the Joint Stipulation and the Exhibits attached thereto, the Court finds that the
4 PAGA penalties awarded in this matter are fair and reasonable.
- 5 g) The Court hereby confirms Haig B. Kazanjian Lawyers, APC, Haig B. Kazandjian and Cathy
6 Gonzalez as PAGA Counsel.
- 7 h) The Court hereby awards attorneys' fees in the amount of 40% of the total Settlement
8 amount, which is \$20,000.00 in attorneys' fees, and \$551.53, in attorneys' costs. The Court
9 finds that attorneys' work resulted in the creation of a common fund of \$50,000.00 and that
10 the attorneys' fees and costs requested were reasonable in light of the amount recovered and
11 the relevant factors under California law. The payment of fees to PAGA Counsel shall be
12 made in accordance with the terms of the Settlement.
- 13 i) The Court appoints Simpluris, Class Action Settlement Administration, as the Settlement
14 Administrator and directs that the PAGA penalty payments be distributed by Simpluris as set
15 forth in the PAGA Settlement Agreement, Joint Stipulation, and this Order. The Court
16 approves Simpluris' Settlement Administration Fees for its services in this matter in an
17 amount not to exceed \$2,500.
- 18 j) The Court approves the award to Plaintiff Kathleen Cummings in the amount of \$5,000 as an
19 incentive award and general release;
- 20 k) Defendants and Plaintiff shall have no further liability for costs, expenses, interest, attorneys'
21 fees, or for any other charge, expense, or liability, except as may be provided in the PAGA
22 Settlement Agreement.
- 23 l) The Court further orders, adjudges and decrees that each Aggrieved Employee (including
24 Plaintiff) and the State of California, shall fully release and forever discharge Defendants and
25 their present and former parent companies, subsidiaries, divisions, related or affiliated companies,
26 shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns
27 and any individual or entity which could be jointly liable with Defendants ("Releasees") from any
28 and all PAGA penalty claims for the time period of December 18, 2019 through the Approval

1 Date as defined in the PAGA Settlement Agreement. The Release of All Claims By All
2 Aggrieved Employees does not include any employees' individual, non-PAGA claims other
3 than Plaintiff's general release as defined in the Settlement Agreement.

4 m) The Court will enter Final Judgment in accordance with this Order.

5 n) The Court shall have and retain continuing jurisdiction over this action and the Parties and
6 the State of California as real party in interest for the Aggrieved Employees including after
7 the entry of this Order and the Final Judgment, to the fullest extent necessary to interpret,
8 enforce and effectuate the terms and intent of the PAGA Settlement Agreement and this
9 Order.

10
11 IT IS SO ORDERED

12 DATED: August 9, 2021



HONORABLE DENNIS J. LANDIN

Dennis J. Landin / Judge

EXHIBIT 1

SETTLEMENT AND RELEASE

This Settlement and Release (hereinafter “Settlement” or “Agreement”) is made and entered into by and between Plaintiff KATHLEEN CUMMINGS (hereinafter “Plaintiff”), individually and on behalf of all purported aggrieved employees, on the one hand, and Defendant A COMMUNITY OF FRIENDS, a non-profit organization (hereinafter “Defendant”), on the other hand. Plaintiff and Defendant are collectively referred to herein as “the Parties.”

This Settlement shall be binding on Plaintiff, on the Aggrieved Employees (as defined below), on California’s state labor law enforcement agencies, and on Defendant and their 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.

I. NATURE OF ACTION

1. On December 18, 2020, Plaintiff sent the Labor and Workforce Development Agency (“LWDA”) notice of her intent to pursue a representative action against A COMMUNITY OF FRIENDS, a California Nonprofit Public Benefit Corporation , pursuant to the Private Attorneys General Act of 2004 (“PAGA”), as codified in California Labor Code § 2698 *et seq.*, on behalf of herself and the State of California as well as on behalf of a group of purported aggrieved employees.

2. After a minimum of 65 days passed without a response from the LWDA to Plaintiff’s written notice to the LWDA listed *supra*, Plaintiff commenced a representative action under the PAGA for alleged Labor Code violations (as further explained herein) on behalf of herself and other allegedly aggrieved employees.

II. REPRESENTATIONS AND DEFINITIONS

3. “Lawsuit” refers to the civil action filed by Plaintiff on March 9, 2021, entitled *KATHLEEN CUMMINGS, an individual, on behalf of herself and all other aggrieved employees,*

v. A COMMUNITY OF FRIENDS, a California Nonprofit Public Benefit Corporation , and DOES 1 through 100, inclusive, Los Angeles County Superior Court, Case No. 21STCV09262.

4. “PAGA Counsel” shall refer to Haig B. Kazandjian and Cathy Gonzalez of HAIG B. KAZANDJIAN LAWYERS, APC.

5. “Counsel for Defendant” and “Defense Counsel” shall refer to Chris Jalian of the law firm, PAUL HASTINGS LLP.

6. “Covered Period” shall mean the period from December 18, 2019 through the Effective Date of this Agreement.

7. “PAGA Representative” or “Plaintiff” shall refer to Named Plaintiff KATHLEEN CUMMINGS.

8. “Court” refers to the Los Angeles County Superior Court.

9. “Covered Claims” means claims brought in the Lawsuit pursuant to Labor Code section 2699 et seq. for PAGA penalties only based on alleged violations of California Labor Code and applicable wage laws: California Labor Code sections 201, 202, 203, 204, 206, 226, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 2800, 2802, 2810.5 based on the facts and theories set forth in the Lawsuit.

10. “Aggrieved Employees” shall mean all current and former non-exempt hourly paid individuals who were employed by Defendant within the state of California who worked one or more pay periods during the Covered Period. As of the date of this Agreement, there are approximately 70 Aggrieved Employees. Defendant agrees to provide a declaration, under penalty of perjury, attesting to the number of Aggrieved Employees as of June 28, 2021.

11. “Eligible Pay Periods” shall mean the total number of pay periods that Aggrieved Employees worked during the Covered Period.

12. “Settlement” shall mean this Settlement and Release Agreement.

13. “Effective Date” shall mean the date the Court grants Approval of this Settlement.

14. After the case was at issue, the Parties engaged in discovery and began to engage in informal arms’ length settlement discussions. Through the exchange of information and attendant discussions between the Parties, Plaintiff learned that the number of Aggrieved Employees is approximately 70 (including Plaintiff).

15. PAGA Counsel considered the following facts and arguments in determining that the Settlement was fair and reasonable:

a. Defendant’s Legal Defenses:

(a) Defendant has cited case law for the proposition that PAGA is not applicable to the nature of violations alleged here.

(b) Defendant also argued that Plaintiff is not an “aggrieved employee” with standing to sue.

(c) Defendant also argued that Plaintiff’s PAGA claims are unmanageable and would be dismissed on that basis.

b. Defendant’s Factual Defenses.

(a) Defendant argued that there were no violations. Defendant argued that they had compliant wage and hour policies. Defendant also argued they had no knowledge of any off the clock work and that the rounding policy was neutral on its face and as applied. Defendant further argued that to the extent any meal or rest breaks were taken short or late or not at all, it was based on the employee’s voluntary choice and there was no violation.

(b) Defendant offered evidence that it automatically paid meal period premiums whenever an employee recorded a short, late or missed meal period.

(c) Defendant offered evidence that it substantially overpaid employees.

- (d) Defendant offered evidence that Plaintiff did not request reimbursement of any business expenses.
- (e) Defendant offered evidence that Plaintiff received and used paid sick leave in accordance with California law.
- (f) In accordance with the PAGA (Labor Code § 2699(e)(1) and (e)(2)), the court in a PAGA action has the same discretion “to assess a civil penalty” that the Labor Commissioner would have, as well as complete discretion to “award a lesser amount than the maximum civil penalty amount specified [by PAGA] if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Defendant argued the PAGA penalties should be reduced based on Defendant’s efforts to comply with wage and hour laws. Defendant also argued that after receiving notice of Plaintiff’s allegations, that they improved monitoring of rest breaks and meal periods, factors that could mitigate in favor of reducing PAGA penalties.

c. Defendant further produced copies of its timekeeping, overtime, reimbursement, meal and rest period policies as well as a sampling of time and payroll records for purposes of settlement. Defendant argued that the time and payroll records demonstrated that Defendant generally complied with meal period laws. Moreover, Defendant argued they need not police breaks to ensure they are taken under California law (See *Brinker*) and that any potential meal period violations would still be subject to the affirmative defense of waiver. Defendant further argued that Defendant continued to pay its employees for their full scheduled hours even when employees worked reduced hours during COVID-19.

16. Consequently, while PAGA Counsel disagreed with Defendant’s legal analysis above, PAGA Counsel anticipated that, at trial, Defendant could make a potentially persuasive argument that the Court could exercise its discretion under PAGA to significantly reduce or

altogether waive any penalties under PAGA. In consideration of the foregoing facts and arguments and how they might impact any judgment ultimately awarded to Aggrieved Employees if the Court was persuaded by them, PAGA counsel determined that the Settlement was fair and reasonable.

17. The Parties recognize that the issues presented in the Lawsuit are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate to the potential benefits of litigation. The Parties have considered the risk and uncertainty of the outcome inherent in any litigation.

18. Plaintiff and PAGA Counsel contend that they have diligently pursued an investigation of the Aggrieved Employees' claims against Defendant.

19. Based on their own independent investigations and evaluations, Defendant and Plaintiff and their respective counsel are of the opinion that the settlement for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interests of the Plaintiff, the Aggrieved Employees, and Defendant in light of all known facts and circumstances and the risks inherent in litigation, including the potential appellate issues. Further, PAGA Counsel believes that the settlement amount entered into is in the best interests of the Aggrieved Employees and that the settlement for each Aggrieved Employee is fair, reasonable, and adequate, given the inherent risk of litigation and the remedial steps Defendant alleges.

20. The purpose of this Settlement is to settle and compromise the Lawsuit and all Covered Claims that Plaintiff and the Aggrieved Employees purportedly have against Defendant and the Releasees (as defined below).

21. Neither the existence of this Settlement nor anything contained in this Settlement shall be construed or deemed as an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant. Nothing herein shall constitute an admission by Defendant that the Lawsuit was properly brought as a representative action other than for settlement purposes.

Settlement of the Lawsuit, the negotiation and execution of this Settlement, and all acts performed or documents executed pursuant to or in furtherance of this Settlement or the settlement of the Lawsuit: (a) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of either Defendant or of the truth of any of the factual allegations in the operative Complaint in the Lawsuit; (b) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omissions on the part of Defendant in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal; (c) are not, shall not be deemed to be, and may not be used as, an admission or evidence of the appropriateness of these or similar claims for representative treatment, class certification, or administration other than for purposes of administering this Settlement; and (d) shall not constitute or be deemed a waiver of any right of to compel arbitration of any dispute with an Aggrieved Employee that is not the subject of the releases detailed in this Settlement.

22. The Parties agree that upon full execution of this Settlement, the matter is stayed in its entirety except for any filings and/or motion work necessary to attain Court approval of the Settlement. Should the Court not grant approval of the Motion For Approval of PAGA Representative Action Settlement, or of the Stipulation For Approval Of The PAGA Representative Action Settlement, the stay will be lifted five (5) days thereafter and the Parties will be restored to their positions prior to the Settlement and the Settlement shall be null and void.

III. TERMS OF SETTLEMENT

23. In consideration of the mutual covenants, promises and representations set forth in this Settlement, Plaintiff, on behalf of herself and the Aggrieved Employees, agrees to settle and compromise the Lawsuit and the Covered Claims, subject to the terms and conditions set forth in this Settlement.

24. The Amount of PAGA Settlement. As consideration for the settlement described herein and the release contained in this Settlement, Defendant agrees to pay a total settlement of \$50,000.00 (“Settlement Payment”), the payment from Defendant is due sixty-one (61) days after the Court’s approval of the Settlement Agreement. The Settlement Payment will be allocated as

follows:

- (a) \$5,000.00 to Plaintiff KATHLEEN CUMMINGS, allocated for resolution of her individual claims and her execution of a general release (the “Enhancement Payment”);
- (b) PAGA Counsel’s attorney fees in the amount of \$20,000.00 subject Court Approval;
- (b) PAGA Counsel’s request for cost reimbursements in the amount of up to \$551.53;
- (c) Administrative costs of up to \$2,500.00 to distribute monies to Aggrieved Employees;
- (d) the remainder of the Settlement Payment in the amount after deducting the items (a), (b), and (c) herein shall be designated as PAGA Penalties to be allocated 75% to the LWDA and the remaining 25% to the Aggrieved Employees pursuant to Labor Code section 2699(i) as outlined below.

25. Allocation and Calculation of the PAGA Penalties. Each Aggrieved Employee shall receive a portion of the PAGA Penalties on a pro rata basis (as described in (a) below). The anticipated total PAGA Penalty Fund will be \$21,948.47. Seventy-Five percent (75%) of the PAGA Penalty Fund (\$16,461.35) will be paid to the LWDA as required by Labor Code section 2699(i). The remaining Twenty-Five percent (25%) of the PAGA Penalty Fund (\$5,487.12) will be distributed to Aggrieved Employees on a pro-rata basis based on the formula set forth below. Each Aggrieved Employee’s pro-rata share of the PAGA Penalty Fund represents their Individual Settlement Payment.

- (a) Individual Settlement Calculation. The Aggrieved Employees shall receive a pro rata share of the PAGA Penalty Fund allocated to Aggrieved Employees (\$5,487.12) Plaintiff and each Aggrieved Employee shall receive a pro rata value equal to the ratio of (a) the number of Eligible Pay Periods worked by that employee to (b) the total number of Eligible Pay

Periods worked by all employees included in the Aggrieved Employee group. All Individual Settlement Payments made to Aggrieved Employees will be reported on an IRS Form 1099.

- (b) Fair Formula. The Parties recognize and agree that the precise value of each Aggrieved Employee's Individual Settlement Payment is subject to a variety of differing calculations and formulas. The Parties hereby agree that the formula for allocating payments as provided herein is reasonable and designed to provide a fair settlement to the Aggrieved Employees.

26. PAGA Counsel's Fees and Costs. As part of the request for approval of this Settlement, PAGA Counsel will request Court approval of forty-percent of the Settlement Payment, which is \$20,000.00 in attorneys' fees. PAGA Counsel will request cost reimbursement in the amount of up to \$551.53 for costs incurred by PAGA Counsel. If the Court approves a lesser amount for attorneys' fees and/or costs, the difference shall be allocated to the PAGA Penalty Fund and distributed pro rata accordingly. Any attorneys' fees and costs awarded to PAGA Counsel, hereinafter referred to as "PAGA Counsel Fees & Costs," shall fully compensate and reimburse PAGA Counsel for any and all of the work already performed in connection with the litigation of Covered Claims and all work remaining to be performed in fully and finally resolving the litigation of Covered Claims, including but not limited to securing Court approval of the settlement, appearing at hearings, making sure that the settlement is fairly and properly administered, appearing at any post-approval matter, all other work that PAGA Counsel has performed or will perform, and all costs that PAGA Counsel has incurred or will incur. Defendant agrees not to oppose the PAGA Counsel Fees & Costs in the amounts listed herein, or in lesser amounts.

27. Tax Treatment of Settlement Amounts. With regard to settlement payments to Aggrieved Employees and Plaintiff, IRS Form 1099s will be issued. Nothing in this Settlement is intended to constitute legal advice regarding federal, state, and/or local tax obligations. Plaintiff acknowledges that she has obtained no tax advice from Defendant and that neither Defendant nor

their attorneys have made any representation concerning the tax consequences, if any, of the Settlement Amount in this Agreement or any payment to be made pursuant to this Agreement. To the extent that this Settlement or any of its attachments is interpreted to contain or constitute advice regarding any state or federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code. Defendant is not responsible for any employee tax obligations regarding the allocation of the settlement payments. Payment of PAGA Counsel Fees & Costs will be reflected in a Form 1099 to PAGA Counsel who shall assume full responsibility and liability for the payment of taxes due on such payments.

IV. RELEASE

28. Release of All Claims:

(a) Release of All Claims By All Aggrieved Employees. Upon the approval by the Court and non-objection by the LWDA of this Settlement, each Aggrieved Employee (including Plaintiff), shall, for the Covered Period, fully release and forever discharge Defendant and their 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 (“Releasees”) from any and all PAGA penalty claims contained in Plaintiff’s PAGA notice or complaint for the time period of December 18, 2019 through the Effective Date as defined herein.

(b) Release of All Claims By Plaintiff. Except as otherwise provided herein, in exchange for the consideration described herein, Plaintiff, on her own behalf and on behalf of her descendants, dependents, heirs, executors, administrators, agents, assigns, and successors (collectively, “Plaintiff’s Releasers”), hereby covenants not to sue and fully and unconditionally forever releases and discharges Defendant and Defendant’s Releasees including their past, present, and future representatives, directors, officers, employees, agents, attorneys, affiliates, members, and shareholders, as well as all parent companies, affiliated companies, subsidiary companies, affiliates, clients, clients facilities, consultants, agents, attorneys, predecessors,

assignors, and/or assigns from and against any and all claims, causes of action, judgments, liens, demands, damages, obligations, suits, contracts, liabilities, losses, costs, and expenses, including, but not limited to, attorneys' fees and disbursements, or offsets of any nature whatsoever (collectively, "Claims") that Plaintiff's Releasors now have, have had, or may hereafter have against Defendant and/or Defendant's Releasees arising out of the Parties' relationship, the cessation of this relationship, including but not limited to those claims arising out of or relating to (i) Plaintiff's performance and reputation, (ii) harassment, (iii) discrimination, (iv) retaliation, (v) rights arising out of alleged violations of any contracts, express or implied; (vi) any covenant of good faith and fair dealing, express or implied; (vii) any tort; (viii) any legal restrictions on Defendant's right to terminate employees; and (ix) any Claims arising under any federal, state or other governmental statute, regulation or ordinance, including, without limitation: Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Federal Rehabilitation Act, the Employee Retirement Income Security Act, the Family and Medical Leave Act, the Fair Labor Standards Act, the California Fair Employment and Housing Act, the California Family Rights Act, the California Labor Code, and any other applicable state or federal law which took place prior to the Effective Date. Except for any rights created by this Agreement, this General Release is intended to be interpreted as broadly as possible and to apply to any and all claims known and unknown available to Plaintiff in any forum, including, but not limited to, any claims for unpaid wages, expense reimbursement, unpaid penalties or premiums, liquidated damages, class or representative actions governing employment (to the fullest extent allowed by applicable law), constructive termination, negligent or intentional infliction of emotional distress, harassment, discrimination, wrongful termination, negligent or intentional infliction of emotional distress, harassment, discrimination, wrongful termination, negligence, breach of contract, breach of the covenant of good faith and fair dealing, promissory estoppel, fraud, negligent or intentional misrepresentation, negligent or intentional interference with contract or prospective economic advantage, unfair business practices, defamation, libel, slander, personal injury; assault, battery,

invasion of privacy, false imprisonment, conversion, disability benefits, claims under Labor Code section 132(a), violation of any provision of federal or state law governing employment, and any claim for attorneys' fees or costs. All such claims are forever barred and by this Agreement Plaintiff acknowledges her familiarity with California Civil Code § 1542, which is expressly waived by Plaintiff. California Civil Code § 1542 reads 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.

However, this release shall not apply to claims for workers' compensation benefits or unemployment insurance benefits or any other claims that Plaintiff cannot, by statute, lawfully waive by this agreement.

V. APPROVAL STIPULATION

29. The Parties recognize that in accordance with Labor Code Section 2699(l) Court approval is required in the event of a settlement of a PAGA action on a representative basis. However, as explained in *Arias v. Superior Court* (2009) 46 Cal.4th 969, the Parties are not obligated to follow the class action procedural rules in PAGA cases and therefore need not obtain approval of the PAGA settlement through a motion for preliminary or final approval. Instead, in order to comply with the requirements of Labor Code Section 2699(l), the Parties shall submit a joint stipulation, or if the Court rejects the joint stipulation then a motion to the Court, identifying the key terms of this Settlement and Release agreement and requesting that the Court approve the amount of PAGA penalties provided for in the Settlement ("Approval Stipulation"). The Settlement is contingent upon the approval by the Court. If the Court should fail to approve this Settlement in the form agreed to by the Parties, the Parties agree to coordinate efforts to address the Court's questions or concerns and resubmit the Approval Stipulation or motion. If, after the

Parties are unable to obtain approval of the terms of the Settlement, or (b) the Court's approval of this Settlement is reversed, modified, or declared or rendered void, then (i) this Settlement shall be considered null and void; (ii) neither this Settlement nor any of the related negotiations or proceedings shall be of any force or effect; and (iii) all Parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court. Invalidation of any material portion of this Settlement, except for the amount of attorneys' fees and costs, Enhancement Payment, or administrative costs, shall invalidate this Settlement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

VI. ADMINISTERING THE SETTLEMENT

30. PAGA Counsel shall provide timely notice to the LWDA of the Settlement.

31. Subject to the Court approval of this Settlement, the Settlement Payment shall be paid as follows:

32. Defendant will fund the settlement administrator a total of \$50,000 sixty-one (61) calendar days after the Effective Date.

33. No later than ten (10) calendar days of the Effective Date, Defendant shall provide the settlement administrator a list of Aggrieved Employees ("Aggrieved Employee List") containing the (1) name; (2) last known home address; (3) the Aggrieved Employee's social security number or other identifying information; and (4) the number of pay periods for each Aggrieved Employee during the Covered Period. The Aggrieved Employee List will also note whether each Aggrieved Employee is a current or former employee. Neither the Aggrieved Employee List nor any information contained therein shall be distributed to PAGA Counsel at any time. The settlement administrator will distribute the checks to the Aggrieved Employees, at a cost not exceeding \$2,500.00, which shall come exclusively from the Settlement Payment which will reduce the available PAGA Penalty Fund.

34. Within fourteen (14) calendar days after the Settlement has been fully funded as described in the paragraphs above, provided there is no objection by the LWDA as to any material

term of the Settlement Agreement prior to Court Approval of this Settlement, the settlement administrator will cause payment of checks for: (a) \$5,000 to Plaintiff as an incentive award and in exchange for a general release; (b) PAGA Counsel for the total amount of PAGA Counsel Fees & Costs, as defined herein as follows: (1) \$20,000.00 paid to PAGA Counsel for attorneys' fees; and (2) \$551.53 paid to PAGA Counsel for costs.

35. Within fourteen (14) calendar days after the Settlement has been fully funded as described in the paragraphs above, provided there is no objection by the LWDA as to any material term of the Settlement Agreement prior to Court Approval, the settlement administrator will cause payment of checks to the LWDA for penalties, and for all Aggrieved Employees in the Aggrieved Employee List as set forth above. Concurrently with sending each Aggrieved Employee their share of the Settlement Amount, the Claims Administrator will include a "Notice of PAGA Action Settlement" (attached hereto as Exhibit A) along with each Aggrieved Employee's check. The settlement administrator shall send each Aggrieved Employee their check via U.S. First Class mail to each Aggrieved Employee's address with directions to the Postmaster to return all undeliverable mail to the settlement administrator. Prior to the mailing, the settlement administrator shall update the addresses contained in the Aggrieved Employees List using the National Change of Address database. If an Aggrieved Employee's check is returned as undeliverable, the settlement administrator shall search the National Change of Address database again for a more current address of the Aggrieved Employee and re-mail the Aggrieved Employee's check to any alternative or updated address that is located, within five (5) calendar days.

36. Settlement checks shall remain valid and negotiable for one hundred eighty (180) calendar days from the date of their issuance. If there are uncashed checks following this period, the settlement administrator will send the uncashed funds to the State of California Department of Industrial Relations Unclaimed Wages Fund in the name of the Aggrieved Employee who did not cash his or her check.

VII. DUTIES OF THE PARTIES PRIOR TO APPROVAL

37. Promptly upon execution of this Settlement, the Parties shall jointly apply to the Court for an Order seeking Approval of the PAGA Representative Action Settlement via Stipulation. If the Court requires a motion, then Plaintiff shall file an unopposed Motion for Approval of PAGA Representative Action Settlement. In addition, Counsel for Plaintiff shall be responsible for providing timely notice of the settlement to the LWDA in accordance Labor Code section 2699(1)(2).

38. The motion for approval, and/or the stipulation for an order will request Court approval of the following:

- a. Approving the amount of PAGA Penalties;
- b. Dismissing the entire Lawsuit with prejudice; and
- c. Waiving all rights to appeal;
- d. Approving the Enhancement Payment;
- e. Approving the PAGA Counsel Attorney fees and costs; and
- f. Approving the Claim Administration costs.

39. In conjunction with the motion for approval, and/or the stipulation for an order, the Parties will submit a proposed order requesting approval of the PAGA penalties provided for in the Settlement.

VIII. PARTIES' AUTHORITY

40. The signatories hereto hereby represent that they are fully authorized to enter into this Settlement and bind the Parties hereto to the terms and conditions hereof.

IX. MUTUAL FULL COOPERATION

41. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement, including, but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement. The Parties to this Settlement shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate

this Settlement and the terms set forth herein. As soon as practicable after execution of this Settlement, PAGA Counsel shall, with the assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the approval of this Settlement from the Court.

X. NO PRIOR ASSIGNMENTS

42. The Parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein. None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Aggrieved Employee, PAGA Counsel (which includes Plaintiff's Counsel), or Defense Counsel without the express written consent of each other Party and their respective counsel. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement, and shall not be construed to confer any right or to avail any remedy to any other person.

XI. NO ADMISSION

43. Nothing contained herein nor is the consummation of this Settlement to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the Releasees. Each of the Parties hereto has entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expense. Defendant deny that it has engaged in any unlawful activity, that it has failed to comply with the law in any material respect, or that it has any liability to anyone under the claims asserted in the Lawsuit. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or shall be construed as an admission of liability or wrongdoing by Defendant.

XII. NON-EVIDENTIARY USE

44. Whether or not the Effective Date occurs, neither this Agreement nor any of its terms nor the Settlement itself shall be: (a) construed as, offered, or admitted in evidence as,

received as, or deemed to be evidence for any purpose adverse to Defendant or any other of the Released Parties, including but not limited to, evidence of a presumption, concession, indication, or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further proceeding in the Lawsuit, or any other civil, criminal, or administrative action or proceeding except for the purposes of effectuating the Settlement pursuant to this Agreement or for Defendant to establish that an Aggrieved Employee has resolved any of his/her claims released through this Agreement.

XIII. NULLIFICATION

45. If (a) the LWDA objects or (b) the Court should for any reason fail to approve this Settlement in the form agreed to by the Parties (except for the amount of attorneys' fees or costs), or (c) the Court's approval of this Settlement is reversed, modified, or declared or rendered void, then (i) this Agreement shall be considered null and void; (ii) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect; and (iii) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court. Invalidation of any material portion of this Agreement, except for the amount of attorneys' fees and costs, shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

XIV. ATTORNEYS' FEES, COSTS AND EXPENSES

46. Except as specifically set forth herein, each Party shall bear its/his/her own attorneys' fees, costs, and expenses, taxable or otherwise, incurred by him/her/it arising out of the Lawsuit, and shall not seek reimbursement thereof from any other party to this Agreement.

XV. CONSTRUCTION

47. The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive, arms-length negotiations between the Parties and that this Agreement constitutes the entire agreement between Plaintiff (on behalf of herself and all other Aggrieved

Employees) and Defendant regarding actual or potential claims asserted by Plaintiff against Releasees. Excluding any Arbitration or Confidentiality Agreement executed by Plaintiff with Defendant, both of which will remain in full force and effect, this Agreement supersedes all prior agreements, written or oral, between or among the Parties regarding those claims or potential claims and the resolution of those claims. Consequently, no other agreement, statement, or promise made by one Party to another as to any matter addressed in this Agreement shall be binding or valid.

XVI. CAPTIONS AND INTERPRETATIONS

48. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision hereof. Each term of this Settlement is contractual and not merely a recital.

XVII. MODIFICATION

49. This Settlement may not be amended, changed, altered, or modified, except in writing and signed by the Parties (or their successors-in-interest) hereto. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

XVIII. MISCELLANEOUS

50. This Settlement contains the entire Agreement between the Parties relating to the Settlement of the Covered Claims and Plaintiff's Released Claims, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing. The Parties have made such investigation of the facts and the law pertaining to the matters described herein and to this Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the

advisability of making and executing this Agreement, or with respect to any such matters that would alter or change the terms of this Agreement. No representations, warranties, or inducements have been made to any party concerning this Agreement other than those expressly set forth or referred to herein.

51. This Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns. This Settlement shall be binding on all Aggrieved Employees and the State of California who will be barred from relitigating the PAGA penalty claims released in this Settlement.

52. This Settlement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement, which shall be binding upon and effective as to all Parties. The counterparts may be transmitted electronically (PDF) or by facsimile.

53. This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California, irrespective of the State of California's choice of law principles.

54. The Parties have cooperated in the negotiation and preparation of this Agreement. This Agreement shall not be construed against any Party on the basis that the Party, or the Party's counsel, was the drafter or participated in the drafting of this Agreement.

55. The Los Angeles County Superior Court shall retain jurisdiction to enforce this Agreement pursuant to California Code of Civil Procedure section 664.6. The Court shall retain continuing jurisdiction over this Lawsuit and over all Parties and Aggrieved Employees, to the fullest extent to enforce and effectuate the terms and intent of this Agreement.

56. This Agreement shall not be subject to collateral attack by any Aggrieved Employee. Such prohibited collateral attack shall include, but not be limited to, claims that the Aggrieved Employee failed, for any reason, to timely receive his or her Individual Settlement Payment.

THE PARTIES HAVE READ THE FOREGOING AGREEMENT. THEY HAVE CONSULTED WITH LEGAL COUNSEL REGARDING THE FOREGOING AGREEMENT AND KNOW THE CONTENTS THEREOF AND SIGN THE SAME AS THEIR FREE, KNOWING, AND VOLUNTARY ACT AND DEED, BEING FULLY AWARE OF ITS CONSEQUENCES AND ITS FINAL AND BINDING EFFECT.

[SIGNATURE PAGE FOLLOWS]

DATED: _____

KATHLEEN CUMMINGS, for Herself and
as a Representative of other Aggrieved Employees

DATED: 7/9/2021



A COMMUNITY OF FRIENDS, a California
Nonprofit Public Benefit Corporation
By: Dora Leong Gallo, President & CEO

APPROVED AS TO FORM:

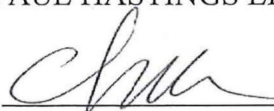
DATED: _____

HAIG B. KAZANDJIAN LAWYERS, APC

By: _____
Haig B. Kazandjian, Esq.
Attorneys for Plaintiff KATHLEEN
CUMMINGS and Aggrieved Employees

DATED: July 9, 2021

PAUL HASTINGS LLP

By: 

Chris Jalian, Esq.
Attorneys for Defendant,
A COMMUNITY OF FRIENDS, a California
Nonprofit Public Benefit Corporation

AND KNOW THE CONTENTS THEREOF AND SIGN THE SAME AS THEIR FREE, KNOWING, AND VOLUNTARY ACT AND DEED, BEING FULLY AWARE OF ITS CONSEQUENCES AND ITS FINAL AND BINDING EFFECT.

[SIGNATURE PAGE FOLLOWS]

DATED: 07 / 09 / 2021

Kathleen Cummings

KATHLEEN CUMMINGS, for Herself and
as a Representative of other Aggrieved Employees

DATED: _____

A COMMUNITY OF FRIENDS, a California
Corporation
By: Dora Leong Gallo, President & CEO

APPROVED AS TO FORM:

DATED: July 9, 2021

HAIG B. KAZANDJIAN LAWYERS, APC

By: _____

Haig B. Kazandjian
Haig B. Kazandjian, Esq.
Attorneys for Plaintiff KATHLEEN
CUMMINGS and Aggrieved Employees

DATED: _____

PAUL HASTINGS LLP

By: _____

Chris Jalian, Esq.
Attorneys for Defendant,
A COMMUNITY OF FRIENDS, a California
Corporation

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

**NOTICE OF PAGA SETTLEMENT AND
RELEASE**

To [NAME]:

The enclosed check is your share of a court-approved representative action settlement between Plaintiff Kathleen Cummings (“Plaintiff”), and Defendant A Community of Friends (“Defendant”). Plaintiff filed a lawsuit against Defendant as the representative of the State of California and Defendant’s other current and former employees who performed work for Defendant in California. Plaintiff asserted claims against Defendant under California Labor Code § 2698 *et seq.*, also known as the Private Attorneys General Act (“PAGA”), based on the alleged failure by Defendant to provide meal periods and rest breaks, pay for all hours worked, sick pay, reimbursement of necessary business expenses, itemized wage statements and timely final pay. Defendant denies that it violated the law in any way. However, Defendant agreed to enter into a settlement to avoid the cost and disruption of litigation.

As a current or former employee of Defendant in California between December 18, 2019 and [APPROVAL DATE], you are covered by this settlement. Per the Court’s final judgment in this case, all people covered by the settlement have released any and all claims for PAGA penalties contained in Plaintiff’s notice to the LWDA and Complaint. This means that you are not able to pursue a PAGA lawsuit against Defendant based on such claims.

The enclosed check is your share of the settlement. The payment amount was calculated based on the number of pay periods you worked for Defendant during the period between December 18, 2019 and [APPROVAL DATE]. Because this calculation was approved by the Court, the amount of your payment is final and cannot change. Enclosed with your check is an IRS Form 1099. Please note that no taxes were withheld from your payment, so it will be your responsibility to pay any taxes that may be due. You should consult with your own tax accountant with regard to any questions that you may have concerning any taxes that may be due. Further, you are bound by the settlement and release of claims based on the Court’s final judgment whether or not you cash or deposit the enclosed check.

If you have any questions or would like more information about the settlement or this lawsuit, you may contact the Claims Administrator at Simpluris Inc.; 888-369-3780, option 2; P.O. Box 26170, Santa Ana, CA 92799

EXHIBIT 2

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

**NOTICE OF PAGA SETTLEMENT AND
RELEASE**

To [NAME]:

The enclosed check is your share of a court-approved representative action settlement between Plaintiff Kathleen Cummings (“Plaintiff”), and Defendant A Community of Friends (“Defendant”). Plaintiff filed a lawsuit against Defendant as the representative of the State of California and Defendant’s other current and former employees who performed work for Defendant in California. Plaintiff asserted claims against Defendant under California Labor Code § 2698 *et seq.*, also known as the Private Attorneys General Act (“PAGA”), based on the alleged failure by Defendant to provide meal periods and rest breaks, pay for all hours worked, sick pay, reimbursement of necessary business expenses, itemized wage statements and timely final pay. Defendant denies that it violated the law in any way. However, Defendant agreed to enter into a settlement to avoid the cost and disruption of litigation.

As a current or former employee of Defendant in California between December 18, 2019 and [APPROVAL DATE], you are covered by this settlement. Per the Court’s final judgment in this case, all people covered by the settlement have released any and all claims for PAGA penalties contained in Plaintiff’s notice to the LWDA and Complaint. This means that you are not able to pursue a PAGA lawsuit against Defendant based on such claims.

The enclosed check is your share of the settlement. The payment amount was calculated based on the number of pay periods you worked for Defendant during the period between December 18, 2019 and [APPROVAL DATE]. Because this calculation was approved by the Court, the amount of your payment is final and cannot change. Enclosed with your check is an IRS Form 1099. Please note that no taxes were withheld from your payment, so it will be your responsibility to pay any taxes that may be due. You should consult with your own tax accountant with regard to any questions that you may have concerning any taxes that may be due. Further, you are bound by the settlement and release of claims based on the Court’s final judgment whether or not you cash or deposit the enclosed check.

If you have any questions or would like more information about the settlement or this lawsuit, you may contact the Claims Administrator at Simpluris Inc.; 888-369-3780, option 2; P.O. Box 26170, Santa Ana, CA 92799

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and
4 not a party to the within action; my business address is 801 North Brand Boulevard, Suite 970,
Glendale, California 91203.

5 On August 4, 2021, I served the foregoing document(s) described as: **[PROPOSED]**
6 **FINAL JUDGMENT** by method indicated below, on the interested parties in this action by
placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

7 **SEE ATTACHED SERVICE LIST**

8 ☐ **BY PERSONAL DELIVERY:** I caused a copy of the document to be delivered personally to
9 the individual(s) named in the attached service list.

10 ☐ **BY OVERNIGHT DELIVERY:** I enclosed the above-listed document(s) in an envelope or
11 package provided by an overnight delivery carrier and addressed it to the referenced in
attached service list. I placed the envelope or package for collection and overnight delivery at
an area regularly utilized by said delivery carrier.

12 ☐ **BY U.S. MAIL:** I enclosed said document(s) in a sealed envelope or package to each
13 addressee. I placed the envelope for collection and mailing, following our firm's ordinary
14 business practices. I am readily familiar with the firm's practice for collecting and processing
correspondence for mailing. Under that practice, the correspondence is deposited with the
15 United States Postal Service, with postage fully prepaid, on the same day in the ordinary
course of business.

16 ☒ **BY ELECTRONIC MAIL:** I transmitted the foregoing document(s) by electronic
17 mail from **melissa@hbklawyers.com** to the electronic mail addresses indicated on the
attached mailing list. The transmission was reported as complete and without error.

18 ☐ **BY FAX TRANSMISSION:** I transmitted the foregoing document(s) by facsimile
19 transmission from 818-696-2307 to the facsimile numbers indicated on the attached mailing
list. The transmission was reported as complete and without error on the transmission report,
20 which was properly issued by the transmitting facsimile machine and, pursuant to Rule
2.306(h)(4), a copy of which is attached to the original of this proof of service.

21
22 ☒ (STATE): I declare under penalty of perjury under the laws of the State of California that the
above is true and correct.

23 Executed on August 4, 2021, at Glendale, California.

24 */s/ Melissa Robinson*

25 _____
Melissa Robinson

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SERVICE LIST

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Attorney for Defendant