

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement ("Settlement" or "Agreement") is made and entered into between Plaintiff Samer Srour Ayoub ("Plaintiff" or "Ayoub"), acting in his capacity as a private attorney general and "aggrieved employee," and Harry Winston, Inc. ("Harry Winston").

I. DEFINITIONS

The following terms, when used in this Settlement, shall have the following meanings:

1. "Action" means the matter entitled *Samer Srour Ayoub, on behalf of himself and all aggrieved employees, Plaintiff, v. Harry Winston, Inc., Defendant*, United States District Court for the Northern District of California Case No. 4:21-cv-01599-JST, and as set forth in Plaintiff's correspondence to the California Labor and Workforce Development Agency, dated December 18, 2020 and February 26, 2021.
2. "First Amended Complaint" or "Complaint" means the operative First Amended Complaint in the Action, filed by Plaintiff in the United States District Court for the Northern District of California on May 28, 2021.
3. "Aggrieved Employees" refers to and consists of all individuals who were employed by Harry Winston as non-exempt security officers in California at any time between December 18, 2019 and the date the Parties (as defined below) execute this Agreement.
4. "Parties" means, collectively, Plaintiff and Harry Winston.
5. "Court" means the United States District Court for the Northern District of California.
6. "Effective Date" means the date upon which the Court enters an order granting approval of the Parties' Settlement.
7. "Individual Settlement Payment" means the amount to be paid to each Aggrieved Employee based on the formula described herein.
8. "LWDA" means the California Labor and Workforce Development Agency.
9. "Total Settlement Fund" is the non-reversionary sum of Twenty-Three Thousand Five Hundred Dollars and Zero Cents (\$23,500.00), which represents the total amount payable under this Settlement by Harry Winston.
10. "Net Settlement Fund" is the amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts (subject to Court approval) are subtracted from the Total Settlement Fund: (a) Plaintiff's attorneys' fees up to \$7,833.33; (b) Plaintiff's litigation costs of \$3,134.64; and (c) reasonable third-party administration costs up to \$975. Thus, the net settlement is \$23,500 minus \$7,833.33 minus \$3,134.64 minus \$975, or \$11,557.03. This is an average amount of about \$200 per aggrieved employee.

11. "PAGA" means the California Labor Code Private Attorneys General Act, California Labor Code §§ 2698, *et seq.*

12. "PAGA Amount" means the Net Settlement Fund, which represents the amount allocated to PAGA penalties.

13. "PAGA Period" means the time period from December 18, 2020 through the date on which the Court enters an order granting approval of the Parties' PAGA Settlement.

14. "PAGA Released Claims" means all claims pled or that could have been pled in the First Amended Complaint pursuant to the PAGA, California Labor Code section 2698 *et seq.*, deriving from and/or based on the facts alleged in the First Amended Complaint and/or the letters that Ayoub sent to the Labor and Workforce Development Agency relating to alleged violations of California law, arising out of or related to services to or work performed for Harry Winston during the PAGA Period upon approval of the Settlement, including claims for penalties, interest, attorneys' fees and/or costs. The release shall encompass all claims, causes of action or liability pursuant to the PAGA, including any penalties based on alleged violations of the IWC Wage Orders or California Labor Code sections 201-204, 218.5, 226, 226.3, 226.7, 510, 512, 516, 558, 1194, 1194.2, and/or 1197, including, without limitation, claims related to alleged "off-the-clock" work, expense reimbursements, inaccurate itemized wage statements, failure to maintain records, untimely payment of wages during employment and/or upon termination, rounding, and/or the payment and/or calculation of meal and rest period premiums.

15. "Plaintiff's Counsel" means Adam Rose, Manny Starr, and Dan Ginzburg of Frontier Law Center.

16. "Settlement Administrator" means Phoenix Settlement Administrators, subject to Court approval.

II. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. **Non-Admission.** Nothing in this Settlement shall be construed to be an admission by Plaintiff that his claims do not have merit or by Harry Winston of any liability or wrongdoing as to Plaintiff, the Aggrieved Employees, or any other person, and Harry Winston specifically disclaims any such liability or wrongdoing. The Parties have entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses and risks. This Settlement and any related court documents or orders are not, and may not be, cited or admitted as evidence of liability.

2. **Total Settlement Fund.** Harry Winston shall pay Twenty-Three Thousand Five Hundred Dollars and Zero Cents (\$23,500.00) as the non-reversionary Total Settlement Fund. Harry Winston will not pay more than the Total Settlement Fund as part of this Settlement.

3. **Net Settlement Fund.** The Parties agree that the following amounts will be subtracted from the Total Settlement Fund, if approved by the Court, resulting in a Net Settlement Fund to distribute to the LWDA and Aggrieved Employees:

- a. Plaintiff's Attorneys' Fees and Costs. Harry Winston will not oppose Plaintiff Counsel's request for attorneys' fees in the amount of up to \$7,833.33 payable from the Total Settlement Fund and actual costs incurred in prosecuting this Action, of up to \$3,134.64. In the event the Court approves a payment of less than these amounts, the difference will be added to the Net Settlement Fund. If the Court awards a lesser amount, it shall not affect the terms of the Parties' settlement. Approval of the Settlement by the Court shall not be contingent on approval of the attorneys' fees or cost requested by Plaintiff's Counsel. The Settlement Administrator will report these payments on IRS Form 1099 issued to Plaintiff's Counsel.
- b. Administration Costs. Harry Winston will not oppose the Settlement Administrator's costs in the amount up to \$975 for administering the Settlement. In the event the Court approves a payment of less than this amount, the difference will be added to the Net Settlement Fund. The Settlement Administrator will report this payment on IRS Form 1099 issued to the Settlement Administrator.

5. Allocation of Net Settlement Fund. The Net Settlement Fund shall be distributed 75% to the LWDA and 25% to the Aggrieved Employees. The 25% portion to be paid to the Aggrieved Employees shall be paid to all Aggrieved Employees based on the proportionate number of workweeks each Aggrieved Employee worked during the PAGA Period, as determined from their respective dates of employment according to Harry Winston's records.

6. PAGA Released Claims. Upon entry of an order granting Court approval to the Settlement, Plaintiff and the Aggrieved Employees shall be deemed to have and shall release all claims pled or that could have been pled in the First Amended Complaint pursuant to the PAGA, California Labor Code section 2698 *et seq.*, deriving from and/or based on the facts alleged in the First Amended Complaint and/or the letters that Ayoub sent to the Labor and Workforce Development Agency relating to alleged violations of California law, arising out of or related to services to or work performed for Harry Winston during the PAGA Period, including claims for penalties, interest, attorneys' fees and/or costs. The release shall encompass all claims, causes of action or liability pursuant to the PAGA, including any penalties based on alleged violations of the IWC Wage Orders or California Labor Code sections 201-204, 218.5, 226, 226.3, 226.7, 510, 512, 516, 558, 1194, 1194.2, and/or 1197, including, without limitation, claims related to alleged "off-the-clock" work, expense reimbursements, inaccurate itemized wage statements, failure to maintain records, untimely payment of wages during employment and/or upon termination, rounding, and/or the payment and/or calculation of meal and rest period premiums. The release shall include Harry Winston and all of its parent, subsidiary, affiliated and related companies and entities, as well as its/their officers, directors, investors, owners, shareholders, employees, partners, agents, and attorneys, and any entities or partnerships with which they are affiliated (collectively, the "Released Parties").

7. Covenants and Representations by Plaintiff.

- a. Plaintiff represents and warrants that he has not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Settlement.

- b. Plaintiff acknowledges that he has read this Settlement, that he fully understands his rights, privileges and duties under the Settlement, and enters into this Settlement freely and voluntarily. Plaintiff further acknowledges that he had the opportunity to consult with his attorneys to explain the terms of this Settlement and the consequences of signing this Settlement.

8. **Confidentiality.** Except as provided below, to the extent necessary to effectuate the Settlement or as required by court or legal process, Plaintiff and Plaintiff's Counsel will keep the terms of this Settlement confidential. Neither Plaintiff nor Plaintiff's Counsel shall issue a press release, hold a press conference, publish information about the Settlement in any form of press, including on websites, social media or on the Internet, use it for marketing purposes, or otherwise publicize the Settlement or communicate its terms in public or in private, unless ordered by the Court. However, for the limited purpose of establishing adequacy of counsel in future class or representative PAGA actions, Plaintiff's Counsel may reference the Action by name and case number in a declaration establishing adequacy as class or representative counsel.

9. **Judicial Approval of Settlement and Judgment.** To permit judicial review and approval of the Settlement, as required by Labor Code section 2698, *et seq.*, Plaintiff's Counsel will file the Settlement with the Court and submit the Settlement to the LWDA as part of the Parties' seeking Court approval of the Settlement, per Labor Code section 2699(1)(2). Within twenty-five (25) calendar days of execution of this Agreement, Plaintiff shall file a motion for approval of the Parties' Settlement and request dismissal of the Action. Harry Winston shall have the right to review and comment upon the motion for approval. As part of the Motion to approve the Settlement, Plaintiff shall submit a proposed order. The final order will, among other things, approve the Settlement as fair, adequate and reasonable, dismiss the litigation described in this Settlement with prejudice, and incorporate the terms of the release contained herein. This Settlement is expressly conditioned upon the Court entering an order as set forth herein. The order will not release or bar any claims other than the PAGA Released Claims as to Plaintiff and Aggrieved Employees. The Parties shall work in good faith to reasonably and promptly present the Settlement to the Court for approval.

III. ADMINISTRATION OF SETTLEMENT

1. **Settlement Administrator.** The Parties agree to use Phoenix Settlement Administrators to handle the administration of this Settlement.

2. **Provision of Information for Aggrieved Employees.** Within fifteen (15) business days after the Effective Date, Harry Winston shall provide the Settlement Administrator with an "Aggrieved Employees List." The Aggrieved Employees List will be in a computer-readable format, such as a Microsoft Excel spreadsheet, and shall include each Aggrieved Employee's: full legal name; social security number; last known mailing address; last known telephone number and/or e-mail address, if available; and start date(s) and end date(s) of employment in California with Harry Winston in a non-exempt position. Because social security numbers are included in the list, the Settlement Administrator will maintain the list in confidence, and access shall be limited to those with a need to use the list as part of the administration of the Settlement.

Within ten (10) business days of receiving the Aggrieved Employees List from Harry Winston, the Settlement Administrator will circulate to counsel for both Parties an anonymized

spreadsheet containing the estimated Individual Settlement Payments for each Aggrieved Employee and the data used to calculate said payments. The Settlement Administrator shall obtain approval of the calculations from counsel for both Parties before mailing Individual Settlement Payments.

3. Calculation of Individual Settlement Payments. Individual Settlement Payments shall be calculated based on each Aggrieved Employees' relative dates of employment, as follows:

a. First, each Aggrieved Employee's "Approximate PAGA Workweeks" shall be calculated by dividing their dates of employment in a non-exempt position during the PAGA Period by seven (7) and rounding to the nearest whole number.

b. Second, all of the Approximate PAGA Workweeks for all Aggrieved Employees shall be added together to obtain the "Total PAGA Period Workweeks."

c. Third, the LWDA's 75% portion of the Net Settlement Fund shall be subtracted from the Net Settlement Fund, leaving the "Total Payout Amount," from which all Individual Settlement Payments shall be made. The Total Payout Amount shall be divided by the Total PAGA Period Workweeks to arrive at the "Per Workweek Payment Amount."

d. Fourth, each Aggrieved Employee's Individual Settlement Payment shall be the product of that individual's Approximate PAGA Workweeks multiplied by the Per Workweek Payment Amount.

4. Explanatory Letter and Individual Settlement Payments. Upon receipt of the Aggrieved Employees List, the Settlement Administrator shall perform a search on the National Change of Address database to update the Aggrieved Employees' addresses.

Within five (5) business days after Harry Winston deposits the Total Settlement Fund with the Settlement Administrator, the Settlement Administrator shall mail copies of the explanatory letter, which has been mutually approved by the Parties and is attached hereto as **Exhibit A**, along with the Individual Settlement Payments to all Aggrieved Employees via First-Class U.S. Mail.

Each Individual Settlement Payment shall be deemed 100% penalties and interest, and reported on an IRS Form 1099, issued by the Settlement Administrator. Checks will remain negotiable for one hundred eighty (180) days from the date they are mailed. Any check that is not negotiated within one hundred eighty (180) days of mailing to an Aggrieved Employee shall be void, and any unclaimed/uncashed/undeposited amounts shall be distributed to the Parties' agreed-upon *cy pres* designee.

5. Undeliverable Notices. The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Aggrieved Employee. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Aggrieved Employee.

Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding

address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a Skip-Trace or other search using the name, address or social security number of the Aggrieved Employee involved and will perform a single re-mailing. There shall be no obligation to re-mail an Individual Settlement Payment more than one time.

Harry Winston fully discharges its obligations to those Aggrieved Employees to whom it will pay an Individual Settlement Payment through the Settlement Administrator's initial mailing of a check, regardless of whether such checks are actually received and/or negotiated by Aggrieved Employees.

5. **Payment of Remainder.** Within five (5) business days after Harry Winston deposits the Total Settlement Fund with the Settlement Administrator, the Settlement Administrator will distribute the following additional payments: (1) the 75% share of the Net Settlement Fund to the LWDA; (2) Court-approved attorneys' fees and costs to Plaintiff's Counsel; and (3) Court-approved administration costs to the Settlement Administrator.

6. **Accounting.** Within fifteen (15) business days following the initial mailing of the Individual Settlement Payments, the Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid from the Settlement.

7. **Tax Consequences.** Individual Settlement Payments made under this Settlement will be attributed 100% as penalties and interest and paid via IRS Form 1099 issued to each Aggrieved Employee. Neither Plaintiff nor Harry Winston, nor counsel for either of the Parties, makes any representations or warranties with respect to tax consequences of any payment under this Settlement.

IV. MISCELLANEOUS PROVISIONS

1. **Successors.** This Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators and successors.

2. **Costs and Fees.** The Parties shall each bear their own costs, attorneys' fees, mediator fees and other fees incurred in connection with this Settlement, the Action and Plaintiff's claims, except as otherwise set forth specifically herein.

3. **Governing Law.** This Settlement shall be construed under and governed by the laws of the State of California, without regard to choice of law principles. All questions of validity, interpretation or performance of any of its terms or of any rights or obligations of the Parties to this Settlement shall be governed by California law.

4. **Complete Agreement.** The Parties each acknowledge and represent that no promise or representation not contained in this Settlement has been made to them and acknowledge and represent that this Settlement contains the entire understanding between them concerning the terms of the Parties' Settlement and contains all terms and conditions pertaining to the compromise and settlement of the PAGA Released Claims alleged in the Action.

5. **Nullification of Settlement.** In the event that: (i) the Court does not approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason,

then this Settlement and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions.

6. **Judgment and Continued Jurisdiction.** After approval of this Settlement, the Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement; (ii) settlement administration matters; and (iii) such post-judgment matters as may be appropriate under court rules or as set forth in this Settlement.

7. **Amendment or Modification.** This Settlement may be amended or modified only by a written instrument, signed by the Parties or their successors-in-interest or counsel for the Parties.

8. **Authorization to Enter into Settlement.** Counsel for the Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Settlement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If they are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

9. **Execution and Counterparts.** This Settlement is subject only to the execution of the Parties. However, the Settlement may be executed in one or more counterparts. All executed counterparts, and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

10. **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties believe this Settlement is a fair, adequate and reasonable settlement of the Action, and have arrived at this Settlement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement. The Parties and their respective counsel shall support the Settlement and its approval by the Court.

11. **Invalidity of Any Provision.** Before declaring any provision of this Settlement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Settlement valid and enforceable.

12. **Severability.** If any term or provision of this Settlement is held to be invalid or unenforceable, the remaining portions of this Settlement will continue to be valid and will be performed, construed and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

13. **Waiver.** No waiver of any condition or covenant contained in this Settlement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right or remedy.

14. **Mutual Preparation.** The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement. Accordingly, this Settlement will not be construed more strictly against one Party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement.

16. **Representation by Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement, and this Settlement has been executed with the consent and advice of counsel and reviewed in full.

17. **Cooperation and Execution of Necessary Documents.** The Parties will cooperate in good faith to reasonably and promptly execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement. The Parties agree to work cooperatively, diligently and in good faith to ensure that all documents necessary to seek the Court's approval of this Agreement are timely filed.

18. **Binding Agreement.** The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement will be fully enforceable and binding on all Parties and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

19. **Denial of Liability.** The Parties expressly recognize that the making of this Settlement does not in any way constitute an admission or concession of wrongdoing on the part of Harry Winston. Nothing in this Settlement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of this Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation of any federal, state or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Settlement may be used in any Court proceeding that has as its purpose the interpretation, implementation or enforcement of the Settlement or any orders or judgments of the Court entered into in connection therewith.

IN WITNESS THEREOF, the Parties to this Settlement each acknowledge that they have read the foregoing Settlement, accept and agree to the provisions contained in this Settlement and hereby execute it voluntarily and with full understanding of its consequences.

**SAMER SROUR AYOUB, on behalf of himself
and as a private attorney general on behalf of
other alleged "aggrieved employees"**

Dated: 10/29/2021

Samer Srour Ayoub
Samer Srour Ayoub, Plaintiff

HARRY WINSTON, INC.

Dated: 10/22/2021

Robert Scott
By: Robert Scott
Its: CFO Don M. P. McClellan
UP, HR

APPROVED AS TO FORM AND CONTENT:

Dated: 11/1/21

Frontier Law Center

By: Adrian Dore