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Attorneys for Plaintiff and Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

JAMES FLOURNOY, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

PARTNERS PERSONNEL –
MANAGEMENT SERVICES, LLC, a
Delaware limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No. CVRI2102372

[Assigned for all purposes to the Hon.
Daniel Ottolia, Department 4]

**DECLARATION OF NICHOLAS
ROSENTHAL IN SUPPORT OF
PLAINTIFF'S MOTION TO APPROVE
SETTLEMENT AGREEMENT
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT**

Date: May 9, 2022

Time: 8:30 a.m.

Dept.: 4

Reservation ID: 938404797838

Action Filed: May 7, 2021

Trial Date: None Set

1 I, Nicholas Rosenthal, declare as follows:

2 1. I am an attorney at law, duly licensed to practice before all Courts in the State of
3 California, and am with the law firm Diversity Law Group, P.C., counsel of record for Plaintiff
4 James Flournoy (“Plaintiff”). I have personal knowledge of the facts set forth below and if
5 called to testify I could and would do so competently.

6 **PROCEDURAL HISTORY**

7 2. From the inception of the case, Plaintiff’s counsel has zealously represented the
8 interests of the Aggrieved Employees.

9 3. On or around March 3, 2021, Plaintiff submitted his written notice under Labor
10 Code section 2699.3 (the “PAGA Notice”) to the California Labor and Workforce
11 Development Agency (“LWDA”) and Defendant Partners Personnel – Management Services,
12 LLC (“Defendant”). Plaintiff alleged that Defendant failed to provide off-duty rest periods,
13 failed to pay all wages owed upon separation of employment, and failed to provide accurate
14 itemized wage statements to its employees, in violation of California Labor Code sections 201,
15 202, 203, 226(a), and 226.7.

16 4. As set forth in the PAGA Notice, Plaintiff alleged Defendant required employees
17 to remain on work premises during their rest breaks. Consequently, Plaintiff alleged that
18 Plaintiff and Aggrieved Employees remained on-duty and under Defendant’s control during
19 their rest breaks. Thus, Plaintiff contends that Defendant is responsible for paying premium
20 compensation for missed/noncompliant rest periods pursuant to Labor Code section 226.7.

21 5. Additionally, as a result of rest period violations, Defendant failed to provide all
22 rest period premium wages due and owing to Plaintiff and Aggrieved Employees upon
23 separation of employment. Plaintiff further alleged that, as a pattern and practice, Defendant
24 violated Labor Code sections 201, 202 and 203 by issuing final payment of wages to Plaintiff
25 and Aggrieved Employees more than 72 hours after termination of employment. For example,
26 while Plaintiff’s employment ended on June 18, 2020, he did not receive his final paycheck
27 until approximately two weeks later.

28 6. On May 7, 2021, Plaintiff filed a representative PAGA action against Defendant

1 in the Superior Court of California, County of Riverside. The Complaint alleged a single cause
2 of action for civil penalties pursuant to Labor Code section 2698, *et seq.*, based on the facts
3 and the alleged Labor Code violations described in Plaintiff's PAGA Notice.

4 **DISCOVERY AND INVESTIGATION**

5 7. After the filing of Plaintiff's Complaint, the Parties discussed possible informal
6 resolution of this matter. The Parties engaged in a robust meet and confer effort regarding the
7 underlying merits of the case and subsequently agreed to participate in mediation.

8 8. In connection with these discussions, Defendant produced copies of the relevant
9 rest period policies. As a part of Plaintiff's on-boarding in June 2018, Defendant provided
10 Plaintiff with its Associate Employee Handbook. The Handbook states that employees "are
11 required to remain on the work premises during your rest break(s)." However, in December
12 2018, Defendant revised its rest period policy. The 2018 revision removed language that
13 explicitly required employees to remain on-site during their rest breaks. The policy, however,
14 did not inform employees of their right to leave the premises during rest periods. In June
15 2020, Defendant rolled out a facially compliant written rest period policy.

16 9. The Parties further discussed the unique challenges of maintaining a state-wide
17 PAGA claim due to Defendant's business model. Defendant is a comprehensive staffing
18 company headquartered in Santa Barbara, California. Defendant provides employees to a
19 variety of different industries in California, including production, packaging, manufacturing,
20 administrative and clerical, logistics and distribution, and professional services. These
21 employees work across hundreds of different client sites with varied policies and practices. In
22 light of this, the Parties agreed that, for the purpose of mediation, they would limit
23 negotiations to employees placed at the job site where Plaintiff worked (StarCrest) during the
24 PAGA liability period.

25 10. On or about February 8, 2022, Defendant produced payroll data, including the
26 number of California employees Defendant placed at StarCrest, the number of pay periods
27 where these employees worked at least one shift in excess of 3.5 hours, the number of
28 separated employees who worked at StarCrest, and the number of wage statements issued to

employees placed at StarCrest during the applicable time period. I reviewed the data and records produced and conducted a full damages analysis.

11. On February 17, 2022, the Parties participated in private mediation with the Honorable Brian Walsh (Ret.). During the mediation, the Parties spoke at length about the strengths and weaknesses of each side's claims and defenses, and the scope of Defendant's liability. After a full day of negotiation, the Parties were able to reach an agreement and accepted a mediator's proposal for settlement and the key terms, as detailed fully in the PAGA Settlement Agreement ("Agreement" or "Settlement Agreement"). Attached hereto as **Exhibit A** is a true and correct copy of the Settlement Agreement.

SUMMARY OF THE PROPOSED SETTLEMENT

12. As defined by the Settlement Agreement, "PAGA Settlement Group Members" means "all current and former non-exempt employees of Defendant in the State of California who were placed at StarCrest at any time during the Covered Period." Settlement Agreement ¶ I.P. The Covered Period encompasses the time period of "March 3, 2020 to the date a signed order approving this Settlement is filed, or May 14, 2022, whichever date is earlier." *Id.* ¶ I.E. Based upon Defendant's records through January 23, 2022, there are an estimated 1,240 PAGA Settlement Group Members who worked approximately 5,305 pay periods during the Covered Period. *Id.* ¶ III.H.

13. The Settlement Agreement requires Defendant to pay the gross amount of One Hundred Twenty-Five Thousand Dollars (\$125,000.00) (the "Total Settlement Amount"). Settlement Agreement ¶ I.X.

14. The balance of the PAGA Settlement Amount remaining after deduction of the approved enhancement payment to Plaintiff, attorneys' fees and costs, and settlement administration costs (the "Net Settlement Amount"), will be available for distribution to the LWDA and PAGA Settlement Group Members. Settlement Agreement ¶ III.C. The Net Settlement Amount is estimated to be at least \$58,878.28. Seventy-five percent (75%) of the Net Settlement Amount, or approximately \$44,158.71, will be paid to the LWDA for PAGA penalties. Settlement Agreement ¶ III.E. The remaining twenty-five percent (25%), or

1 approximately \$14,719.57, will be distributed to PAGA Settlement Group Members.

2 Settlement Agreement ¶ III.H.

3 15. As part of the Settlement Agreement, Defendant does not object to Plaintiff's
4 Counsel's request for attorneys' fees of approximately thirty-three and one-third percent
5 (33 1/3%) of the Total Settlement Amount, *i.e.*, Forty-One Thousand Six Hundred Sixty-Six
6 Dollars (\$41,666.00), plus up to Fifteen Thousand Dollars (\$15,000.00) for reimbursement of
7 litigation costs, subject to the Court finally approving this Settlement. Settlement Agreement ¶
8 III.F. Plaintiff's Counsel's anticipated actual litigation costs total \$6,455.72. The costs were all
9 directly incurred in the prosecution of this action, including filing fees, mediation fee, postage,
10 copying, and service of process fees. Attached hereto as **Exhibit B** is a true and correct copy
11 of my office's cost bill, which reflects costs incurred in prosecuting this case. Any costs not
12 awarded by the Court will revert to the Net Settlement Amount for distribution to the LWDA
13 and the PAGA Settlement Group Members.

14 16. Defendant has also agreed to not object to Plaintiff's request for a Representative
15 Plaintiff's Payment of Ten Thousand Dollars (\$10,000.00). Settlement Agreement ¶ III.G.

16 17. Finally, the Settlement Agreement provides for the payment of the fees and
17 expenses reasonably incurred by the Settlement Administrator. Settlement Agreement ¶ III.D.
18 The Parties have agreed to utilize ILYM Group, Inc. to administer the settlement, with the
19 administration costs estimated to be \$8,000.00. *Id.* ¶¶ III.D, III.I.

20 **VALUE OF SETTLEMENT PER PAY PERIOD**

21 18. Based on the total settlement amount, Defendant will pay approximately \$23.56
22 per pay period ($\$125,000 \div 5,305$ pay periods) to resolve the claims in this case.

23 19. The amount any particular PAGA Settlement Group Member will be entitled to
24 recover will depend on the number of pay periods during which he or she worked while placed
25 at StarCrest during the Covered Period, with some entitled to receive more and others less.

26 Settlement Agreement ¶ III.H. This is fair, as it directly allocates greater penalties to
27 individuals who worked longer and thus have allegedly suffered greater harm.

POTENTIAL CIVIL PENALTIES

20. Using the data provided by Defendant, I performed a comprehensive damages analysis. Defendant has indicated that there were approximately 5,305 pay periods in which PAGA Settlement Group Members worked at StarCrest during the Covered Period. Assuming that the Court were to award a \$100 penalty for each pay period, the maximum PAGA penalties arising from the rest period violation total \$530,500.00.

21. There are approximately 5,305 pay periods in which PAGA Settlement Group Members received a wage statement during a pay period where her or she worked at least one shift that was more than 3.5 hours at StarCrest during the Covered Period. Applying a civil penalty of \$100 per wage statement, the penalties total \$530,500.

22. Therefore, pursuant to the PAGA, if the Court were to award penalties for each violation alleged, the PAGA penalties could total as high as \$1,061,000. However, even if Plaintiff were to prevail on the merits of the PAGA claim, the potential recovery is uncertain. If the Court only awarded a maximum penalty for a single violation per pay period, the total penalties would only be approximately \$530,500 (\$100 x 5,305 pay periods).

23. The above penalty calculation further assumes that Plaintiff will prevail on the merits. However, Plaintiff's claims are contested. Defendant has argued that it complied with the law, had legal policies, and provided its employees duty-free rest periods. Defendant may have sought summary judgment on these issues or proceeded to trial. If Defendant won, the State of California and PAGA Settlement Group Members would not have recovered anything.

24. Assuming that Plaintiff prevailed on liability, under the facts of this case, I appreciate the substantial risk that Defendant could present a persuasive argument to reduce the amount of PAGA penalties at trial. The Court has discretion under PAGA to reduce the maximum allowable PAGA penalties or to decide not to award PAGA penalties at all.

25. I am also aware that Courts routinely award far less than the statutory maximum amount of civil penalties, even where an underlying violation of the Labor Code is found. For example, as shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp.*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum

1 PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with
2 the law. 30 Cal. App. 5th 504, 517 (2018). Similarly, in the matter of *Magadia v. Wal-Mart*
3 *Assocs. et al.*, 2019 U.S. Dist. Lexis 91792 at *87-*100 (N.D. Cal. May 31, 2019), while the
4 trial court imposed substantial PAGA penalties upon the defendant, such amount still
5 represented reductions of 67% and 80% of the potential PAGA penalties at issue. *Id.* at *87-
6 *100. Moreover, this was only after the plaintiff in *Magadia* had prevailed after trial.

7 26. I strongly believe that Plaintiff can prevail at trial. However, after taking into
8 account sharply disputed factual and legal issues involved in this litigation, the risks attending
9 further prosecution, and the substantial benefits to be received pursuant to the compromise and
10 settlement of the litigation, I have concluded that settlement on the terms set forth in the
11 Settlement Agreement is appropriate and in the best interests of Plaintiff and the PAGA
12 Settlement Group Members.

13 **ATTORNEY EXPERIENCE**

14 27. My firm has a great deal of experience in wage and hour class action litigation
15 and has been approved as class counsel in a number of class actions.

16 28. My qualifications are as follows: I received my JD from University of Southern
17 California Gould School of Law in 2009. Upon graduation, I practiced law as an associate at
18 Seyfarth Shaw LLP, representing corporate clients in both single-plaintiff and wage and hour
19 class actions. In 2014, I began as an associate at Diversity Law Group.

20 29. I have handled a number of wage and hour matters including class actions and
21 multiple-plaintiff actions. I have been named as Class Counsel in a number of class actions
22 that have been granted certification or preliminary or final approval by the Superior Courts of
23 Los Angeles County, Orange County, Alameda County, and Monterey County, the United
24 States District Court for the Central District of California, and the United States District Court
25 for the Northern District of California. These cases include, but are not limited to: *Diller v.*
26 *Under Armour Retail, Inc.*, Santa Clara County Superior Court Case No. 114-CV-265729,
27 *Dall v. Post Alarm Systems*, Los Angeles County Superior Court Case No. BC598528, *Lopez*
28 *v. Imperial Body Shop, Inc.*, Orange County Superior Court Case No. Case No. 30-2015-

00816193-CU-OE-CXC, and *Hughes v. Lincare, Inc., et al.*, Monterey Superior Court Case No. M124764.

30. To date, I have incurred approximately 22.0 hours in connection with the litigation of this lawsuit. Attached hereto as **Exhibit C** is a summary of the hours I have incurred to date. The total lodestar for my hours will be approximately \$15,400.00 based on an hourly rate of \$700.00 per hour.

31. I have been approved at an hourly rate of \$650.00 per hour by various Courts, including: *Pittman v. Martinez Steel Corporation*, San Bernardino County Superior Court Case No. CIVDS1823132, *Della Maggiora v. Watsonville Community Hospital*, Santa Cruz County Superior Court Case No. 18CV00191, *Randolph v. Pacific Racing Association*, Alameda County Superior Court Case No. RG18908139, *Morones v. Bimbo Bakeries USA, Inc.*, Sacramento County Superior Court Case No. 34-2018-00245481-CU-OE-GDS *Foaad Hanna v. Equinix, LLC*, Santa Clara County Superior Court Case No. 18CV339365; *Alicia Harris v. 24 Seven LLC*, Los Angeles County Superior Court Case No. BC720144; *Markham v. Quik Stop Markets, Inc.*, Santa Clara Superior Court Case No. 19CV341582; *Siron v. Raypak, Inc.*, Ventura Superior Court Case No. 56-2019-005279959-CU-OE-VTA; *Carter v. Kline Services, Inc.*, San Bernardino Superior Court Case No. CIVDS1828867, *Pascual v. Satellite Healthcare, Inc.*, Santa Clara County Superior Court Case No. 19CV345211; *Carrillo v. New Balance Athletics, Inc.*, Santa Clara County Superior Court Case No. 19CV352469; *Vogel v. Veolia North America, LLC*, Monterey County Superior Court Case No. 19CV001443; *Holman v. American Sugar Refining, Inc.*, Contra Costa County Superior Court Case No. MSC18-00415; and *Chavez v. Converse, Inc.*, United States District Court, Northern District of California Case No. 15-cv-03746-NC. As of 2022, I increased my hourly rate to \$700.00 per hour. I have been approved at an hourly rate of \$700.00 since the beginning of 2022, including in *Gutierrez v. Spa Havens, LP*, San Diego Super Court Case No. 37-2019-00057065-CU-OE-NC, *Ray v. C&W Facility Services Inc.*, San Bernardino Superior Court Case No. CIVSB2101321, *Diaz v. Acuity Brands Lighting, Inc.*, San Bernardino Superior Court Case No. CIVDS2015583, and *Alvarez v. Forterra Building Products*, San Diego

1 Superior Court Case No. 37-2020-00018179-CU-OE-CTL.

2 **NOTICE TO LWDA**

3 32. Concurrent with the filing of the Motion to Approve PAGA Settlement, my
4 office uploaded the motion, Settlement Agreement, and proposed order to the LWDA's
5 website.

6 I declare under penalty of perjury under the laws of the State of California that the
7 foregoing is true and correct.

8 Executed on this 13th day of April 2022, at Los Angeles, California.

9 
10 _____
11 Nicholas Rosenthal
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EXHIBIT A

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on behalf of himself, the State of California,
and all other aggrieved employees

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PERSONNEL – MANAGEMENT
SERVICES, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

JAMES FLOURNOY, as an individual and on
behalf of all others similarly situated,

Plaintiff,

v.

PARTNERS PERSONNEL –
MANAGEMENT SERVICES, LLC, a
Delaware limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No. CVRI2102372

PAGA SETTLEMENT AGREEMENT

Complaint Filed: May 7, 2021
Trial Date: None Yet Set

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement is made by and between Plaintiff James Flournoy (“Plaintiff”), on behalf of himself and on behalf of the State of California and all Private Attorneys General Act (“PAGA”) Settlement Group Members, on the one hand, and Defendant PARTNERS PERSONNEL – MANAGEMENT SERVICES, LLC, on behalf of itself and all of its current and former owners, parents, subsidiaries, members, representatives, agents, insurers, officers, directors, and employees (“Defendant”), on the other hand (Plaintiff and Defendant are collectively referred herein as, the “Parties”, and individually as a “Party”), subject to the approval of the Court in accordance with California Labor Code section 2699(1)(2), upon and subject to the following terms and conditions.

I. DEFINITIONS

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

- A. “Action” means the civil action titled *James Flournoy, as an individual and on behalf of others similarly situated v. Partners Personnel – Management Services, LLC, a Delaware limited liability company, and DOES 1 through 50*, Case No. CVRI2102372 (the “Action”), pending before Superior Court of the State of California, for the County of Riverside (the “Court”).
- B. “Agreement” or “Settlement Agreement” means this PAGA Settlement Agreement.
- C. “Complaint” means the Complaint filed by Plaintiff on May 7, 2021, in the Action.
- D. “Court” means the Superior Court for the State of California, County of Riverside.
- E. “Covered Period” means the period of time from March 3, 2020 to the date a signed order approving this Settlement is filed, or May 14, 2022, whichever date is earlier.

- 1 F. "Defendant" means the Defendant in this Action, PARTNERS PERSONNEL –
2 MANAGEMENT SERVICES, LLC.
- 3 G. "Effective Date" means the date upon full funding of the Settlement.
- 4
- 5 H. "Defendant's Counsel" means Brandon R. McKelvey and Timothy B. Nelson of
6 Medina McKelvey LLP.
- 7
- 8 I. "Judgment" means the Order Granting Approval of Settlement and Entering Final
9 Judgment entered by the Court in substantially the same form evidenced by
10 Exhibit A to this Agreement and incorporated by reference into this Agreement.
- 11 J. "LWDA" means the California Labor and Workforce Development Agency.
- 12
- 13 K. "LWDA Payment" means the portion of the payment from the Total Settlement
14 Amount to be paid to the LWDA under the Settlement Agreement.
- 15
- 16 L. "Net Settlement Amount" means the amount from the Total Settlement Amount
17 that is available for distribution as Settlement Shares to PAGA Settlement Group
18 Members and the LWDA Payment after deduction for (i) the Representative
19 Plaintiff's Payment, (ii) the Plaintiff's Counsel Fees and Expenses Payment, and
20 (iii) the Settlement Administrator's fees and expenses. If any Settlement Share
21 check is not timely cashed by a Settlement Group Member, that share will be sent
22 to the California State Controllers' Office Unclaimed Property Fund in the name of
the Settlement Group Member.
- 23 M. "PAGA" means the Private Attorneys General Act of 2004, California Labor Code
24 section 2698 *et seq.*
- 25
- 26 N. "PAGA Notice" means a notice of proposed settlement pursuant to PAGA,
27 substantially in the form evidenced by **Exhibit B** to this Agreement.
- 28

- O. “PAGA Released Claims” means any and all claims under PAGA that are pled in Plaintiffs’ Representative PAGA Action Complaint, or which could have been pled under the PAGA based on the factual allegations in Plaintiff’s Representative Action PAGA Complaint, that arose during the Covered Period. The release only extends to pay periods in which a PAGA Settlement Group Member worked at StarCrest.
- P. “PAGA Settlement Group Members” means all current and former non-exempt employees of Defendant in the State of California who were placed at StarCrest at any time during the Covered Period.
- Q. “Plaintiff” means the Plaintiff in this Action, James Flournoy.
- R. “Plaintiff’s Counsel” means Larry Lee, Esq., Kristen Agnew, Esq., and Nick Rosenthal, Esq. of Diversity Law Group, P.C.
- S. “Released Parties” means Defendant and all of its current and former owners, parents, subsidiaries, members, representatives, agents, insurers, officers, directors, managers, employees, and related entities.
- T. “Representative Plaintiff’s Payment” means the special payment made to Plaintiff to compensate him for initiating and pursuing the Action and undertaking the risk of liability for attorneys’ fees and expenses in the event that he was unsuccessful in the prosecution of the Action.
- U. “Settlement” means this PAGA Settlement Agreement.
- V. “Settlement Administrator” means the administrator proposed by the Parties and appointed by the Court to administer the Settlement. The Parties have agreed to propose ILYM Group, Inc. to serve in this capacity.
- W. “Settlement Share” means the portion of the Net Settlement Amount allocable to each PAGA Settlement Group Member as provided by this Agreement.

1 X. "Total Settlement Amount" means the total amount to be paid by Defendant as
2 provided by this Agreement. The Total Settlement Amount is one hundred twenty
3 five thousand dollars and no cents (\$125,000.00). The Total Settlement Amount
4 will cover (i) all Settlement Shares to PAGA Settlement Group Members, (ii) the
5 LWDA Payment, (iii) the Representative Plaintiff's Payment, (iv) the Plaintiff's
6 Counsel Fees and Expenses Payment, and (v) the Settlement Administrator's fees
7 and expenses.

8 **II. FACTUAL BACKGROUND**

9
10 A. On or about March 3, 2020, Plaintiff served a letter to the LWDA and Defendant
11 in accordance with the requirements of Labor Code section 2699.3, to notify the
12 LWDA of alleged violations by Defendant of California Labor Code sections 201,
13 202, 203, 226(a), and 226.7 for the following alleged failures: (1) failure to
14 authorize and permit compliant rest breaks; (2) failure to provide accurate wage
15 statements; and (3) failure to timely pay all wages due upon termination. To date,
16 the LWDA has declined to investigate the alleged violations.

17 B. On May 7, 2021, Plaintiff commenced this Action. Plaintiff's Complaint sought
18 civil penalties under the PAGA for the following alleged violations of the
19 California Labor Code: (1) rest period violations (Labor Code sections 226.7); (2)
20 wage statement violations (Labor Code sections 226 *et seq.*); and (3) failure to pay
21 all wages due at the time of termination (Labor Code sections 201-203).

22
23 C. In the Action, Plaintiff sought penalties under PAGA on behalf of himself and the
24 PAGA Settlement Group Members for the alleged violations of California's Labor
25 Code.

26 D. Prior to mediation, Defendant by and through its counsel supplied Plaintiff's
27 counsel with employee and payroll data, policy documents, and additional
28

information regarding Defendant's non-exempt, hourly employees in California who were placed at StarCrest, which Plaintiff's Counsel reviewed and analyzed.

E. On February 17, 2020, the Parties participated in a mediation presided over by well-respected employment law mediator Honorable Brian Walsh (ret.). During the mediation, each side, represented by its respective counsel, recognized the risk of an adverse result in the Action. The Parties both agreed to a resolution at the mediation. The Parties have agreed to settle the Action pursuant to the terms and conditions of this Agreement.

F. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that Plaintiff's claims in the Action have merit or that Defendant has any liability to Plaintiff or the PAGA Settlement Group on those claims, or as an admission by Plaintiff that Defendant's defenses in the Action have merit.

III. SETTLEMENT TERMS AND CONDITIONS

A. **Non-Admission.** Nothing in this Settlement nor the acts to be performed or judgments to be entered pursuant to the terms of the Settlement shall be construed to be an admission by Plaintiff that his claims do not have merit or by Defendant of any liability or wrongdoing as to Plaintiff, Aggrieved Employees or any other person. Defendant specifically disclaims any such liability or wrongdoing. Defendant denies the allegations in the Action and specifically denies that it has committed any misconduct, statutory or regulatory violation, wrongdoing, or any other actionable conduct of any kind. 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.

- 1 **B. Total Settlement Amount.** Subject to the terms and conditions of this Agreement
2 and court approval, the Total Settlement Amount is one hundred twenty-five
3 thousand five hundred dollars and no cents (\$125,000.00.) The Total Settlement
4 Amount will cover (i) all Settlement Shares to PAGA Settlement Group Members,
5 (ii) the LWDA Payment, (iii) the Representative Plaintiff's Payment, (iv) the
6 Plaintiff's Counsel Fees and Expenses Payment, and (v) the Settlement
7 Administrator's fees and expenses. The settlement is non-reversionary, such that
8 the entire Total Settlement Amount will be disbursed.
- 9 **C. Net Settlement Amount.** The Parties agree that the following amounts should be
10 subtracted from the Total Settlement Amount, if approved by the Court, resulting
11 in a Net Settlement Amount to distribute to the LWDA and Aggrieved Employees:
12 (1) Payment to the Settlement Administrator; (2) Payment to Plaintiff's Counsel for
13 attorney's fees and costs; and (3) Representative Plaintiff's Payment.
- 14 **D. Payments to Settlement Administrator.** The Settlement Administrator will pay
15 to itself out of the Total Settlement Amount its reasonable fees and expenses as
16 approved by the Court, and not to exceed eight thousand dollars (\$8,000.00).
- 17 **E. Payments to LWDA.** The Settlement Administrator shall pay to the LWDA 75%
18 of the Net Settlement Amount.
- 19 **F. Payment to Plaintiff's Counsel.** Defendant will not oppose Plaintiff's Counsel's
20 request for a Fees and Expenses Payment in the total, maximum amount of forty
21 one thousand six hundred and sixty six dollars and no cents (\$41,666.00) for
22 attorneys' fees (up to thirty three and one third percent (33 1/3%) of the Total
23 Settlement Amount) and expenses not to exceed fifteen thousand dollars
24 (\$15,000.00). The Settlement Administrator will issue to Plaintiff's Counsel a
25 Form 1099 with respect to the awarded attorneys' fees and costs.
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27
28

1 **G. Payment to Plaintiff.** In addition to his Settlement Share, Plaintiff will collectively
2 apply to the Superior Court for a Representative Plaintiff's Payment of not more
3 than ten thousand dollars and no cents (\$10,000.00). Defendant will not oppose a
4 Representative Plaintiff's Payment of up to ten thousand dollars and no cents
5 (\$10,000.00). The Settlement Administrator will pay the Representative Plaintiff
6 Payment approved by the Superior Court out of the Total Settlement Amount. If
7 the Superior Court approves a Representative Plaintiff's Payment of less than ten
8 thousand dollars and no cents (\$10,000.00), the remainder will be retained in the
9 Net Settlement Amount. Tax deductions and withholdings will not be taken from
10 the Representative Plaintiff's Payment, and instead a Form 1099 will be issued to
11 Plaintiff with respect to this payment.

12 **H. Settlement Share to PAGA Settlement Group Members.** Subject to the terms
13 and conditions of this Agreement, the Settlement Administrator will allocate
14 Settlement Shares from the Net Settlement Amount to the PAGA Settlement Group
15 Members in proportion to the number of pay periods worked for Defendant while
16 placed at StarCrest during the Covered Period. A Form 1099 will be issued to each
17 Settlement Group Member for his/her Settlement Share because the Action sought
18 civil penalties.

19
20 If the total number of pay periods worked by the PAGA Group at StarCrest from
21 March 2, 2020 to January 23, 2022 exceeds 5,835 (i.e., ten percent above the
22 5,305 pay periods that Defendant reported prior to mediation), the Settlement
23 Amount shall increase in proportion to the increase above 10 percent. In other
24 words, a 12 percent increase in pay periods will result in a 2 percent increase in
25 the Settlement Amount.

26 **I. Appointment of Settlement Administrator.** The Parties have agreed to propose
27 ILYM Group, Inc. as an acceptable Settlement Administrator to resolve disputes in
28 connection with the calculation of Settlement Shares in accordance with the
Settlement; distribute Settlement Shares and other payments due under the

1 Settlement; and otherwise administer the Settlement. The Settlement
2 Administrator's duties will include preparing, printing, and mailing the Notice
3 Packet to the PAGA Settlement Group Members; conducting a National Change of
4 Address search and using Accurint and other reasonable and cost-effective skip
5 trace methods to locate any PAGA Settlement Group Member whose Notice Packet
6 was returned by the U.S. Postal Service as non-deliverable, and re-mailing the
7 Notice Packet to the PAGA Settlement Group Member's new address; issuing the
8 checks to effectuate the payments due under the Settlement; and otherwise
9 administering the Settlement pursuant to this Agreement. The Settlement
10 Administrator will have the final authority to resolve all disputes concerning the
11 calculation of a PAGA Settlement Group Member's Settlement Share, subject to
12 the dollar limitations set forth in this Agreement. The Settlement Administrator's
13 reasonable fees and expenses, including the cost of printing and mailing the Notice
14 Packet, will be paid out of the Total Settlement Amount.

15 **J. Procedure for Approving Settlement.**

16
17 **1. Motion for an Order Approving the Settlement.**

18 a. The Parties will cooperate in seeking approval of the
19 Settlement, including Plaintiff filing a Motion for an Order
20 Approving the Settlement Agreement (the "Approval Motion").

21
22 b. Pursuant to PAGA, on the date Plaintiff files the Approval
23 Motion, Plaintiff will submit to the LWDA the PAGA Notice
24 substantially evidenced by **Exhibit B** to this Agreement, enclosing
25 this Agreement. The Parties intend and believe that providing notice
26 of this Settlement to the LWDA pursuant to the procedures
27 described in this section complies with the requirements of PAGA.
28

1 c. At the hearing on the Approval Motion, the Parties will
2 jointly appear, support the granting of the motion, and submit an
3 order granting the motion in the form evidenced by **Exhibit A** to
4 this Agreement.

5 d. Should the Court decline to approve all material aspects of
6 the Settlement, or order material changes to the Settlement to which
7 the Parties do not agree, the Parties will meet and confer to address
8 the Court's concerns and determine whether resolution of the Action
9 can be obtained in a manner consistent with the Court's concerns.
10 If no agreement can be reached, the Settlement will be null and void
11 and the Parties will have no further obligations under it. However,
12 an award by the Court of lesser amounts than sought for the
13 Representative Plaintiff's Payment and/or Counsel Fees and
14 Expenses Payment will not be considered a material change to the
15 Settlement.

16
17 2. **No Right to Opt Out or Object.** The Parties agree there is no statutory
18 right for any PAGA Settlement Group Member to object, opt out or otherwise
19 exclude himself or herself from the Settlement. The Parties further agree there is
20 no right or opportunity for any PAGA Settlement Group Member to appeal the
21 approval of the Settlement by the Court. The Parties further agree that an
22 Aggrieved Employees' recovery under this Settlement does not act to preclude
23 claims not encompassed within the release of claims in Section III.K.1.

24 3. **Notice to PAGA Settlement Group Members.** After the Court enters its
25 order granting the Approval Motion, every PAGA Settlement Group Member will
26 be provided with the Notice of their Settlement Share.

27
28 a. Within fourteen (14) days after the Court Order is signed, approving
the Settlement, Defendant will provide to the Settlement Administrator the

1 names, last known addresses and telephone numbers, Social Security
2 numbers, and Covered Pay Periods of all PAGA Settlement Group
3 Members. The Settlement Administrator shall keep this information
4 confidential and not disclose it to Plaintiff's Counsel or any third parties. If
5 any or all of the PAGA Settlement Group Members' data is unavailable to
6 Defendant, Defendant will use best efforts to deduce or reconstruct the data
7 prior to when it must be submitted to the Settlement Administrator.

8 b. Within seven (7) days after receiving the PAGA Settlement Group
9 Members' data from Defendant, the Settlement Administrator will send a
10 Notice to each PAGA Settlement Group Member. The Settlement
11 Administrator will mail this information to all identified PAGA Settlement
12 Group Members, using the mailing address information provided by
13 Defendant, unless modified by any updated address information that the
14 Settlement Administrator obtains in the course of administration of the
15 Settlement. In the event of returned or non-deliverable notices, the
16 Settlement Administrator will make reasonable efforts to locate PAGA
17 Settlement Group Members and re-send the notices.

18 c. If a Notice is returned because of an incorrect address, the
19 Settlement Administrator will promptly, and not later than ten (10) days
20 from receipt of the returned Notice, search for a more current address for
21 the PAGA Settlement Group Member using Accurint and/or other
22 reasonable and cost-effective skip trace methods, and re-mail the Notice to
23 the PAGA Settlement Group Member. The Settlement Administrator will
24 use the PAGA Settlement Group Members' data and otherwise work with
25 Defendant to find a more current address. The Settlement Administrator
26 will be responsible for taking reasonable steps, consistent with its agreed-
27 upon job parameters, court orders, and fees, as agreed to with Plaintiff's
28 Counsel and according to the following deadlines, to trace the mailing

1 address of any PAGA Settlement Group Member for whom a Notice is
2 returned by the U.S. Postal Service as undeliverable. These reasonable
3 steps will include, at a minimum, the tracking of all undelivered mail;
4 performing address searches for all mail returned without a forwarding
5 address; and promptly re-mailing to PAGA Settlement Group Members for
6 whom new addresses are found.

7
8 4. **Submission of Judgment.** Plaintiff shall submit a copy of the Judgment in
9 this Action and a copy of any other order providing for or denying an award
10 of civil penalties within ten (10) days after entry of the Judgment and/or
11 order, in compliance with Section 2699(1)(3) of the California Labor Code.
12 The Judgment will be made available to the LWDA and Aggrieved
13 Employees through the Settlement Administrator's website for a period of
14 two (2) years following entry of judgment.

15 5. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with
16 the material terms of this Agreement, Plaintiff, Defendant, and their
17 respective counsel hereby waive any and all rights to appeal from the
18 Judgment, including all rights to any post-judgment proceeding and
19 appellate proceeding, such as a motion to vacate judgment, a motion for
20 new trial, and any extraordinary writ, and the Judgment therefore will
21 become non-appealable at the time it is entered. The waiver of appeal does
22 not include any waiver of the right to oppose any appeal, appellate
23 proceedings or post-judgment proceedings. This paragraph does not
24 preclude Plaintiff or Plaintiff's Counsel from appealing from a refusal by
25 the Court to award the Plaintiff's attorneys' fees and/or costs sought by
26 them. If an appeal is taken, the time for consummating the Settlement
27 (including making payments under the Settlement) will be suspended until
28 such time as their appeal is finally resolved and the Judgment becomes
Final, as defined in this Agreement.

- 1 6. **Vacating, Reversal, or Material Modification of Judgment on Appeal**
2 **or Review.** If, after a notice of appeal or a petition for *certiorari* or review,
3 or any other motion, petition, or application, the reviewing court vacates,
4 reverses, or modifies the Judgment such that there is a material change to
5 the Settlement, and that court's decision is not completely reversed and the
6 Judgment is not fully affirmed on review by a higher court, then either
7 Plaintiff or Defendant will have the right to void the Settlement, which the
8 Party must do by giving written notice to the other Parties, the reviewing
9 court, and the Court not later than thirty (30) days after the reviewing court's
10 decision vacating, reversing, or materially modifying the Judgment
11 becomes Final. A vacation, reversal, or modification of the Court's award
12 of the Representative Plaintiff's Payment and/or Plaintiff's attorneys' fees
13 and/or costs will not constitute a vacating, reversal, or material modification
14 of the Judgment within the meaning of this paragraph, although Plaintiff or
15 Plaintiff's Counsel have the right to appeal from any refusal by the Court to
16 award the Plaintiff's Counsel's attorneys' fees and/or costs sought by them.
- 17 7. **Timing of Settlement Payments.** The settlement payment provided for in
18 Paragraph III.B. shall be made within fourteen (14) days after the Court
19 Order is signed approving the Settlement.
- 20
- 21 8. Within seven (7) days after the Court Order is signed approving the
22 Settlement, the Settlement Administrator will provide Defendant with wire
23 transfer information. Within fourteen (14) days after the Court Order is
24 signed approving the Settlement, Defendant will transfer the Total
25 Settlement Amount to the Settlement Administrator via wire transfer.
26 Within twenty one (21) days after the Court Order is signed approving the
27 Settlement, the Settlement Administrator will make the following payments
28 from the Total Settlement Amount: distribution as Settlement Shares to
 PAGA Settlement Group Members; the LWDA Payment paid to the

1 LWDA; the Representative Plaintiff's Payment to Plaintiff; Plaintiff's
2 Counsel Fees and Expenses Payment paid to Plaintiff's Counsel; and the
3 Settlement Administrator's fees and expenses.

- 4 9. **Uncashed Settlement Share Checks.** A PAGA Settlement Group Member
5 must receive or cash his or her Settlement Share payment or check within
6 180 calendar days after it is mailed to him or her. If a check is returned to
7 the Settlement Administrator, the Settlement Administrator will make all
8 reasonable efforts to re-mail it to the PAGA Settlement Group Member at
9 his or her correct address. If any PAGA Settlement Group Member's
10 Settlement Share check is not cashed within 120 days after its last mailing
11 to the PAGA Settlement Group Member, the Settlement Administrator will
12 send the PAGA Settlement Group Member a letter or postcard informing
13 him or her that unless the check is cashed in the next 60 days, it will expire
14 and become non-negotiable, and offer to replace the check if it was lost or
15 misplaced but not cashed. If a PAGA Settlement Group Member fails to
16 cash the check for his or her Settlement Share within 180 days after it is
17 mailed to him or her, the funds shall be distributed by the Settlement
18 Administrator to the State Controller's Unclaimed Property Fund in the
19 Settlement Group Member's name.

20
21 **K. Release and Waiver of Claims.**

- 22 1. **PAGA Settlement Group Members.** Upon the full funding of the
23 Settlement, Plaintiff, acting on behalf of the State of California, and all
24 PAGA Settlement Group Members release Defendant and the Released
25 Parties from any and all claims based on the Private Attorneys General Act
26 (2004), as pleaded in Plaintiff's Complaint or that could have been pleaded
27 on the facts as alleged in the Complaint and Plaintiff's notice letters to
28 LWDA, arising during the Covered Period, including but not limited to

claims under Labor Code sections 201, 202, 203, 226, 226.7, 2698, 2699.3, and 2699.5, the Industrial Welfare Commission Wage Orders, and any resulting claim for attorneys' fees and costs (the "Released Claims"). The release only extends to pay periods in which the PAGA Settlement Group Member worked at StarCrest.

2. **Section 1542 Release.** In addition to the release made in Section III.K.1, Plaintiff makes the additional following general release of all claims, known or unknown. Plaintiff released the Released Parties from all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule or regulation arising out of, relating to, or in connection with Plaintiff's relationship with Defendant as well as any and all acts or omissions by or on the part of Defendant. (The release set forth in this paragraph shall be referred to hereinafter as the "General Release.")

With respect to the General Release, Plaintiff stipulates and agrees that, upon the date on which the Court's approval order becomes final, Plaintiff shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

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.

1
2 This release specifically excludes claims for unemployment insurance,
3 disability, social security, and workers compensation (with the exception of
4 claims arising pursuant to California Labor Code Sections 132(a) and
5 4553). Accordingly, if the facts relating in any manner to this Settlement
6 are found hereafter to be other than or different from the facts now believed
7 to be true, the release of claims contained herein shall be effective as to all
8 unknown claims.

9
10 L. **No Effect on Other Benefits.** The payment to PAGA Settlement Group Members
11 will not result in any additional benefit payments (such as 401(k) or bonus) beyond
12 those provided by this Agreement to Plaintiff or the PAGA Settlement Group
13 Members, and they will be deemed to have waived all such claims, whether known
14 or unknown by them, as part of their release of claims under this Agreement.

15 M. **Confidentiality Preceding Approval.** Prior to filing of the Motion for Settlement
16 Approval, Plaintiff will not issue any press or other media releases or have any
17 communication with the press or media or anyone other than financial advisors,
18 retained experts, the LWDA and vendors related to settlement administration,
19 regarding the Settlement. If, before the filing of the Motion for Settlement
20 Approval, Plaintiff or his attorneys disclose to any unauthorized party (a) that a
21 settlement has been reached or (b) any of the terms of the Settlement except as
22 required by law or to effect the Settlement, Defendant may rescind the Settlement,
23 rendering it null and void. Plaintiff further agrees that he will instruct his attorneys
24 not to disclose the terms of this Agreement other than as necessary in connection
25 with the Motion for Settlement Approval. This section does not bar Plaintiff's
26 counsel from carrying out their duties as counsel to Representative Plaintiff for the
27 LWDA.
28

1 N. **Miscellaneous Terms.**

2 1. **No Admission of Liability.**

3
4 a. Defendant denies that it has engaged in any unlawful activity, has
5 failed to comply with the law in any respect, or has any liability to
6 anyone under the claims asserted in the Action. This Agreement is
7 entered into solely for the purpose of compromising highly disputed
8 claims. Nothing in this Agreement is intended or will be construed
9 as an admission of liability or wrongdoing by Defendant, or an
10 admission by Plaintiff that any of her claims were non-meritorious
11 or any defense asserted by Defendant was meritorious. This
12 Settlement and the fact that Plaintiff and Defendant were willing to
13 settle the Action will have no bearing on, and will not be admissible
14 in connection with, any litigation (other than solely in connection
15 with the Settlement).

16 b. Whether or not the Judgment becomes Final, nothing in the
17 Settlement, this Agreement, any document, statement, proceeding
18 or conduct related to the Settlement or the Agreement, or any reports
19 or accounting of those matters, will be (i) construed as, offered or
20 admitted in evidence as, received as, or deemed to be evidence for
21 any purpose adverse to Defendant or any other Released Parties,
22 including, but not limited to, evidence of a presumption, concession,
23 indication or admission by any of the Released Parties of any
24 liability, fault, wrongdoing, omission, concession or damage; or (ii)
25 disclosed, referred to or offered in evidence against any of the
26 Released Parties, in any further proceeding in the Action, or any
27 other civil, criminal or administrative action or proceeding except
28

1 for purposes of effectuating the Settlement pursuant to this
2 Agreement.

3 c. This section and all other provisions of this Agreement
4 notwithstanding, any and all provisions of this Agreement may be
5 admitted in evidence and otherwise used in any and all proceedings
6 to enforce any or all terms of this Agreement, or in defense of any
7 claims released or barred by this Agreement.
8

9 2. **Integrated Agreement.** After this Agreement is signed and delivered by
10 all Parties and their counsel, this Agreement and its exhibits will constitute
11 the entire agreement between the Parties relating to the Settlement, and it
12 will then be deemed that no oral representations, warranties, covenants, or
13 inducements have been made to any Party concerning this Agreement or its
14 exhibits other than the representations, warranties, covenants, and
15 inducements expressly stated in this Agreement and its exhibits.

16 3. **Attorney Authorization.** Plaintiff's Counsel and Defendant's Counsel
17 each warrant and represent that they are authorized by their respective
18 clients to take all appropriate action required or permitted to be taken by
19 such Parties pursuant to this Agreement to effectuate its terms, and to
20 execute any other documents required to effectuate the terms of this
21 Agreement. The Parties and their counsel will cooperate with each other
22 and use their best efforts to affect the implementation of the Settlement. In
23 the event the Parties are unable to reach agreement on the form or content
24 of any document needed to implement the Agreement, or on any
25 supplemental provisions that may become necessary to effectuate the terms
26 of this Agreement, the Parties will seek the assistance of the Court or
27 mediator, and in all cases all such documents, supplemental provisions and
28 assistance of the court will be consistent with this Agreement. No attorney

1 for any party is a party to this agreement and will not be liable for any
2 Party's breach of any of the terms of this Agreement.

3 4. **Modification of Agreement.** This Agreement, and any and all parts of it,
4 may be amended, modified, changed, or waived only by an express written
5 instrument signed by all Parties or their successors-in-interest.

6
7 5. **Agreement Binding on Successors.** This Agreement will be binding upon,
8 and inure to the benefit of, the successors of each of the Parties.

9
10 6. **Applicable Law.** All terms and conditions of this Agreement and its
11 exhibits will be governed by and interpreted according to the laws of the
12 State of California, without giving effect to any conflict of law principles or
13 choice of law principles.

14 7. **Cooperation in Drafting.** The Parties have cooperated in the drafting and
15 preparation of this Agreement. This Agreement will not be construed
16 against any Party on the basis that the Party was the drafter or participated
17 in the drafting.

18 8. **Fair Settlement.** The Parties and their respective counsel believe and
19 warrant that this Agreement reflects a fair, reasonable, and adequate
20 settlement of the Action and have arrived at this Agreement through arms-
21 length negotiations, taking into account all relevant factors, current and
22 potential.

23
24 9. **Headings.** The descriptive heading of any section or paragraph of this
25 Agreement is inserted for convenience of reference only and does not
26 constitute a part of this Agreement.

1 10. **Notice.** All notices, demands or other communications given under this
2 Agreement will be in writing and deemed to have been duly given as of the
3 third business day after mailing by United States mail, addressed as follows:

4 *To Plaintiff and the Settlement Group:*

5
6 DIVERSITY LAW GROUP, P.C.

7 Larry W, Lee, Esq. (SBN 228175)

8 lwlee@diversitylaw.com

9 Kristen M. Agnew, Esq. (SBN 247656)

10 kagnew@diversitylaw.com

11 Nicholas Rosenthal, Esq. (SBN 268297)

12 nrosenthal@diversitylaw.com

13 515 S. Figueroa St., Suite 1250

14 Los Angeles, California 90071

15 Telephone: (213) 488-6555

16 Facsimile: (213) 488-6554

To Defendant:

Brandon R. McKelvey (SBN 217002)

brandon@medinamckelvey.com

Timothy B. Nelson (SBN 235279)

tim@medinamckelvey.com

Medina McKelvey LLP

925 Highland Pointe Drive, Suite 300

Roseville, California 95678

Telephone: (916) 960-2211

11. **Execution in Counterpart.** This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile signatures will be accepted if the original signature is provided within seven days. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

IV. EXECUTION BY PARTIES

The Parties hereby execute this Agreement.

Dated: March 51, 2022

James Flournoy


[James Flournoy \(Mar 15, 2022 16:35 PDT\)](#)

1 By: Paul J. Sorensen

2 Paul Sorensen

3 CEO

4 APPROVED AS TO FORM:

5 Dated: March __, 2022

DIVERSITY LAW GROUP, P.C.

7 By: _____

8 Larry W. Lee

9 Kristen M. Agnew

Nicholas Rosenthal

Attorneys for Plaintiff JAMES FLOURNOY

13 Dated: March __, 2022

MEDINA McKELVEY, LLP

15 By: _____

16 Brandon R. McKelvey

Timothy B. Nelson

Attorneys for Defendant PARTNERS

PERSONNEL – MANAGEMENT

SERVICES, LLC

1
2
3 Dated: March __, 2022

Partners Personnel – Management Services, LLC

4
5 By: _____

6 [NAME]

7 [TITLE]

8 APPROVED AS TO FORM:

9 Dated: March 17, 2022

DIVERSITY LAW GROUP, P.C.

10
11 By:  _____

Larry W. Lee

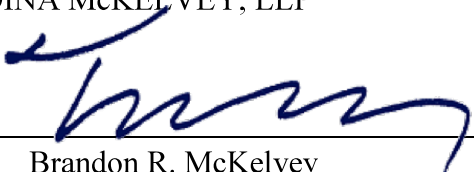
Kristen M. Agnew

Nicholas Rosenthal

Attorneys for Plaintiff JAMES FLOURNOY

12
13
14
15
16 Dated: March 25, 2022

MEDINA McKELVEY, LLP

17
18 By:  _____

Brandon R. McKelvey

Timothy B. Nelson

Attorneys for Defendant PARTNERS

PERSONNEL – MANAGEMENT

SERVICES, LLC

EXHIBIT A

DIVERSITY LAW GROUP, P.C.

Larry W. Lee (SBN 228175)
E-mail: lwlee@diversitylaw.com
Kristen M. Agnew (SBN 247656)
E-mail: kagnew@diversitylaw.com
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Attorneys for Plaintiff

MEDINA McKELVEY LLP

Brandon R. McKelvey (SBN 217002)
Email: brandon@medinamckelvey.com
Timothy B. Nelson (SBN 235279)
E-mail: tim@medinamckelvey.com
925 Highland Pointe Drive, Suite 300
Roseville, California 95678
Telephone: (916) 960-2211

Attorneys for Defendant

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

JAMES FLOURNOY, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

PARTNERS PERSONNEL –
MANAGEMENT SERVICES, LLC, a
Delaware limited liability company; and
DOES 1 through 50,

Defendants.

CASE NO. CVRI2102372

**[PROPOSED] JUDGMENT AND
ORDER GRANTING PLAINTIFF'S
MOTION FOR SETTLEMENT
APPROVAL OF CLAIMS
BROUGHT UNDER THE PAGA,
REASONABLE ATTORNEY'S
FEES AND COSTS, AND
ENHANCEMENT AWARD**

Date: May 9, 2022
Time: 8:30 a.m.
Dept.: 4

Action Filed: May 7, 2021
Trial Date: None Set

1 On May 9, 2022, a hearing was held on Plaintiff James Flourney's motion for approval
2 of a settlement agreement pursuant to California's Private Attorneys General Act (the "PAGA")
3 (the "Settlement"). The Court having considered all the papers filed and proceedings herein and
4 otherwise being fully informed, and having made this Judgment which constitutes a final
5 adjudication of this matter on the merits, and good cause appearing,

6 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

- 7 1. All terms used for purposes of this Order and Judgment, not otherwise defined, shall
8 have the same meaning as given in the PAGA Settlement Agreement ("Settlement")
9 executed between the Parties on _____, 2022.
- 10 2. Pursuant to the PAGA, Labor Code section 2699, subdivisions (1)(2) and (1)(4), the
11 Labor and Workforce Development Agency ("LWDA") has been given notice of the
12 Settlement. Pursuant to the PAGA, on the date the Parties filed the motion seeking
13 approval of the Settlement with the Court, Plaintiff submitted to the LWDA a notice
14 of the Settlement enclosing a copy of the Settlement. The Court finds and determines
15 that Plaintiff's notice of the Settlement complied with the statutory requirements of
16 the PAGA.
- 17 3. The Court confirms approval of the Settlement as to the following group of
18 individuals, collectively referred to as the "PAGA Settlement Group Members":
19 All non-exempt, hourly employees who worked for Defendant in California and were
20 assigned to the StarCrest from March 3, 2020 to _____.
- 21 4. This Court has jurisdiction over the subject matter of this litigation, over all PAGA
22 Settlement Group Members, and over those persons and entities undertaking
23 affirmative obligations under the Settlement.
- 24 5. The Court finds that the Settlement is, in all respects, fair, reasonable, and adequate.
25 Accordingly, the Court hereby finally and unconditionally approves the Settlement.
- 26 6. The Court approves the Notice to PAGA Settlement Group Members, Exhibit B to
27 the Settlement Agreement.
- 28

- 1 7. The Court finds that each PAGA Settlement Group Member, in accordance with the
2 Settlement, releases the following “Released Claims” against the Released Parties:
3 “Any and all claims based on the Private Attorneys General Act (2004), as pleaded in
4 Plaintiff’s Complaint or that could have been pleaded on the facts as alleged in the
5 Complaint, during the Covered Period.” The release only extends to pay periods in
6 which the PAGA Settlement Group Member worked at StarCrest.
- 7 8. The Court finds that the Total Settlement Amount, Net Settlement Amount, and the
8 methodology used to calculate and pay each Settlement Share, in accordance with the
9 Settlement, are fair and reasonable.
- 10 9. The Court authorizes ILYM Group, Inc. to act as the Settlement Administrator.
- 11 10. The Court authorizes the Settlement Administrator to calculate and pay the Settlement
12 Shares, in accordance with the terms of the Settlement.
- 13 11. The Court awards the Settlement Administrator in this Action its fees and costs of
14 eight thousand dollars and zero cents (\$8,000.00) in accordance with the terms of the
15 Settlement Agreement.
- 16 12. The Court awards to Representative Plaintiff a payment of ten thousand dollars and
17 zero cents (\$10,000.00), which shall be paid to Representative Plaintiff as a PAGA
18 Representative Enhancement award. In exchange, Representative Plaintiff has agreed
19 to a general release of all claims that he might have against Defendant, including a
20 Civil Code section 1542 release.
- 21 13. The Court awards to Plaintiff’s Counsel in this Action its fees of forty one thousand
22 six hundred and sixty six dollars and zero cents (\$41,666.00) and actual costs of
23 \$15,000.00, in accordance with the terms of the Settlement Agreement.
- 24 14. The Court approves the allocations and payment of One Hundred Twenty Five
25 Thousand Dollars (\$125,000.00) for the compromise of claims brought under the
26 PAGA, to be paid in accordance with the terms of the Settlement. Under the terms of
27 the Settlement, seventy-five percent (75%) of the Net Settlement Amount will be paid
28 to the State of California Labor and Workforce Development Agency (“LWDA

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Payment”), and the remaining amount of the Net Settlement Amount shall be distributed to the PAGA Settlement Group Members in accordance with the terms of the Settlement.

15. Checks for Settlement Shares sent to PAGA Settlement Group Members shall be valid for one hundred eighty (180) days after issuance. Funds remaining from any checks for Settlement Shares uncashed after one hundred eighty (180) days will be disbursed to the California State Controller’s Office Unclaimed Property Fund.

16. The Court retains exclusive and continuing jurisdiction over this Action for purposes of supervising, administering, implementing, interpreting, and enforcing this Judgment and Order, as well as the Settlement.

17. Nothing in this Order and Judgment or the Settlement shall be construed as an admission or concession by any party. The Settlement and this resulting Judgment and Order simply represent a compromise of disputed allegations.

18. Plaintiff is directed to submit a copy of this Order to the LWDA within ten (10) days of the date of this Order.

IT IS SO ORDERED AND ADJUDGED.

Dated: _____

Honorable Daniel Ottolia
Judge of the Superior Court

EXHIBIT B

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

JAMES FLOURNOY, as an individual and on behalf)
of all others similarly situated,)

Plaintiff,)

vs.)

PARTNERS PERSONNEL – MANAGEMENT)
SERVICES, LLC, a Delaware limited liability)
company; and DOES 1 through 50, inclusive,)

Defendants.)

Case No. CVRI2102372

**NOTICE OF PRIVATE ATTORNEYS
GENERAL ACT SETTLEMENT PAYMENT**

TO: *All of Defendant's non-exempt, hourly employees who were assigned to work at StarCrest at any time between March 3, 2020 to [REDACTED].*

This Notice is being provided to you to inform you of a Private Attorneys General Act ("PAGA") Settlement and your proportional share of this settlement payment. The payment is a result of a Court-approved PAGA Settlement in the case of *James Flournoy v. Partners Personnel – Management Services, LLC*, Riverside County Superior Court Case No. CVRI2102372 (the "Litigation"). This Notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the truth of the allegations in the Litigation or the merits of the claims or defenses asserted. Defendant Partners Personnel – Management Services, LLC ("Defendant") denies that Defendant has engaged in any unlawful conduct in any respect and further denies all of Plaintiff James Flournoy's ("Plaintiff") allegations in the Litigation. By entering into the PAGA Settlement, Defendant does not admit any liability to Plaintiff or to any other current or former employees who worked for Defendant, and does not admit that Defendant has violated the rights of Plaintiff, any other current or former employee, or any other person(s).

Plaintiff filed a notice with the California Labor and Workforce Development Agency ("LWDA") to exhaust administrative remedies and pursue claims under PAGA for alleged violations of California Labor Code sections 201, 202, 203, 226, 226.7, 2698, 2699.3, and 2699.5. The scope of the PAGA Settlement includes all of Defendant's non-exempt, hourly employees who worked for Defendant and were assigned to work at StarCrest from March 3, 2020, to [REDACTED] (the "PAGA Time Period"). In exchange for the PAGA Settlement, Plaintiff has agreed to waive any and all liability for violations of the PAGA based on violation of Labor Code sections 201, 202, 203, 226, 226.7, 2698, 2699.3, and 2699.5, as alleged in the Litigation, and in particular Plaintiff's right to participate in or bring a claim under the PAGA for said violations of these Labor Code sections. This waiver shall apply to all members within the PAGA group, including you, and extends to any PAGA claims asserted in the Litigation and arising during the PAGA Time Period.

The total PAGA Settlement is \$125,000.00. After deducting amounts for the Court-approved attorney's fees (\$41,666.00) and actual litigation costs (\$15,000.00) to Plaintiff's counsel, an enhancement payment to the Plaintiff (\$10,000.00), and costs of administering this settlement to ILYM Group, Inc. (\$8,000.00), the remaining amount of \$50,334.00 is being paid as follows, as required by law: 75% to the LWDA, and 25% distributed to the affected employees employed by Defendant during the PAGA Time Period. The allocation of the 25% sum is as follows: Each employee will receive a share of the settlement based on the number of weeks that the employee worked for Defendant and was assigned to StarCrest during the relevant time period (March 3, 2020 to [REDACTED] in proportion to the total number of weeks all of Defendant's employees worked for Defendant and were assigned to StarCrest during the relevant time period. The weeks you and other employees worked was determined by Defendant's records. Enclosed in this mailing, you will find a check containing your share of the PAGA Settlement based on this allocation. The allocations to each individual employee are non-appealable.

If you have any questions or concerns, you may contact counsel for Plaintiff or Defendant.

Larry W. Lee
Kristen M. Agnew
Nicholas Rosenthal
Diversity Law Group, APC
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Los Angeles, California 90071
Tel: (213) 488-6555
On behalf of Plaintiff

Brandon R. McKelvey
Timothy B. Nelson
Medina McKelvey LLP
925 Highland Pointe Drive, Suite 300
Roseville, CA 95678
Tel: (916) 960-2211
On behalf of Defendant

EXHIBIT B

Selection Criteria

Slip Classification Open
Client (hand select) Include: Flournoy, James v. Partners
Slip.Transaction Ty 2 - 2

Rate Info - identifies rate source and level

Slip ID Dates and Time Posting Status Description		Timekeeper Activity Client Reference	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
66321 3/3/2021 WIP LWDA	EXP	Olympia Court fees Flournoy, James v. Partners	1	75.00	75.00
67002 3/31/2021 WIP Postage	EXP	Olympia Postage Flournoy, James v. Partners	1	6.96	6.96
69007 6/2/2021 WIP Riverside Superior - Complaint	EXP	Erika Mejia Court fees Flournoy, James v. Partners	1	1450.00	1450.00
67794 6/8/2021 WIP Attorney Service - Complaint Service	EXP	Olympia Atty Service Flournoy, James v. Partners	1	97.29	97.29
67895 6/30/2021 WIP Photocopies	EXP	Olympia Photocopies Flournoy, James v. Partners	7	0.25	1.75
67896 6/30/2021 WIP Postage	EXP	Olympia Postage Flournoy, James v. Partners	1	0.71	0.71
68134 7/16/2021 WIP ACE E Filing - Stip to Cont CMC	EXP	Olympia Court fees Flournoy, James v. Partners	1	33.30	33.30
68244 7/26/2021 WIP ACE E Filing - Stip and Order to Cont ISC	EXP	Olympia Court fees Flournoy, James v. Partners	1	33.30	33.30

4/6/2022
12:06 PM

DIVERSITY LAW GROUP
Slip Listing

Page 2

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
68252	EXP	Olympia	1	12.70	12.70
7/30/2021		Court fees			
WIP		Flournoy, James v. Partners			
ACE E Filing - Notice of Entry of Order					
68845	EXP	Erika Mejia	1	15.39	15.39
9/13/2021		Court fees			
WIP		Flournoy, James v. Partners			
One Legal - 170.6					
68940	EXP	Erika Mejia	1	15.39	15.39
9/14/2021		Court fees			
WIP		Flournoy, James v. Partners			
One Legal - 170.6					
68939	EXP	Erika Mejia	1	12.35	12.35
9/14/2021		Court fees			
WIP		Flournoy, James v. Partners			
One Legal - Amended 170.6					
68851	EXP	Erika Mejia	1	12.35	12.35
9/14/2021		Court fees			
WIP		Flournoy, James v. Partners			
One Legal - 170.6					
69197	EXP	Olympia	1	12.70	12.70
10/8/2021		Court fees			
WIP		Flournoy, James v. Partners			
ACE E Filing - Notice of Reassignment					
69213	EXP	Olympia	1	12.70	12.70
10/8/2021		Court fees			
WIP		Flournoy, James v. Partners			
ACE Filing - Notice of Reassignment					
69306	EXP	Christine Choo	1	33.30	33.30
10/12/2021		Court fees			
WIP		Flournoy, James v. Partners			
ACE E Filing - Stip and Prop Order to Cont					
ISC					
70308	EXP	Christine Choo	1	53.21	53.21
12/13/2021		Atty Service			
WIP		Flournoy, James v. Partners			
Attorney Service - Stip and Order Chamber					
Copy					
70107	EXP	Olympia	1	25.50	25.50
12/15/2021		Court fees			
WIP		Flournoy, James v. Partners			
ACE EFiling - Stip and Prop Order to Cont					

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DIVERSITY LAW GROUP
Slip Listing

Page 3

Slip ID Dates and Time Posting Status Description	Timekeeper Activity Client Reference	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
CMC				
70138 EXP 12/16/2021 WIP ACE E Filing - Joint CMS	Christine Choo Court fees Flournoy, James v. Partners	1	4.90	4.90
70146 EXP 12/17/2021 WIP ACE E Filing - NOE	Olympia Court fees Flournoy, James v. Partners	1	4.90	4.90
70509 EXP 1/27/2022 WIP JAMS Mediation [\$5,000 - \$550 refund = \$4,450]	Olympia Arbitrators Flournoy, James v. Partners	1	4450.00	4450.00
71234 EXP 2/18/2022 WIP Meal	Kristen Agnew Meals Flournoy, James v. Partners	1	24.41	24.41
71317 EXP 4/6/2022 WIP ACE E Filing - Motion for PAGA Approval	Olympia Court fees Flournoy, James v. Partners	1	67.61	67.61
Grand Total				
	Billable	0.00		6455.72
	Unbillable	0.00		0.00
	Total	0.00		6455.72

EXHIBIT C

Flournoy v. Partners Personnel
Time and Task Chart for Nick Rosenthal

Hours	Description of Work
2.3	Review facts and arbitration agreement.
.6	Edit PAGA letter and Representative Action Complaint.
1.1	Review and analyze Defendant's meal and rest period policies.
1.5	Research re manageability requirement for PAGA actions.
3.7	Edit mediation statement.
6.7	Attend mediation.
2.0	Revise settlement agreement.
4.1	Edit Motion to Approve Settlement Agreement Pursuant to PAGA and prepare supporting declaration.
22.0	TOTAL HOURS