

MAYALL HURLEY P.C.
JOHN P. BRISCOE (SBN: 273690)
jbriscoe@mayallaw.com
2453 Grand Canal Boulevard
Stockton, California 95207-8253
Telephone: 209.513.9319
Facsimile: 209.473.4818

Attorneys for Plaintiff Russell Jim Menguito

Michael Heath (SBN: 196747)
Howard Olsen (SBN: 255888)
Walter J. Lin (SBN: 327142)
LAW OFFICE OF MICHAEL HEATH
3251 Steiner St.
San Francisco, CA 94123
Phone 415.931.4207
Fax 415.931.4117
mheath@mheathlaw.com

Attorneys for Defendant
458 Fairgrounds Drive, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SOLANO

RUSSELL JIM MENGUITO, an individual,

Case No.: FCS056724

Plaintiff,

**STIPULATION OF SETTLEMENT UNDER
PRIVATE ATTORNEYS GENERAL ACT OF
2004; [PROPOSED] ORDER**

v.

**458 FAIRGROUNDS DRIVE, LLC, a
limited liability company dba Red Roof Inn;
and DOES 1-100, inclusive,**

Defendants.

The Parties hereto, Plaintiff Russell Jim Menguito ("Plaintiff") as a proxy for the Labor and Workforce Development Agency ("LWDA"), and Defendant 458 Fairgrounds Drive, LLC ("Defendant"), by and through their respective counsel of record, hereby stipulate and agree as follows:

1 1. WHEREAS, on April 21, 2021, counsel for Plaintiff sent a letter to the LWDA and
2 Defendant alleging violations of Labor Code sections 201, 202, 226, 226.7, 246, 510, 512, 1182.12,
3 and 1197, alleged to have occurred during Plaintiff's employment with Defendant, on behalf of
4 Plaintiff and other purportedly aggrieved employees ("LWDA Letter").

5 2. WHEREAS, on June 28, 2021, Plaintiff filed this action alleging both individual
6 causes of action under the Labor Code, and also a claim under the Private Attorneys General Act
7 ("PAGA", Lab. Code, § 2698, *et seq.*).

8 3. WHEREAS, subsequent to the filing of the Complaint, the Parties have engaged in
9 formal discovery through which Defendant has provided information regarding the number of
10 California employees believed to have been affected by the alleged violations during the relevant
11 time period. The total number of aggrieved employees potentially affected by the PAGA Claims as
12 of the date of this order is believed to be eleven (11).

13 4. WHEREAS, Defendant denies all of Plaintiff's allegations, both on factual and legal
14 bases.

15 5. WHEREAS, the Parties engaged in settlement negotiations primarily through their
16 respective attorneys: John P. Briscoe, a shareholder of Mayall Hurley P.C. and a member of that
17 firm's employment litigation group; and Michael Heath, of the Law Office of Michael Heath, both
18 experienced litigators with knowledge of employment law and the PAGA.

19 6. WHEREAS, the Parties have reached agreement on the terms of settlement
20 regarding the PAGA claims. The Plaintiff's individual claims, have been resolved by way of a
21 separate, confidential settlement agreement.

22 7. WHEREAS, Labor Code section 2699(l) requires that the court review and approve
23 any proposed settlement agreement pursuant to PAGA.

24 8. WHEREAS, Plaintiff and Plaintiff's counsel concluded—after taking into account
25 the sharply disputed factual and legal issues involved in the Action, the risks attending further
26 prosecution, the discovery and investigation conducted to date, and the substantial benefits
27 received and to be received pursuant to the compromise and settlement of the Action, the nature of

1 the claimed violations and the wide discretion of the Court to reduce civil penalties imposed—that
2 settlement on the terms herein set forth is in the best interest of all interested parties, including the
3 Labor and Workforce Development Agency (the “LWDA”), and that the settlement adequately
4 serves the deterrent purposes of the PAGA.

5 9. WHEREAS, Plaintiff and Plaintiff’s counsel have balanced their evaluation of the
6 validity and strength of the asserted claims against the problems of proof and the legal standards
7 governing the claims alleged. Based on the information obtained through discovery, Plaintiff’s
8 counsel estimates that the maximum amount of civil penalties that could be obtained in this action
9 is in excess of \$200,000. Based on this evaluation, Plaintiff’s counsel believes that the settlement
10 reached satisfies the public policies of PAGA to punish past violations and deter future violations
11 of the Labor Code.

12 10. WHEREAS, similarly, Defendant and Defendant’s counsel concluded there were
13 benefits associated with settling. Although Defendant denies the various allegations and
14 challenges the validity of each of the causes of action in the Action, Defendant took into account
15 the sharply disputed factual and legal issues involved in the Action, the risk attending further
16 defense, the expense, time, and burden of protracted litigation, and the desire to put the controversy
17 to rest. Based on these factors, Defendant and Defendant’s counsel agreed to this settlement
18 without any admission of fault or liability. Nothing in this Agreement, nor any action taken in
19 implementation thereof, nor any statements, discussions or communications, nor any materials
20 prepared, exchanged, issued, or used during the course of the negotiations leading to this
21 Agreement, is intended by the Parties to constitute, nor will any of the foregoing constitute, be
22 introduced, be used or be admissible in any way in this case or any judicial, arbitral, administrative,
23 investigative, or other forum or proceeding as evidence of any violation of any federal, state, or
24 local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or
25 in equity, against Defendant or any other Released Party (as defined in paragraph 13, *infra*).

26 11. WHEREAS, the parties hereby agree to settle the PAGA claims at issue in the
27 Action (“the PAGA Settlement”) for a total payment of **\$50,000.00** and dismiss with prejudice the
28

1 Eighth Cause of Action under the PAGA.

2 12. WHEREAS, the persons covered by the PAGA Settlement will be Plaintiff and all
3 other persons who were employed by Defendant in California as nonexempt employees, at any
4 time from April 24, 2020 to the date of approval of this PAGA Settlement. The time period
5 covered by the PAGA Settlement will be from April 24, 2020 through the date of this order (“the
6 PAGA Timeframe”). The Released Parties include Defendant, its parents, predecessors,
7 successors, related companies, subsidiaries, affiliates, partners, officers, directors, managers,
8 servants, agents, employees, former employees, future employees, future entities, trusts,
9 employment agencies and professional employer organizations, and their employees, officers,
10 agents, representatives, attorneys, past or present, insurers, stockholders, fiduciaries, and other
11 service providers, and their successors and assigns, and all persons acting under, by, through, or in
12 concert with any of them (hereinafter collectively referred to as the “Released Parties”).

13 13. Upon the Effective Date (the date of this stipulated order), the LWDA and each of
14 the Other Aggrieved Employees, including Plaintiff, hereby voluntarily and knowingly release and
15 forever discharge any and all claims against the Released Parties that could have been premised or
16 predicated on any claims, causes of action, or legal theories of relief described or pleaded in the
17 operative complaint filed in this action and the written notice of any such claims submitted to the
18 LWDA by Plaintiff under PAGA, specifically for violations of Labor Code sections 201, 202, 226,
19 226.7, 246, 510, 512, 1182.12, and 1197, arising from April 24, 2020 through the date of this order
20 (“PAGA Released Claims”).

21 14. Neither the Settlement Administrator’s distribution of Individual Settlement
22 Payment checks to, nor the use or enjoyment of any Individual Settlement Payment checks by
23 Other Aggrieved Employees shall constitute consideration offered or exchanged for the release of
24 any Other Aggrieved Employees or private rights of action against any person. The release shall
25 also exclude claims for wrongful termination, unemployment insurance, social security, disability,
26 and workers’ compensation.

27 15. This Stipulation of Settlement shall not operate as a waiver of any of Plaintiff’s

individual (i.e., non-PAGA) claims, which have been resolved by a separate agreement.

16. WHEREAS, the sum of \$50,000 (the "Gross PAGA Settlement Sum") shall be allocated as follows:

- a. \$16,667, representing approximately 33 1/3% of the Gross PAGA Settlement Sum as attorneys' fees incurred for prosecution of the PAGA Claim; and
- b. \$2,625.44 for costs of suit; and
- c. \$1,495 as professional fees and costs of the Settlement Administrator, Phoenix Settlement Administrators.

The Net PAGA Settlement Amount of \$29,212.56 will be further allocated as follows:

- e. \$7,303.14, or 25 percent (25%) of the Net PAGA Settlement Sum will be distributed by Defendant to Plaintiff and the Other Aggrieved Employees who worked during the PAGA Timeframe. Each employee will receive a proportional share of the net PAGA Settlement Sum based on the number of pay periods he/she was employed during the PAGA Timeframe. Any such employees still employed with or on behalf of Defendant will receive the appropriate credit apart from their regular pay. Defendant will send each Other Aggrieved Employee their portion of the settlement by mail to the last known address. Settlement checks issued to the Other Aggrieved Employees pursuant to this Agreement shall expire 180 days from the date they are issued. Any unclaimed funds after the 180 days shall be remitted to the LWDA.
- f. \$21,908.42 or 75 percent (75%) of the Net PAGA Settlement Sum shall be paid to the LWDA in accordance with Section 2699(i) of the California Labor Code.

17. WHEREAS, on the condition that the Court approves this Stipulation and enters the attached Order: the PAGA Settlement Sum will be paid as follows:

- a. Within fifteen (15) calendar days after the Effective Date, Defendant shall pay the Gross PAGA Settlement Sum to the Settlement Administrator and shall provide the Settlement Administrator with a list of the names and last-known addresses of the Other Aggrieved Employees. Within ten (10) calendar days of receipt of the Gross PAGA Settlement Sum, the Settlement Administrator shall (1) pay attorney's fees to Mayall Hurley P.C. in the amount of \$16,667, and costs in the amount of \$2,625.44; (2) pay \$21,924.42 to the LWDA; (3) pay the Individual Settlement Payments to the Other Aggrieved Employees; and (4) retain \$1,495 for its fees and costs.
- b. With regard to the Other Aggrieved Employees with the exception of Plaintiff, their Individual Settlement Payments shall be sent to each Other Aggrieved Employee by U.S. First Class mail to the Other Aggrieved Employee's last

known address. A letter explaining this Settlement Agreement will be included in the mailing of each Other Aggrieved Employee's check. Plaintiff's payment will be sent with the other consideration provided for resolution of his individual claims. It will be conclusively presumed that any Other Aggrieved Employee's check was received if the payment check has not been returned within thirty (30) days of the original mailing of the payment check.

c. Settlement checks shall remain valid and negotiable for one hundred twenty (120) calendar days from the date of their issuance. If there are uncashed checks following this period, Defendant will ensure that uncashed funds shall be forwarded to the LWDA in the name of the Other Aggrieved Employee who did not cash his or her Individual Settlement Payment, if practicable.

d. The settlement payments set forth above will be reported on IRS Form 1099s. The Parties acknowledge and agree that all settlement payments set forth under this Agreement are attributable as penalties. None are attributable as wages. Accordingly, the parties acknowledge and agree that Defendant is not responsible for any employer-side taxes in connection with any PAGA settlement payments under this Agreement. Plaintiff, Mayall Hurley P.C., and the Other Aggrieved Employees shall be solely responsible for the reporting and payment of their share of any federal, state and/or municipal income or other taxes on payments made pursuant to this Agreement, and shall hold Defendant and Defendant's counsel free and harmless from any claims resulting from treatment of such payments as non-taxable, including the treatment of such payments as not subject to withholding or deduction for payroll and employment taxes. No party has made any representation to any of the other Parties as to the taxability of any payments pursuant to this agreement, including the payments to Plaintiff and the Other Aggrieved Employees, the payments to Plaintiff's counsel, or otherwise as to the tax implications of any provision of this Agreement.

18. The Parties jointly request that the Court approve the penalties sought as part of the PAGA Settlement and approve the dismissal of the PAGA claims in the Complaint attendant therewith.

19. This Stipulation is made for the sole purpose of settling this Action. This Stipulation and the settlement it evidences are made in compromise of disputed claims. Because this action was pleaded as a PAGA action, this Stipulation must receive approval by the Court. Accordingly, the Parties enter into this Stipulation and associated settlement on a conditional basis. If the Court does not enter an order granting approval of this Stipulation, this Stipulation shall be deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred to or

utilized for any purpose whatsoever; and the negotiation, terms and entry of the Stipulation shall remain subject to the provisions of California Evidence Code sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable. If the Court does enter an order granting approval of this Stipulation, the Parties shall file a Request for Dismissal which includes a dismissal of the PAGA claims in the Complaint.

20. The Parties and their counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry or have any communication with the press about the fact, amount or terms of this Stipulation. In addition, the Parties and their counsel agree that they will not engage in any advertising or distribute any marketing materials relating to this Stipulation or this action in any manner that identifies Defendant, including but not limited to any postings on any websites maintained by Plaintiff's counsel. Neither Plaintiff nor Plaintiff's Counsel will discuss the terms or the fact of this Agreement with third parties other than (1) their immediate family members, or (2) their respective accountants or lawyers as necessary for tax purposes. Plaintiff and Plaintiff's Counsel agree not to publish any of the terms or conditions of this Stipulation in any manner that identifies Defendant.

21. Plaintiff's attorney has calculated the attorneys' fees included in paragraph 16. The Parties agree that if the Court approves an amount of attorneys' fees less than the amount set forth in Paragraph 16, the unapproved portion shall revert to the Net PAGA Settlement Amount to be distributed between the Plaintiff, the Other Aggrieved Employees and the LWDA in the same percentages as set forth in Paragraph 16.

IT IS SO STIPULATED.

PLAINTIFF AND PLAINTIFF'S COUNSEL

DATED: 12/15/2021

DocuSigned by:
Russell Jim Menguito
80629E92E667446
Plaintiff Russell Jim Menguito

DATED: December 17, 2021

MAYALL HURLEY P.C.

By: John P. Briscoe
Attorneys for Plaintiff

DEFENDANT AND DEFENDANT'S COUNSEL

458 Fairgrounds Drive, LLC

DATED: December __, 2021

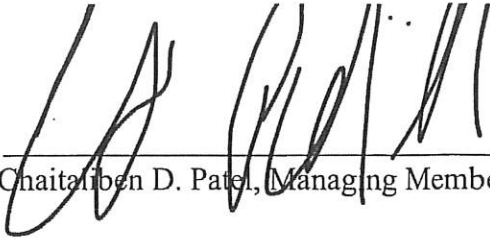
By: Chaitaliben D. Patel, Managing Member

DATED: December __, 2021

LAW OFFICES OF MICHAEL HEATH

By: Michael Heath
Attorneys for Defendant

1 DATED: December 17, 2021

By: 
Chaitaniben D. Patel, Managing Member

2
3
4 DATED: December 17, 2021

LAW OFFICES OF MICHAEL HEATH

5
6 By: 
Michael Heath
Attorneys for Defendant

7
8
9
10
11
12
13
14 **ORDER**

15 Upon review of the foregoing stipulation entered into by and between the parties in the
16 above-referenced action, and good cause appearing therefor,

17 **IT IS HEREBY ORDERED** that the foregoing stipulation is hereby approved and the
18 Court approves the Parties' PAGA Settlement pursuant to Labor Code § 2699(l). The parties are
19 ordered to perform their respective duties as stipulated thereto.

20 **DATED:**

21 _____
Judge of the Superior Court