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PACIFIC BEACH RECOVERY & LA JOLLA
RECOVERY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

CENTRAL DIVISION

DOMINIQUE WHITEHAIR an individual,

Plaintiff,

v.

PACIFIC BEACH RECOVERY, a California
Business; LA JOLLA RECOVERY, a California
Business; and DOES 1 through 100, inclusive,

Defendants.

Case No.: 37-2021-00038307-CU-WT-CTL

*[Assigned to: Honorable Gregory W. Pollack
Dept. C71]*

**JOINT STIPULATION FOR ORDER
APPROVING SETTLEMENT PURSUANT
TO PRIVATE ATTORNEYS' GENERAL
ACT; [PROPOSED] ORDER**

Complaint Filed: 9/8/2021

Trial Date: Not yet set

Plaintiff DOMINIQUE WHITEHAIR ("Plaintiff") and Defendants PACIFIC BEACH
RECOVERY and LA JOLLA RECOVERY ("Defendants") (collectively, "the Parties"), by and through
their respective counsel of record, hereby stipulate as follows:

WHEREAS, on or about April 16, 2021, pursuant to the California Labor Code Private

Attorneys' General Act ("PAGA"), Plaintiff, by and through her counsel, sent a notice to the California Labor Workforce Development Agency ("LWDA") and Defendants alleging that Defendants violated the California Labor Code and California Wage Orders and seeking civil penalties under PAGA (the "PAGA Notice");

WHEREAS, on or about September 8, 2021, Plaintiff filed a Complaint in the Superior Court of California, County of San Diego, entitled *Dominique Whitehair v. Pacific Beach Recovery, La Jolla Recovery, and DOES 1-100, inclusive*, Case No. 37-2021-00038307-CU-WT-CTL, alleging individual employment and representative claims under PAGA (the "Action" or "Lawsuit");

WHEREAS, Defendants vigorously dispute and deny the Lawsuit's allegations and causes of action, including, without limitation, Plaintiff's individual employment and representative claims for civil penalties pursuant to PAGA;

WHEREAS, the Parties conducted informal discovery, exchanged relevant information and documents (including personnel and payroll records), and independently investigated and evaluated the claims and defenses in this matter;

WHEREAS, counsel for the Parties have significant experience litigating and resolving the wage-and-hour claims alleged in the Lawsuit, including claims for civil penalties under PAGA;

WHEREAS, the Parties recognize that the issues the Action presents are unlikely to be resolved without extensive and costly discovery, pretrial and trial proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate to the potential benefits of litigation;

WHEREAS, nothing in this Stipulation and Settlement Agreement are intended or will be construed as an admission by Defendants that Plaintiff's claims or the Action have merit or that they have any liability to Plaintiff or those claims or the State. This Stipulation and Agreement is intended to fully, finally, and forever compromise, release, resolve, discharge, and settle the released claims subject to the terms and conditions set forth in this Agreement.

Subject to Court approval, the Parties hereby stipulate as follows:

1. The Settlement becomes enforceable upon execution of (1) the settlement agreement (the

1 “Settlement Agreement”), both of which the Parties agree are enforceable by the San Diego Superior
2 Court, upon motion of any Party, and (2) a joint stipulation for settlement that contains the essential
3 terms of the Settlement and more specific information and procedures as required by law (“Joint
4 Stipulation”).

5 2. Based on their own independent investigations and evaluations, the Parties and their
6 respective counsel believe settlement of the PAGA Claims (defined below) on the terms set forth in the
7 Settlement Agreement are fair, reasonable, adequate, and in the best interest of the Parties, the LWDA,
8 and the Aggrieved Employees in light of all known facts and circumstances, their assessment of the
9 mutual risks and costs of further litigation, and the assessments of their respective counsel.

10 3. For purposes of the Lawsuit and the Settlement, the individuals asserting claims under
11 PAGA – i.e., the “Aggrieved Employees” or “PAGA Members” – are all current and former employees,
12 including individuals allegedly misclassified as independent contractors, who worked for Defendants at
13 least one pay period during the PAGA liability period (“PAGA Period”), which is April 16, 2020,
14 through the date this Court approves the Settlement (the “PAGA Settlement”) pursuant to the terms of
15 the PAGA Settlement (the “Approval Date”).

16 4. Under the Settlement Agreement (**Attached as Exhibit A**) the term PAGA CLAIMS
17 means claims for which civil penalties are available pursuant to PAGA based on the allegations in the
18 lawsuit, but not limited PAGA claims for civil penalties due to the alleged Labor Code violations and by
19 Defendant during the Class Period including California Labor Code sections 201-204, 210, 216, 222,
20 222.5, 223, 224, 226, 226.4, 226.6, 226.7, 246, 248.5, 256, 432.5, 510, 512, 558, 558.1, 1174, 1194,
21 1197, 1197.1, 1199, 2698 *et seq.*, 2699, 2802, and their subsections, all applicable IWC Wage Order 9-
22 2001; Cal. Code of Regulations sections 11090(11) and (12).

23 5. California Labor Code section 2699(l) (2) requires that this Court review and approve
24 settlement of the PAGA Claims.

25 6. The Parties recognize that this Court may, pursuant to California Labor Code section
26 2699(e)(2), award a lesser amount than the maximum civil penalty available under PAGA, if based on
27 the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust,
28 arbitrary and oppressive, or confiscatory.

1 7. The Parties have provided a copy of this Joint Stipulation and the Settlement Agreement
2 to the LWDA in accordance with Labor Code Section 2699(1)(2), and a proof of service to the LWDA is
3 attached as Exhibit B.

4 8. Within thirty (30) business days after receipt of a notice of entry of the Court's Approval
5 order, Defendants shall pay the sum of Sixty-Seven Thousand Five Hundred (\$67,500.00) to resolve PAGA
6 claims ("PAGA Gross Settlement").

7 9. Under the terms of the settlement agreement, the Parties have stipulated to a gross
8 settlement sum of \$67,500.00 for PAGA claims which will be allocated as follows:

9 a. Twenty-Two Thousand Seven Hundred Fifty (\$22,750), less costs to Plaintiff's
10 counsel, which represents 33% of the Settlement Amount for all past and future
11 attorneys' fees necessary to prosecute, settle, and administer the Settlement and final
12 resolution of the matter.

13 b. Charges and expenses of the Settlement Administrator, estimated to be no more
14 than Six Thousand Seven Hundred Fifty Dollars (\$6,750.00) will be paid from the
15 Settlement Amount. Any charges and expenses of the Settlement Administrator greater
16 than the allocated Six Thousand Seven Hundred Fifty Dollars (\$6,750.00) will come from
17 the Settlement Amount.

18 c. The PAGA Net Settlement Amount shall be calculated as follows: Settlement
19 Amount minus Court approved amounts for attorneys' fees, Litigation costs, and
20 Administrative Costs.

21 d. Seventy-five percent (75%) of the remainder of the PAGA Net Settlement
22 distributed to the LWDA.

23 e. Twenty-five percent (25%) of the remainder of the PAGA Net Settlement
24 distributed pro rata per pay period to all aggrieved employees.

25 10. Plaintiff's counsel will notify the LWDA of the Settlement when it submits the Settlement
26 and Stipulation for approval.

27 11. The Parties agree that, should the Court decline to approve the Settlement based on the
28 allocation of the PAGA Gross Settlement Amount or PAGA Net Settlement Amount, the Parties will re-

1 negotiate in good faith in an effort to obtain Court approval of the Settlement.

2 12. Settlement Administrators shall be the CPT Group Class Action Administrators and shall
3 make payments to PAGA members, the LWDA, Plaintiff, Plaintiff's Counsel within thirty (30) business
4 days after Settlement Administrator's receipt of the PAGA List.

5 13. Defendants will provide PAGA Members' information (names, addresses, phone
6 numbers, social security numbers, and number of pay periods worked for Defendants in California during
7 the PAGA Period) to Settlement Administrators to assist the settlement process within thirty (30) days of
8 the court signing the order approving this Stipulation.

9 14. Settlement Administrators will send checks to each Aggrieved Employees' last known
10 address on file with Defendants and shall remain valid and negotiable for 180 days from the date of their
11 issuance to Aggrieved Employees.

12 15. If any checks are returned as undeliverable, as set forth in the Settlement Agreement, the
13 Settlement Administrator shall make reasonable efforts to obtain an updated address and reissue a check
14 to that Aggrieved Employee.

15 16. All funds not claimed within 180 days of the initial mailing shall be directed to the State
16 Controller's Office under the Unclaimed Property Statutes in the name(s) of the individual(s) who did
17 not cash his or her check(s).

18 17. The Parties agree that the Settlement is confidential (except for purposes of enforcement),
19 that no Party will issue a press release or other public or non-public representation regarding the
20 Settlement, other than as necessary to obtain Court approval and effectuate the terms of the Settlement.

21 18. The Parties intend that the Settlement shall be fully enforceable and binding upon all
22 Parties, and that it shall be admissible and subject to disclosure in any proceeding to enforce its terms
23 under Code of Civil Procedure section 664.6 and any other applicable statute or law, notwithstanding the
24 mediation confidentiality provisions that otherwise might apply under local, federal and state law.

25 19. The Parties agree that the subsequent filing of the Joint Stipulation is for settlement
26 purposes only and if, for any reason, the Settlement is not approved, the parties will make a good faith
27 effort to negotiate and enter into new settlement agreement.

28 20. Plaintiff will prepare and file a motion, if necessary, with the Court requesting Approval

1 of the Settlement.

2 21. This Court shall retain jurisdiction to enforce the terms of the PAGA Settlement
3 Agreement pursuant to California Code of Civil Procedure Section 664.6; and, Subject to the Court's
4 approval and order based on the Joint Stipulation, the Parties shall bear their own respective costs and
5 attorneys' fees, except as otherwise provided in the Settlement Agreement.

6 The Parties jointly request that the Court approve this Joint Stipulation accordingly to its terms.

7
8 DATED: September 29, 2021

M LAW ATTORENYS, APC

9
10 By: 
11 NARAK MIRZAIE, ESQ.
12 Attorney for Plaintiff
13 DOMINIQUE WHITEHAIR

14 DATED: October 4, 2021

JACKSON LEWIS P.C.

15
16 By: 
17 Adrienne L. Conrad
18 Emilia A. Arutunian
19 Attorneys for Defendants
20 LA JOLLA RECOVERY
21 PACIFIC BEACH RECOVERY
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EXHIBIT A

PAGA SETTLEMENT AGREEMENT

This Stipulation of Settlement (“PAGA Settlement Agreement”) is made by and between Named Plaintiff Dominique Whitehair (“Plaintiff”), on her own behalf and on behalf of all members of the PAGA Group, as defined below, and Defendants La Jolla Recovery & Pacific Beach Recovery (collectively “Defendants”), in the lawsuit entitled *Case name, et al.*, San Diego Superior Court Case No. 37-2021-00038307-CU-WT-CTL (the “Litigation”). The term “Party” or “Parties” as used herein shall refer to Plaintiff, Defendant, or both, as may be appropriate. This PAGA Settlement Agreement resolves all claims that were asserted or could have been asserted against Defendant pertaining to the claims in the Litigation.

I. DEFINITIONS

A. Administrative Costs. All administrative costs of settlement, including cost of notice to the Settlement Group, administration, and any fees and costs incurred or charged by the Settlement Administrator in connection with the execution of its duties under this Stipulation of Settlement.

B. Agreement. The terms “Agreement” or “Settlement Agreement” are used synonymously herein to mean this PAGA Settlement Agreement.

C. Court. The term “Court” as used herein means the Superior Court of the State of California for the County of San Diego.

D. Date of Approval. The terms “Date of Approval” or “Approval” as used herein mean the date of the PAGA Settlement Approval Hearing.

E. Defendants. The term “Defendant” as used herein means: La Jolla Recovery & Pacific Beach Recovery

F. Litigation. The term “Litigation” as used herein means the action entitled filed in San Diego Superior Court, Case No. 37-2021-00038307-CU-WT-CTL.

G. LWDA Payment. The term “LWDA Payment” as used herein means seventy-five percent (75%) of the remainder of the Settlement Amount after the deduction of any award of attorneys’ fees, Litigation costs, and Administrative Costs. This amount shall be calculated

as follows: Settlement Amount minus (Court approved amounts for attorneys' fees, Litigation costs, and Administrative Costs) times 75%.

H. Named Plaintiff. The term "Named Plaintiff" as used herein means Dominique Whitehair. The term Named Plaintiff shall be used synonymously with the term PAGA Representative.

I. Net Settlement Amount. The term "Net Settlement Amount" as used herein means the Settlement Amount minus any award of attorneys' fees and Litigation costs, Administrative Costs, and the seventy-five percent (75%) of penalties payable to the LWDA ("LWDA Payment") pursuant to California's Private Attorney General Act ("PAGA"), and as provided in Sections VI and X, respectively.

J. Net Settlement Payments. The term "Net Settlement Payment(s)" shall include payments made to the Settlement Group as part of the Agreement.

K. PAGA Group. The PAGA Group is defined as: All persons within the State of California who are or were employed by Defendant or provided services to Defendant in the State of California that were classified as non-exempt, paid by hourly rate or by commission, at any time within the PAGA Period.

L. PAGA Period. The term "PAGA Period" or "Settlement Period" shall refer to the time period from April 16, 2020, to the date of settlement approval.

M. Plaintiff's Counsel. The term "Plaintiff's Counsel" as used herein means: M Law Attorneys, APC, who are counsel for and acting on behalf of Named Plaintiff.

N. Plaintiff's Individual Claim. The term "Plaintiff's Individual Claim" as used herein means: Causes of Actions One (1) Through four (4), Six (6) and Seven (7) brought in the Plaintiff's operative complaint in the Litigation.

O. Settlement Administrator. The term "Settlement Administrator" as used herein means CPT Group Class Action Administrators which will be responsible for the administration of the Settlement Payment, as defined below, and all related matters.

P. Settlement Agreement. The terms "Settlement Agreement" or "Agreement" are used synonymously herein to mean this PAGA Settlement Agreement.

1 **Q. Settlement Amount.** The terms “Settlement Amount” and “Gross Settlement
2 Fund” as used herein mean a fund in the sum of Sixty Seven Thousand Five Hundred Dollars &
3 Zero Cents (\$67,500.00) which shall be paid by Defendant, and from which all Net Settlement
4 Payments, Court approved attorneys’ fees and Litigation costs pursuant to Section XIII,
5 Administrative Costs pursuant to Section VIII, and distribution to the LWDA pursuant to
6 Section XVI shall be paid, except as provided herein.

7 The Parties currently estimate that there are approximately 194 individuals in the PAGA
8 Group.

9 **II. BACKGROUND**

10 A. On April 16, 2021, Plaintiff provided Defendant with a Private Attorney General
11 Act (“PAGA”) Notice to the Labor and Workforce Development Agency (“LWDA”) and
12 demand letter alleging individual claims as well as wage and hour PAGA violations against
13 Defendant La Jolla Recovery & Pacific Beach Recovery : 201-204, 210, 216, 222, 222.5, 223,
14 224, 226, 226.4, 226.6, 226.7, 246, 248.5, 256, 432.5, 510, 512, 558,, 558.1,1174, 1194, 1197,
15 1197.1, 1199, 2698 *et seq.*, 2699, 2802, and their subsections, all applicable IWC Wage Order
16 9-2001; Cal. Code of Regulations sections 11090(11) and (12); penalties that could have arisen
17 out of the facts alleged in the Complaint (“Released Claims”) against Defendant on Plaintiff’s
18 behalf and on behalf of other alleged aggrieved employees.

19 B. On September 8, 2021, Plaintiff brought an action against Defendant, which is
20 pending as *Dominique Whitehair v. Pacific Beach Recovery*, et al., San Diego Superior Court
21 Case No. 37-2021-00038307-CU-WT-CTL (the “Litigation”). In the Litigation, Plaintiff asserts
22 that Defendant failed to pay Plaintiff and other similarly situated non-exempt hourly and
23 commissioned employees all wages in full and on a timely basis, provide overtime, provide meal
24 periods and rest periods, issue accurate itemized wage statements, and other associated Labor
25 Code violations. The Litigation sought penalties under PAGA for these alleged violations. The
26 Litigation does not include Plaintiff’s Individual Claims.

27 C. Following the filing of the Litigation, counsel for the Parties met and conferred
28 with respect to the potential settlement of the Litigation. Pursuant to these discussions, the

1 Parties agreed to exchange informal discovery and engage in private mediation. The Parties
2 subsequently exchanged informal discovery, including: information and documentation
3 concerning the claims set forth in the Litigation, such as documentation regarding Named
4 Plaintiff's employment; information regarding the number of putative PAGA Group members
5 and the number of current versus former employees; and the total pay periods worked by the
6 PAGA Group.

7 D. Named Plaintiff and Plaintiff's Counsel have engaged in good faith, arms-length
8 negotiations. The Parties settled the case, subject to the Approval of the Court and finalization
9 of a formal Settlement Agreement. The Parties have now entered into a more detailed,
10 formalized Settlement Agreement for submission to the Court for Approval.

11 E. Plaintiff's Counsel has conducted an investigation of the law and facts relating
12 to the claims asserted in the Litigation and has concluded, taking into account the sharply
13 contested issues involved, the expense and time necessary to pursue the Litigation through trial
14 and any appeals, the risks and costs of further prosecution of the Litigation, the risk of an adverse
15 outcome, the uncertainties of complex litigation, and the substantial benefits to be received by
16 the Named Plaintiff and the members of the PAGA Group pursuant to this Agreement, that a
17 settlement with Defendant on the terms and conditions set forth herein is fair, reasonable,
18 adequate, and in the best interests of the PAGA Group. Named Plaintiff, on her own behalf and
19 as a representative pursuant to PAGA, has agreed to settle the Litigation with Defendant on the
20 terms set forth herein.

21 F. Defendant has concluded that, because of the substantial expense of defending
22 against the Litigation, the length of time necessary to resolve the issues presented herein, the
23 inconvenience involved, and the concomitant disruption to their business operations, it is in its
24 best interests to accept the terms of this Agreement. Defendant denies each of the allegations
25 and claims asserted against it in the Litigation. However, Defendant nevertheless desires to
26 settle the Litigation for the purpose of avoiding the burden, expense, and uncertainty of
27 continuing litigation and for the purpose of putting to rest the controversies engendered by the
28 Litigation.

1 G. This Agreement is intended to and does effectuate the full, final, and complete
2 resolution of all allegations and claims that were asserted, or could have been asserted, in the
3 Litigation by Named Plaintiff. This Agreement does not cover Plaintiff's Individual Claims,
4 which have been resolved with a separate agreement.

5 **III. JURISDICTION**

6 The Parties agree that the Court has jurisdiction over the Parties and the subject matter
7 of this Litigation. The Litigation includes claims that, while Defendant denies them in their
8 entirety, would, if proven, authorize the Court to grant relief pursuant to the applicable statutes.
9 After the Court has granted Approval of the Agreement, pursuant to California Code of Civil
10 Procedure Section 664.6 the Parties agree that the Court shall retain jurisdiction of this action
11 solely for the purpose of interpreting, implementing, and enforcing this Agreement consistent
12 with the terms set forth herein, and the Parties and their counsel submit to the jurisdiction of the
13 Court for purposes of interpreting, implementing, and enforcing this Agreement and all orders
14 and judgments entered in connection therewith.

15 **IV. STATEMENT OF NO ADMISSION**

16 A. Defendant denies liability to Named Plaintiff and to the PAGA Group upon any
17 claim or cause of action. This Agreement does not constitute, and is not intended to constitute,
18 an admission by Defendant as to the merits, validity, or accuracy of any of the allegations or
19 claims made against it in the Litigation.

20 B. Nothing in this Agreement, nor any action taken in implementation thereof, nor
21 any statements, discussions, or communications, nor any materials prepared, exchanged, issued,
22 or used during the course of the negotiations leading to this Agreement, is intended by the Parties
23 to constitute, nor will any of the foregoing constitute, be introduced, be used, or be admissible
24 in any way in this case or any other judicial, arbitral, administrative, investigative, or other forum
25 or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance,
26 regulation, rule, or executive order, or any obligation or duty at law or in equity. The Parties
27 themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in this
28 case or any other judicial, arbitral, administrative, investigative, or other forum or proceeding,

1 as purported evidence of any violation of any federal, state, or local law, statute, ordinance,
2 regulation, rule, or executive order, or any obligation or duty at law or in equity, or for any other
3 purpose. Notwithstanding the foregoing, this Agreement may be used in any proceeding before
4 the Court that has as its purpose the interpretation, implementation, or enforcement of this
5 Agreement or any orders or judgments of the Court entered in connection with this Agreement.

6 C. None of the documents produced or created by Named Plaintiff or the PAGA
7 Group in connection with the claims procedures or claims resolution procedures constitute, and
8 they are not intended to constitute, an admission by Defendant of any violation of any federal,
9 state, or local law, statute, ordinance, regulation, rule, or executive order, or any obligation or
10 duty at law or in equity.

11 D. Nothing in this Agreement will be construed as an admission or
12 acknowledgement of any kind that any group should or would be given collective treatment in
13 the Litigation or in any other action or proceeding. Further, neither this Agreement nor the
14 Court's actions with regard to this Agreement will be admissible in any court or other tribunal
15 regarding the propriety of collective treatment. In the event that this Agreement is not approved
16 by the Court or any appellate court, is terminated, or otherwise fails to be enforceable, Named
17 Plaintiff will not be deemed to have waived, limited, or affected in any way any claims, rights,
18 or remedies in the Litigation, and Defendant will not be deemed to have waived, limited, or
19 affected in any way any of their objections or defenses in the Litigation.

20 **V. RELEASE, DISMISSAL, AND CONFIDENTIALITY**

21 **A. Release as to All PAGA Group Members.**

22 Upon Approval by the Court of this Settlement, Plaintiff and each member of the PAGA
23 Group, will release any and all claims and causes of action under the California Private
24 Attorneys' General Act of 2004 Cal. Lab. Code § 2698 (PAGA) against Defendant, any of
25 Defendant's successors, present and former parents, subsidiaries and affiliated companies or
26 entities, their respective officers, directors, employees, partners, shareholders and agents, as well
27 as any other successors, assigns and legal representatives and their related persons and entities,
28 and any individual or entity that could be liable for any of the Released Claims, and Defendant's

counsel of record in the Litigation (“Released Parties”) , arising out of the facts and claims asserted in the Litigation for civil penalties under PAGA based upon any of Named Plaintiff’s allegations or claims, under any legal theory of liability, in any forum. This includes but is not limited to: failure to pay straight and regular wages; failure to pay overtime wages; failure to provide meal periods; failure to provide rest periods; failure to pay wages due at termination; failure to provide paid sick leave; failure to provide itemized wage statements; failure to pay employees twice a month; and failure to reimburse business expenses; violation of Business and Professions Code section 17200, et seq.; PAGA claims for civil penalties due to the alleged Labor Code violations and by Defendant during the Class Period including California Labor Code sections 201-204, 210, 216, 222, 222.5, 223, 224, 226, 226.4, 226.6, 226.7, 246, 248.5, 256, 432.5, 510, 512, 558,, 558.1,1174, 1194, 1197, 1197.1, 1199, 2698 *et seq.*, 2699, 2802, and their subsections, all applicable IWC Wage Order 9-2001; Cal. Code of Regulations sections 11090(11) and (12); penalties that could have arisen out of the facts alleged in the Complaint (“Released Claims”). This release extends only to the penalties available through PAGA and does not release Plaintiff’s Individual Claims.

B. Publicity.

The Named Plaintiff and her counsel agree that they have not and will not publish this Agreement. More specifically, Named Plaintiff and his counsel agree that they will not report the Settlement in any medium or in any publication, shall not post or report anything regarding the claims of Named Plaintiff or the Settlement on any website, and shall not contact any reporters or media regarding the Settlement. However, nothing in the provision shall be construed from as preventing the Parties from taking following actions: (a) Named Plaintiff’s Counsel shall be allowed to refer to the Litigation and Agreement in other litigations to support their adequacy as attorneys for a putative class or to justify an award of attorney’s fees; (b) the Parties shall have the right to disclose the Agreement as may be required under federal or state tax and/or securities laws or under Generally Accepted Accounting Principles; (c) the Parties may refer to the Agreement, describe its terms, and file the settlement agreement with the Court, the California LWDA, and the Settlement Administrator in connection with any proceedings

1 which are reasonably necessary to obtain Approval of the Settlement; and, (d) the Parties or
2 their representatives may communicate with accountants or legal advisors regarding the
3 Agreement. Except for the previously listed exceptions, in response to any inquiries about the
4 Litigation, the Parties may state that “the case was resolved, and it was resolved confidentially.”

5 **VI. SETTLEMENT ADMINISTRATOR**

6 Named Plaintiff and Defendant, through their respective counsel, have selected CPT
7 Group Class Action Administrators as the Settlement Administrator to administer the
8 Agreement, which includes but is not limited to distributing and responding to inquiries about
9 the notice of settlement and calculating all amounts to be paid from the Net Settlement Fund.
10 Charges and expenses of the Settlement Administrator, estimated to be Six Thousand Seven
11 Hundred Fifty Dollars and Zero Cents (\$6,750.00), will be paid from the Settlement Amount.
12 Any charges and expenses of the Settlement Administrator greater than the allocated Six
13 Thousand Seven Hundred Fifty Dollars (\$6,750.00) will come from the Settlement Amount. If
14 the actual Settlement Administrator fees are less than the Parties’ estimation, the difference
15 between the actual and estimated Settlement Administrator fees will be included in the Net
16 Settlement Amount.

17 **VII. NOTICE**

18 Named Plaintiff and Defendant, through their respective attorneys, have jointly prepared
19 a Notice of PAGA Settlement (the “Notice”), in the form attached hereto as Exhibit “A” which
20 in substance will be provided to the members of the PAGA Group as follows:

21 As soon as practicable following Approval of the Agreement, but no later than thirty
22 (30) business days after the Court’s Approval, Defendant will provide to the Settlement
23 Administrator the following information about each PAGA Group member: (1) name; (2) last
24 known home address; (3) number of pay periods as a PAGA Group member during the PAGA
25 period; and (4) social security number (“PAGA List”).

26 The Settlement Administrator shall run all the addresses provided through the United
27 States Postal Service NCOA database (which provides updated addresses for any individual who
28 has moved in the previous four years who has notified the U.S. Postal Service of a forwarding

1 address) to obtain current address information. Within thirty (30) business days after the
2 Settlement Administrator's receipt of the PAGA List, the Settlement Administrator will mail
3 the Notice together with a settlement payment to all PAGA Group members by first-class United
4 States mail, postage prepaid, with directions to the Postmaster to forward the Notice and return
5 all undeliverable Notices to the Settlement Administrator. For each Notice and settlement
6 payment that is returned as undeliverable, the Settlement Administrator shall promptly attempt
7 to locate the Aggrieved Employee by performing an additional skip trace and shall re-mail the
8 Notice and settlement check no later than ten (10) calendar days following receipt of the
9 undeliverable Notice. The Notice will be provided in English.

10 **VIII. COMPUTATION AND DISTRIBUTION OF PAYMENTS**

11 **A. Distribution Formula.**

12 Members of the PAGA Group will receive a lump sum payment as good and valuable
13 consideration for the waiver and release of claims set forth in Section V(A), above, in an amount
14 determined by the Settlement Administrator in accordance with the provisions of this
15 Agreement.

16 The lump sum payment to each member of the PAGA Group will be determined by
17 dividing the Net Settlement Amount by the total number of pay periods worked by all members
18 of the PAGA Group during the Settlement Period (the "Pay Period Amount") and then
19 multiplying the Pay Period Amount by the number of pay periods worked by the individual
20 PAGA member.

21 **B. Funding of the Settlement.**

22 The funding of the Settlement Amount will be completed at one time with funds
23 provided to and escrowed by the Settlement Administrator. The funds used for the Settlement
24 Amount shall be paid to the Claims Administrator by Defendant within thirty (30) business days
25 of its receipt of a notice of entry of the Court's Approval order.

26 If a PAGA Group member is deceased at the time of distribution, the Settlement
27 Administrator shall notify the executor of the deceased PAGA Group member's estate and ,if
28 appropriate, place the deceased PAGA Group member's payment in escrow or similar disposition

1 such that any competing heirs may take whatever action they wish to resolve ultimate disposition
2 of such money and the Settlement Administrator and the Parties hereto may disclaim any further
3 interest in or obligation in relation to such money.

4 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
5 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip
6 trace search and, if another address is identified, shall mail the check to the newly identified
7 address. If the Settlement Administrator is unable to obtain a valid mailing address through this
8 process, the monies represented by the check shall be turned over according to the below
9 procedures.

10 Settlement checks will specifically indicate that they are void if not negotiated within
11 one hundred eighty 180 days of their issuance. Any settlement checks that remain uncashed one
12 hundred eighty (180) or more calendar days after issuance by the Settlement Administrator shall
13 be voided. The Settlement Administrator will remit the entire amount of each PAGA Group
14 member's uncashed Individual Settlement Payment to the California State Controller for deposit
15 in the Unclaimed Property Fund in the name of the PAGA Group member to whom the uncashed
16 Individual Settlement Payment was drafted.

17 **C. Time for Distribution of the Attorney Fees, Costs, and LWDA Payment.**

18 The Settlement Administrator shall cause the Court approved attorney's fees and
19 Litigation costs and LWDA Payment to be paid at the same time and manner as the Settlement
20 Payments to the PAGA Group.

21 **IX. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN**

22 The amounts paid under this Agreement do not represent a modification of any
23 previously credited hours of service under any employee benefit plan, policy, or bonus program
24 sponsored by Defendant. Such amounts will not form the basis for additional contributions to,
25 benefits under, or any other monetary entitlement under, benefit plans (self-insured or not)
26 sponsored by Defendant, policies, or bonus programs. Any payments made under the terms of
27 this Agreement shall not be applied retroactively, currently, or on a going forward basis as
28 salary, earnings, wages, or any other form of compensation for the purposes of Defendant's

benefit plan, policy, or bonus program. Defendant retains the right to modify the language of their benefit plans, policies, and bonus programs to effect this intent and to make clear that any amounts paid pursuant to this Agreement are not for “hours worked,” “hours paid,” “hours of service,” or any similar measuring term as defined by applicable plans, policies, and bonus programs for purpose of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Agreement.

X. PLAINTIFF’S COUNSEL’S ATTORNEYS’ FEES AND LITIGATION COSTS

Defendant shall not oppose an application by Plaintiff’s Counsel for, and Plaintiff’s Counsel shall not seek or receive an amount in excess of Twenty Two Thousand Seven Hundred Fifty Dollars and Zero Cents (\$16,983.00) which represents 33% of the Settlement Amount for all past and future attorneys’ fees necessary to prosecute, settle, and administer the Litigation and this Agreement. Any attorneys’ fees or Litigation costs awarded to Plaintiff’s Counsel by the Court shall be deducted from the Settlement Amount for the purpose of determining the Net Settlement Amount. This amount shall include all attorneys’ fees, Litigation costs, and expenses for which Named Plaintiff and Plaintiff’s Counsel could claim under any legal theory whatsoever. Should the Court approve a lesser percentage or amount of fees and/or Litigation costs than the amount that Plaintiff’s Counsel ultimately seeks, then the unapproved portion or portions shall revert to the Net Settlement Amount.

XI. TAXATION AND ALLOCATION

For withholding tax characterization purposes and payment of taxes, the Net Settlement Amount shall be deemed and is allocated by the Parties as follows (“Net Settlement Allocation”): 100% as penalties.

All PAGA Group members who cash their settlement check may receive an IRS Form 1099 for their portion of the settlement, if deemed required by the Settlement Administrator (in compliance with IRS guidelines).

XII. COURT APPROVAL

This Agreement is contingent upon Approval by the Court. Named Plaintiff and Defendant agree to take all steps as may be reasonably necessary to secure Approval of the

1 Agreement, to the extent not inconsistent with the terms of this Agreement, and will not take
2 any action adverse to each other in obtaining Court Approval of this Agreement in all respects.

3 **XIII. APPRISAL AND CERTIFICATION BY THE SETTLEMENT**
4 **ADMINISTRATOR.**

5 The Settlement Administrator shall keep Plaintiff's Counsel and Defendant's Counsel
6 apprised of all distributions from the Settlement Amount. Upon completion of administration
7 of the Settlement, the Settlement Administrator shall provide written certification of such
8 completion to Plaintiff's Counsel and Defendants' Counsel. The Settlement Administrator shall
9 also provide Defendant with a final accounting, including the names of payees and Net
10 Settlement Payments.

11 **XIV. MISCELLANEOUS PROVISIONS**

12 **A. Stay of Litigation.**

13 Named Plaintiff and Defendant agree to the stay of all discovery in the Litigation,
14 pending Approval of the Agreement by the Court.

15 **B. Interpretation of the Agreement.**

16 This Agreement constitutes the entire agreement between Named Plaintiff and
17 Defendant. Except as expressly provided herein, this Agreement has not been executed in
18 reliance upon any other written or oral representations or terms, and no such extrinsic oral or
19 written representations or terms shall modify, vary, or contradict its terms. In entering into this
20 Agreement, the Parties agree that this Agreement is to be construed according to its terms and
21 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and
22 enforced under the laws of the State of California, both in its procedural and substantive aspects,
23 without regard to its conflict of laws provisions. Any claim arising out of or relating to the
24 Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior
25 Court of the State of California for the County of San Diego and Named Plaintiff and Defendant
26 hereby consent to the personal jurisdiction of the Court over them solely in connection
27 therewith. The foregoing is only limited to disputes concerning this Agreement and in no way
28 limits or negates the enforceability and effect of any other agreements signed by employees of

1 Defendant. Named Plaintiff, on his own behalf and on behalf of the PAGA Group, and
2 Defendant participated in the negotiation and drafting of this Agreement and had available to
3 them the advice and assistance of independent counsel. As such, neither Named Plaintiff nor
4 Defendant may claim that any ambiguity in this Agreement should be construed against the
5 other.

6 The terms and conditions of this Agreement constitute the exclusive and final
7 understanding and expression of all agreements between Named Plaintiff and Defendant with
8 respect to the settlement of the Litigation. The Agreement may be modified only by a writing
9 signed by counsel for all Parties or their successors-in-interest.

10 **C. Further Cooperation.**

11 Named Plaintiff and Defendant and their respective attorneys shall proceed diligently to
12 prepare and execute all documents, to seek Approval from the Court, and to do all things
13 reasonably necessary or convenient to consummate the Agreement as expeditiously as possible.

14 **D. Confidentiality of Documents.**

15 Named Plaintiff, the Settlement Administrator, and Plaintiff's Counsel shall maintain
16 the confidentiality of all documents, deposition transcripts, declarations, and other information
17 obtained in the Litigation, unless necessary for appeal or such documents are ordered to be
18 disclosed by the Judge or by a subpoena.

19 **E. Counterparts.**

20 The Agreement may be executed in one or more actual or non-original counterparts, all
21 of which will be considered one and the same instrument and all of which will be considered
22 duplicate originals.

23 **F. Authority.**

24 Each individual signing below warrants that he or she has the authority to execute this
25 Agreement on behalf of the party for whom or which that individual signs.

26 **G. No Third-Party Beneficiaries.**

27 Named Plaintiff, members of the PAGA Group, Defendant, and Released Parties are
28 direct beneficiaries of this Agreement, but there are no third-party beneficiaries.

1 **H. Force Majeure.**

2 The failure of any party to perform any of its obligations hereunder shall not subject such
3 party to any liability or remedy for damages, or otherwise, where such failure is occasioned in
4 whole or in part by acts of God, fires, accidents, earthquakes, other natural disasters, explosions,
5 floods, wars, interruptions or delays in transportation, power outages, labor disputes or
6 shortages, shortages of material or supplies, governmental laws, restrictions, rules or
7 regulations, sabotage, terrorist acts, acts or failures to act of any third parties, or any other similar
8 or different circumstances or causes beyond the reasonable control of such party.

9 **I. Deadlines Falling on Weekends or Holidays.**

10 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,
11 or legal holiday, that deadline shall be continued until the following business day.

12 **J. Severability.**

13 In the event that any one or more of the provisions contained in this Agreement shall for
14 any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
15 unenforceability shall in no way effect any other provision if Defendant's Counsel and
16 Plaintiff's Counsel, on behalf of the Parties and the PAGA Group, mutually elect in writing to
17 proceed as if such invalid, illegal, or unenforceable provision had never been included in this
18 Agreement.

19 **K. Defendant's Fees and Costs**

20 All of Defendants' own legal fees, costs, and expenses incurred in this Litigation shall be
21 borne by Defendant.

22 **L. No Prior Assignment**

23 Plaintiff hereby represents, covenants, and warrants that he has not directly or indirectly,
24 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or
25 entity any portion of any liability, claim, demand, action, cause of action or rights herein released
26 and discharged.

27 **M. No Tax or Legal Advice.**

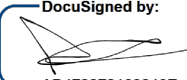
28 The Parties understand and agree that the Parties are neither providing tax or legal advice,

1 nor making representations regarding tax obligations or consequences, if any, related to this
2 Agreement, and that PAGA Group Members will assume any such tax obligations or
3 consequences that may arise from this Agreement, and that PAGA Group Members shall not
4 seek any indemnification from the Parties or any of the Released Parties in this regard. The
5 Parties agree that, in the event that any taxing body determines that additional taxes are due from
6 any PAGA Group Members assume all responsibility for the payment of such taxes.

7 [Signatures to follow on next page]
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Dated: 9/29/2021, 2021

DocuSigned by:

AD473372169840E...

Plaintiff, Plaintiff

Dated: 10/12/2021, 2021

Daniel Simons

By: Daniel Simons, on behalf
of
Defendants La Jolla Recovery and Pacific Beach Recovery

APPROVED AS TO FORM ONLY:

Dated: 9/29/2021, 2021

M LAW ATTORNEYS, APC
DocuSigned by:

Narak Mirzaie, Esq.

Attorneys for Plaintiff

Dated: October 13, 2021

JACKSON LEWIS PC


Adrienne Conrad, Esq.
Emilia Artunian, Esq.
Attorney for Defendant

4820-6569-9576, v. 2

PROOF OF SERVICE

FP 38618102.1
FP 40438763.1

[Proposed] ORDER

Based upon the Stipulation of the parties and good cause appearing therefore,

IT IS HEREBY ORDERED THAT

1. The Court fully approves the PAGA Settlement as agreed upon by the parties.
2. The Court fully approves the Gross PAGA Settlement of **\$67,500.00** to be distributed in the following manner
 - a. Twenty-Two Thousand Seven Hundred Fifty (\$22,750), less costs to Plaintiff's counsel, which represents 33% of the Settlement Amount for all past and future attorneys' fees necessary to prosecute, settle, and administer the Settlement and final resolution of the matter.
 - b. Charges and expenses of the Settlement Administrator, estimated to be no more than Six Thousand Seven Hundred Fifty (\$6,750.00) will be paid from the Settlement Amount. Any charges and expenses of the Settlement Administrator greater than the allocated Six Thousand Seven Hundred Fifty (\$6,750.00) will come from the Settlement Amount.
 - c. The PAGA Net Settlement Amount shall be calculated as follows: Settlement Amount minus Court approved amounts for attorneys' fees, Litigation costs, and Administrative Costs.
 - d. Seventy-five percent (75%) of the PAGA Net Settlement Amount is 75% of \$38,000.00 which is **\$28,500.00** shall be paid to the LWDA.
 - e. Twenty-five percent (25%) of the PAGA Net Settlement Amount is 25% of \$38,000.00 which is **\$9,500.00** shall be paid pro rata per pay period to the aggrieved employees.

The PAGA Claims are Dismissed with Prejudice as to Plaintiff and any allegedly aggrieved employees/non-Plaintiff.

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1 3. Plaintiff shall provide the LWDA with a copy of this Order within 10 days after entry of this
2 order.

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4 **IT IS SO ORDERED.**

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6 Dated: _____

7 Hon. Gregory W. Pollack
8 JUDGE OF THE SUPERIOR COURT
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12 4829-2543-0780, v. 4
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