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

MATTHEW MILLER as an individual and on
behalf of all others similarly situated, and as a
private attorney general,

Plaintiff,

vs.

STANBRIDGE UNIVERSITY, a California
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 30-2021-01206298-CU-OE-CXC

(Assigned for all purposes to the Hon. William
Claster, Dept. CX 104)

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

Date: July 22, 2022

Time: 9:00 a.m.

Dept.: CX104

Reservation No.: 73787090

Complaint Filed: June 17, 2021

Trial Date: None

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1. I am an attorney at law duly admitted to practice before all courts in the State of California and am a member of the law firm of the Diversity Law Group, P.C., one of the attorneys of record for Plaintiff Matthew Miller (“Plaintiff”) in the above-entitled action. I have personal knowledge of the facts and circumstances set forth herein, and if called upon as a witness to testify thereto, I could and would truthfully do so.

the case, Plaintiff's counsel has zealously represented the interests

4. On June 17, 2021, Plaintiff filed a representative PAGA action against Defendant in the Superior Court of California, County of Orange. The Complaint alleged a single cause of action for violation of Labor Code section 2698, *et seq.*, based on the facts described in Plaintiff's PAGA Notice.

6. Prior to the mediation, Defendant informally produced data relevant to the potential value of the claims, including the number of alleged aggrieved employees and pay periods encompassed by the allegations of Plaintiff's complaint. Using the data provided by Defendant, Plaintiff's Counsel performed a comprehensive damages analysis.

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1 action. After a full day of arm's length negotiations, the Parties agreed to a settlement of the action and
2 executed a memorandum of understanding.

3 8. The Parties thereafter worked to memorialize the terms of the settlement in the
4 Settlement Agreement and General Release of All Claims ("Settlement Agreement"), a true and correct
5 copy of which is attached hereto as **Exhibit A**.

6 **SUMMARY OF THE PROPOSED SETTLEMENT**

7 9. As defined by the settlement, "Aggrieved Employees" means "all individuals who are or
8 were employed by Stanbridge in California during the period of April 14, 2020 and April 9, 2021 who
9 received pay for wages from Stanbridge through direct deposit." Settlement Agreement ¶ I.1. The
10 PAGA Period is defined as "the period of time from April 14, 2020 and April 9, 2021."

11 10. Based upon Defendant's records, there are an estimated 384 Aggrieved Employees who
12 worked approximately 5,785 pay periods during the PAGA Period.

13 11. The Settlement Agreement requires Defendant to pay the gross amount of One Hundred
14 Fifteen Thousand Seven Hundred Dollars (\$115,700.00) (the "Gross Settlement Amount"). Settlement
15 Agreement ¶ III.30.

16 12. The balance of the Gross Settlement Amount remaining after deduction of the approved
17 service award to Plaintiff, attorneys' fees and costs, and settlement administration costs (the "Net
18 Settlement Amount"), will be available for distribution to the LWDA and Aggrieved Employees.
19 Settlement Agreement ¶¶ I.11, III.32. The Net Settlement Amount is estimated to be at least \$53,019.00.
20 Seventy-five percent (75%) of the Net Settlement Amount, or approximately \$39,764.25, will be paid to
21 the LWDA for PAGA penalties. Settlement Agreement ¶ III.32.a. The remaining twenty-five percent
22 (25%), or approximately \$13,254.75, will be distributed to Aggrieved Employees. Settlement
23 Agreement ¶ III.32.b.

24 13. As part of the Settlement Agreement, Defendant does not object to Plaintiff's Counsel's
25 request for attorneys' fees of approximately one-third (or 33%) of the Gross Settlement Amount, *i.e.*,
26 Thirty-Eight Thousand One Hundred Eighty-One Dollars (\$38,181.00), plus up to Fifteen Thousand
27 Dollars (\$15,000.00) for reimbursement of litigation costs, subject to the Court approving this
28 Settlement. Settlement Agreement ¶ III.31.b. Plaintiff's Counsel's anticipated actual litigation costs total

1 \$10,850.93. The costs were all directly incurred in the prosecution of this action, including filing fees,
2 service of process fees, mediation costs, postage, copying, and other costs. Attached hereto as **Exhibit B**
3 is a true and correct copy of my office's cost bill, which reflects costs incurred in prosecuting this case.
4 Any costs not awarded by the Court will revert to the Net Settlement Fund for distribution to the LWDA
5 and Aggrieved Employees.

6 14. Defendant has also agreed to not object to Plaintiff's request for a service award of Five
7 Thousand Dollars (\$5,000.00). Settlement Agreement ¶ III.31.a.

8 15. Finally, the Settlement Agreement provides for the payment of the fees and expenses
9 reasonably incurred by the Settlement Administrator. Settlement Agreement ¶ III.31.c. The Parties have
10 agreed to allocate \$4,500.00 for administration costs to Phoenix Settlement Administrators. Settlement
11 Agreement ¶ III.31.c. The Parties believe the administration fee to be reasonable.

12 **VALUE OF SETTLEMENT PER PAY PERIOD**

13 16. Based on the total settlement amount, Defendant will pay approximately \$20.00 per pay
14 period ($\$115,700 \div 5,785$ pay periods) to resolve the claims in this case.

15 17. The amount any particular Aggrieved Employee will be entitled to recover will depend
16 on the number of pay periods he or she worked during the PAGA Period, with some entitled to receive
17 more and others less. Settlement Agreement ¶ III.32.b. This is fair, as it directly allocates greater
18 penalties to individuals who have allegedly suffered greater harm.

19 **POTENTIAL CIVIL PENALTIES**

20 18. PAGA penalties are difficult to evaluate in a matter like this, but there are reasons to
21 believe that they would be limited. Defendant has indicated that there were approximately 5,785 pay
22 period that Aggrieved Employees worked during the PAGA Period. Assuming that Plaintiff were to
23 prevail on the merits of the PAGA claim, applying the standard penalty of \$100 per pay period yields
24 \$578,500.00 in potential liability.

25 19. In the alternative, if the Court were to "stack" penalties (*i.e.*, award multiple PAGA
26 penalties for different Labor Code violations in the same pay period), the potential PAGA penalties
27 could total as high as \$2,314,000.00:
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Labor Code Section	Violation	Pay Periods	PAGA Penalties
Lab. Code §§ 201-204, 221-224	Unlawfully deducting earned wages	5,785	\$578,500
Lab. Code §§ 201-204, 1194, 1194.2, 1197, 1197.1	Failure to timely pay all wages due	5,785	\$578,500
Lab. Code § 226	Failure to provide accurate wage statements	5,785	\$578,500
Lab. Code § 2802	Failure to reimburse business expenses	5,785	\$578,500
TOTAL			\$2,314,000

20. However, I believe that is unrealistic to assume that the Court would permit the “stacking” of PAGA penalties in this manner. I am not aware of any PAGA award in which the trial court assessed more than one penalty per pay period.

21. The above penalty calculations further assume that Plaintiff will prevail on the merits. However, Plaintiff’s claims are contested. Defendant contends that a substantial reduction in potential PAGA penalties was warranted because (1) the alleged violation was inadvertent, and (2) Defendant changed its practices to eliminate the violation after receiving notice of the alleged violation. Immediately after Defendant received Plaintiff’s pre-filing LWDA notice, it changed its payroll system to eliminate the deductions for direct deposits. Thus, Defendant contended that no PAGA penalties were needed to punish or deter Defendant for its inadvertent behavior, much less to deter it from committing any future violations that were completely foreclosed by its new payroll practices.

22. I also considered the Court of Appeal’s recent holding in *Wesson v. Staples the Off. Superstore, LLC*, 68 Cal. App. 5th 746, 763, 283 Cal. Rptr. 3d 846, 857 (2021), *reh’g denied* (Sept. 27, 2021), *review denied* (Dec. 22, 2021), which upheld the trial court’s order striking PAGA claim as unmanageable.

23. In negotiating the amount of the settlement, I also took into account the inherent uncertainty in the potential recovery in a PAGA action. By statute, the Court can decline to award the full amount of PAGA penalties where “if, based on the facts and circumstances of the particular case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” *See* Cal. Labor Code § 2699(e)(2). 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.

24. 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. As shown in the Court of Appeal’s decision in *Carrington v. Starbucks Corp.*, while the plaintiff prevailed on his PAGA claim at trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer’s good faith attempt at complying with the law. 30 Cal. App. 5th 504, 517 (2018). Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539; *see O’Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1133 (N.D. Cal., 2016). Thus, assuming that the Court uses *Carrington* as a benchmark and assesses PAGA penalties of approximately 10% of the total maximum, a more realistic estimate of the maximum PAGA penalties at issue—even with “stacking”—is \$231,400.00.

THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE

25. I believe that Plaintiff could prevail at trial. However, I also believe in the fairness of the settlement, which is based on factoring in the uncertainty and risks attendant to not prevailing on one or more theories of liability, the possibility of losing at trial and potential for appeals. Moreover, as Defendant adamantly denies that it should be liable for the full extent of the alleged penalties, there is a possibility that Plaintiff and the Aggrieved Employees would be awarded less or recover nothing at trial. Thus, after taking into account sharply disputed legal issues involved in this litigation, the risks associated with further prosecution, delays caused by potential appeals, and the substantial benefits to be received pursuant to the settlement, I believe that the proposed settlement is fair, reasonable, and adequate and is in the best interests of Plaintiff and the Aggrieved Employees.

26. Indeed, the Gross Settlement Amount is approximately 20% of the maximum amount of

1 penalties at issue, if the Court permitted an award of multiple violations per pay period. If the Court
2 were to only permit a single violation penalty per pay period, the Gross Settlement Amount is
3 approximately 20% of the available penalties.

4 27. Here, the settlement proposes a payment of approximately \$39,764.25 in penalties to the
5 LWDA and approximately \$13,254.75 in penalties to the Aggrieved Employees, which is an outstanding
6 result in a PAGA-only case.

7 **NOTICE TO LWDA**

8 28. Concurrent with the filing of the Motion to Approve PAGA Settlement, my office
9 uploaded the Motion, Settlement Agreement, and proposed order to the LWDA's website.

10 **ATTORNEY EXPERIENCE**

11 29. My firm has a great deal of experience in wage and hour class action litigation and has
12 been approved as class counsel in a number of class actions.

13 30. I am one of the primary attorneys on this matter. My qualifications are as follows: I
14 received my JD from University of Southern California Gould School of Law in 2009. Upon graduation,
15 I practiced law as an associate at Seyfarth Shaw LLP, representing corporate clients in both single-
16 plaintiff and wage hour class actions. In 2014, I began as an associate at Diversity Law Group.

17 31. I have handled a number of wage and hour matters including class actions and multiple-
18 plaintiff actions. I have been named as Class Counsel in a number of class actions that have been
19 granted certification or preliminary or final approval by the Superior Courts of Los Angeles County,
20 Orange County, Alameda County, and Monterey County, the United States District Court for the Central
21 District of California, and the United States District Court for the Northern District of California. These
22 cases include, but are not limited to: *Diller v. Under Armour Retail, Inc.*, Santa Clara County Superior
23 Court Case No. 114-CV-265729, *Lopez v. Imperial Body Shop, Inc.*, Orange County Superior Court
24 Case No. Case No. 30-2015-00816193-CU-OE-CXC, *Hughes v. Lincare, Inc., et al.*, Monterey County
25 Superior Court Case No. M124764, *Pittman v. Martinez Steel Corporation*, San Bernardino County
26 Superior Court Case No. CIVDS1823132, *Della Maggiora v. Watsonville Community Hospital*, Santa
27 Cruz County Superior Court Case No. 18CV00191, *Randolph v. Pacific Racing Association*, Alameda
28 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; *Chavez v. Converse, Inc.*, United States District Court – Northern District of California Case No. 15-cv-03746-NC, and *Rodriguez v. Nike Retail Services, Inc.*, United States District Court – Northern District of California Case No. 5:14-CV-1508 BLF.

32. To date, I have incurred approximately 39.1 hours in connection with the litigation of this lawsuit. Attached hereto as **Exhibit C** is a chart summarizing the amount of work I have incurred to date on this matter.

33. The total lodestar for my hours will be approximately \$27,370.00 based on 39.1 total hours, at an hourly rate of \$700.00 per hour. 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;

1 *Vogel v. Veolia North America, LLC*, Monterey County Superior Court Case No. 19CV001443; *Holman*
2 *v. American Sugar Refining, Inc.*, Contra Costa County Superior Court Case No. MSC18-00415; and
3 *Chavez v. Converse, Inc.*, United States District Court, Northern District of California Case No. 15-cv-
4 03746-NC. As of January 1, 2022, I increased my hourly rate to \$700.00 per hour. I have been approved
5 at the \$700.00 rate in *Gutierrez v. Spa Havens, LP*, San Diego Superior Court Case No. 37-2019-
6 00057065-CU-OE-NC, *Cruzado v. Ontario T, Inc.*, San Bernardino Superior Court Case No.
7 CIVSB2027249, *Ray v. C&W Facility Services, Inc.*, San Bernardino Superior Case No.
8 CIVSB2101321, *Alvarez v. Forterra Building Products*, San Diego Superior Court Case No. 37-2020-
9 00018179-CU-OE-CTL, and *Bautista v. Western Refining Retail*, Alameda Superior Court Case No.
10 RG19013250.

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

13 Executed on this 21st day of June 2022, at Los Angeles, California.

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15 _____
16 Nicholas Rosenthal
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EXHIBIT A

SETTLEMENT AGREEMENT AND GENERAL RELEASE OF ALL CLAIMS

THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE OF ALL CLAIMS (“Settlement Agreement”) is made and entered into by and between Plaintiff Matthew Miller (“Miller” or “Plaintiff”), on behalf of himself and the Aggrieved Employees, as defined herein, and Defendant Stanbridge University, and past and present corporate affiliates, subsidiary divisions, related entities, successors-in-interest, divested business and business units (collectively, “Stanbridge” or “Defendant”), (collectively with Plaintiff, the “Parties”), as follows:

I. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

1. “Action” means the PAGA Complaint styled *Matthew Miller v. Stanbridge University et al.*, Orange County Superior Court Case No. 30-2021-01206298-CU-OE-CXC (“Complaint”)
2. “Aggrieved Employees” means all individuals who are or were employed by Stanbridge in California during the period of April 14, 2020 and April 9, 2021 who received pay for wages from Stanbridge through direct deposit.
3. “Approval Hearing” means the hearing to be conducted by the Court to determine whether to approve finally and implement the terms of this Agreement and enter the Judgment.
4. “Attorneys’ Fees” and “Attorneys’ Expenses” mean the amounts to be paid to PAGA Counsel for fees and expenses, respectively, as approved by the Court, to compensate PAGA Counsel for their legal work in connection with the Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, all post-Settlement compliance procedures, and related litigation expenses billed in connection with the Actions.
5. “Court” means the Superior Court of California, County of Orange.
6. “Defendant” means Stanbridge University.
7. “Defendant’s Counsel” means Linda Auerbach Allderdice and Samuel J. Stone of Holland & Knight LLP.
8. “Effective Date” means the date upon which the Court approves this Agreement.
9. “Gross Settlement Amount” means One Hundred Fifteen Thousand Seven Hundred Dollars and No Cents (\$115,700.00) to be paid by Defendant as provided by this Agreement. This Gross Settlement Amount is an all-in amount without any reversion to Defendant and shall be inclusive of all payments to Aggrieved Employees; payments to the State of California; Claims Administration Expenses; Attorneys’ Fees; Attorneys’ Expenses; and Service Award, and excluding any

employer payroll taxes, if any, due on the portion of the payments to Aggrieved Employees, which shall not be paid from the Gross Settlement and shall be the separate additional obligation of Defendant. The Gross Settlement Amount is all in with no reversion to Defendant and shall be paid without the need to submit a claim form.

10. “Judgment” means the Order and Judgment entered by the Court substantially in the forms attached hereto as Exhibit A to this Agreement and incorporated by reference into this Agreement.
11. “Net Settlement Amount” means the Gross Settlement Amount less the Court-approved amounts for Claims Administration Expenses; Attorneys’ Fees; Attorneys’ Expenses; and Service Award.
12. “PAGA Counsel” means Larry W. Lee, Kristen Agnew and Nicholas Rosenthal of Diversity Law Group, P.C. and William Marder of Polaris Law Group LLP.
13. “PAGA Data” means, for each PAGA Member, his or her name; last-known mailing address; Social Security number; his or her email address (if known); and his or her number of pay periods worked as a PAGA Member.
14. “PAGA Period” means the period of time from April 14, 2020 and April 9, 2021.
15. “PAGA Member” is synonymous with Aggrieved Employee.
16. “Plaintiff” is Matthew Miller, an individual.
17. “Qualifying Pay Periods” means the number of pay periods each Aggrieved Employee received a direct deposit from Stanbridge during the PAGA Period.
18. “Released Parties” collectively mean: Defendant, Defendant’s past and present corporate affiliates, subsidiaries, divisions, related entities, divested businesses and business units, and the board members, officers, employees, agents, representatives, insurers and attorneys of any of the same.
19. “Service Award” means the service payment made to Plaintiff in his capacity as the named plaintiff in order to compensate him for initiating the Action, performing work in support of the Action, undertaking the risk of liability for Defendant’s expenses in the event Plaintiff was unsuccessful in the prosecution of the Action, and for the general release of all claims by the Plaintiff.
20. “Settlement” means the disposition of the Action and all related claims effectuated by this Agreement.
21. “Settlement Administrator” means the third party settlement administrator proposed by the Parties, as approved by the Court.
22. “Settlement Share” means the pro rata share of payment to an Aggrieved Employee based on the number of Qualifying Pay Periods.

II. RECITALS

23. WHEREAS, Miller was previously employed by Stanbridge as an exempt employee;
24. WHEREAS, On April 22, 2021, Plaintiff filed a class-action complaint in Orange County Superior Court, Case No. 30-2021-01196748-CU-OE-CXC ("Class Action"), alleging claims for (1) unlawful deductions from wages; (2) inaccurate itemized wage statements; (3) failure to reimburse business expenses; and (4) unfair or unlawful business practices;
25. WHEREAS, on October 6, 2021, Plaintiff dismissed the Class Action in light of the arbitration agreement between Plaintiff (and putative class members) and Stanbridge;
26. WHEREAS, on June 17, 2021, Miller caused a representative action styled *Matthew Miller v. Stanbridge University et al.*, Orange County Superior Court Case No. 30-2021-01206298-CU-OE-CXC ("Complaint") to be filed, alleging one cause of action, for penalties pursuant to California's Private Attorneys General Act, Labor Code § 2699, et seq. ("PAGA");
27. WHEREAS, on May 2, 2022, the Parties participated in a mediation with respected mediator Michael Loeb, and the Parties reached an agreement regarding resolution of Complaint after extensive, arms-length negotiations in a full-day private mediation, taking into account all relevant factors, present and potential, and strengths and weaknesses of the Parties' respective positions;
28. WHEREAS, on May 2, 2022, the Parties memorialized their agreement to resolve in the form of a Memorandum of Understanding. This Agreement replaces and supersedes the Memorandum of Understanding and any other agreements, understandings, or representations between the Parties.
29. 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 the claims in Plaintiff's Action have merit or that Defendant bears any liability to Plaintiff or the Aggrieved Employees on those claims or any other claims, or as an admission by Plaintiff that Defendant's defenses in the Action have merit.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

III. SETTLEMENT TERMS AND CONDITIONS

30. **Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Gross Settlement Amount that Defendant will pay under this Settlement is One Hundred Fifteen Thousand Seven Hundred Dollars and No Cents (\$115,700.00). This amount is all-inclusive of all payments contemplated in this resolution, including payment of Claims Administration Expenses; Attorneys' Fees; Attorneys' Expenses; and Service Award but excluding any employer-side payroll

taxes (if any) which shall be separately paid by Defendant to the Settlement Administrator. All of the Gross Settlement Amount will be disbursed pursuant to this Agreement without the need to submit a claim form and none of the Gross Settlement Amount will revert to Defendant.

31. **Payments from the Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, including approval by the Court, the Settlement Administrator will make the following payments out of the Gross Settlement Amount:
 - a. **To Plaintiff:** In addition to the Settlement Share to be paid to Plaintiff, Plaintiff will apply to the Court for an award of not more than \$5,000 each as Service Award, which Defendant shall not oppose. The Settlement Administrator will pay the Service Award approved by the Court out of the Gross Settlement Amount. If the Court approves a Service Award of less than \$5,000, the remainder will be retained in the Net Settlement Amount for distribution. Payroll tax withholding and deductions will not be taken from the Service Award and instead a Form 1099 will be issued to Plaintiff with respect to the payment, who will assume full responsibility and liability for the taxes due on the Service Award.
 - b. **To PAGA Counsel:** PAGA Counsel will apply to the Court for an award of not more than One-Third of the Gross Settlement Amount, which is presently \$38,181, as their Attorneys' Fees and an amount not more than \$15,000 for all expenses incurred as documented in PAGA Counsel's billing records as their Attorneys' Expenses. Defendant will not oppose their request consistent with this Agreement and approved by the Court. The Settlement Administrator will pay the amounts approved by the Court out of the Gross Settlement Amount. If the Court approves an Attorneys' Fees or Attorneys' Expenses payment of less than these amounts, which are presently \$38,181, and \$15,000 respectively, the remainder will be retained in the Net Settlement Amount for distribution. Payroll tax withholding and deductions, if any, will not be taken from such payments and instead one or more Forms 1099 will be issued to PAGA Counsel with respect to those payments. The payment of the Attorneys Fees' and Attorneys Expenses shall be made to Class Counsel.
 - c. **To the Settlement Administrator.** The Settlement Administrator will pay out of the Gross Settlement Amount to itself its reasonable fees and expenses that are documented and approved by the Court in an amount not to exceed \$4,500 ("Settlement Administration Expenses"). To the extent the Settlement Administration Expenses that are documented and approved by the Court are less than \$4,500, the remainder will be retained in the Net Settlement Amount.
32. **Payments From the Net Settlement Amount.** The Net Settlement Amount shall include the following payments after the deductions have been made from the Gross Settlement Amount as described in this Agreement. The Net Settlement Amount shall include the following:

- a. **The LWDA Payment.** 75% of the Net Settlement Amount shall be paid to the State of California, by and through the LWDA, as the LWDA's share of the settlement of civil penalties paid under this Agreement pursuant to the PAGA.
 - b. **Settlement Shares.** The remaining 25% of the Net Settlement Amount will be distributed to the Aggrieved Employees based on their respective pay periods by dividing the 25% of Net Settlement Amount by the number of Qualifying Pay Periods for all Aggrieved Employees worked during the PAGA Period to determine a dollar amount per Qualifying Pay Period ("PAGA Rate") and multiplying the Qualifying Pay Period for each individual Aggrieved Employee by the PAGA Rate to calculate their Settlement Share. All Aggrieved Employees will be sent their share of the Settlement Share and will be subject to the release of claims as set forth below. One hundred percent (100%) of the PAGA Payment is in settlement of claims for penalties and not be subject to wage withholdings, and shall be reported on IRS Form 1099. Submission of a claim form is not required to participate or receive a Settlement Share.
 - c. **Qualifying Pay Period Modification.** Defendant has represented that based on data available at the time of mediation, the Aggrieved Employee group worked 5,785 Qualifying Pay Periods, i.e., pay periods between April 14, 2020 and April 9, 2021. In the event that the number of pay periods reported by Defendant to the Settlement Administrator exceeds 6,364 (10% greater than the estimated 5,785 pay periods), the Gross Settlement Amount shall be proportionally increased by the amount above 6,364 pay periods.
33. **Appointment of Settlement Administrator.** After obtaining a quote from mutually acceptable and qualified settlement administrators, the Parties have mutually agreed to ask the Court to appoint Phoenix Settlement Administrators as the qualified administrator, to serve as the Settlement Administrator, which, as a condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and its compensation. The Settlement Administrator's duties will include calculating Settlement Shares; issuing the checks to effectuate the payments due under the Settlement; issuing the tax reports required under this Settlement; and otherwise administering the Settlement pursuant to this Agreement. Additionally, prior to issuance of checks to Aggrieved Employees for Settlement Shares, the Settlement Administrator shall conduct a National Change of Address search to update Aggrieved Employees' addresses before mailing the checks. The Settlement Administrator will have the authority to resolve all disputes concerning the calculation of an Aggrieved Employee's Settlement Share, subject to the dollar limitations and calculations set forth in this Agreement. The Settlement Administration Expenses will be paid out of the Gross Settlement Amount.
34. The Settlement Administrator shall have its own Employer Identification Number under Internal Revenue Service Form W-9 and shall use its own Employer Identification Number in calculating payroll withholdings for taxes (if any) and shall transmit the required employers' and employees' share of the withholdings to

the appropriate state and federal tax authorities. The Settlement Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.

35. Procedure for Approving Settlement.

a. Motion for Approval of Settlement by the Court.

- a. After Execution of this Settlement Agreement, Plaintiff will file a Motion with the Court for an order giving Approval of the Settlement. Any disagreement among the Parties concerning the Class Notice, the proposed orders, or other documents necessary to implement the Settlement will be referred to the mediator for resolution.
- b. PAGA Counsel shall submit this Agreement and the motion for approval to the LWDA at the same time as they are submitted to the Court, as required by PAGA.
- c. At the hearing on the Motion for Approval, the Parties will jointly appear, support the granting of the motion, and submit an Order Granting Approval of the Settlement substantially in the form evidenced by Exhibit A to this Agreement and incorporated by reference into this Agreement.
- d. Should the Court decline to approve material aspects of the Settlement (including but not limited to the scope of release to be granted by Aggrieved Employees or the binding effect of the Settlement on Aggrieved Employees or the State of California), the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court’s approval.

- b. **PAGA Data.** Within thirty (30) days of the Court entering an Order approving the settlement, Defendant will provide to the Settlement Administrator an electronic database containing the PAGA Data. If any or all of the PAGA Data is unavailable to Defendant, Defendant will so inform PAGA Counsel and the Parties will meet and confer to reach a resolution concerning the method to use to reconstruct or otherwise agree upon the PAGA Data prior to when it must be submitted to the Settlement Administrator. This information will otherwise remain confidential and will not be disclosed to anyone, except as required to applicable taxing authorities, in order to carry out the reasonable efforts described in section III.38.b., or pursuant to Defendant’s express written authorization or by order of the Court. All PAGA Data will be used for settlement notification and settlement administration and shall not be used for any other purpose by PAGA Counsel. This provision shall not be construed to impede PAGA Counsel’s ability to discharge their fiduciary duties to the Aggrieved

Employees, and if additional disclosures are necessary, PAGA Counsel will obtain written authorization of Defendant and/or an order from the Court.

- a. Within fifteen (15) days of receipt of the PAGA Data, the Settlement Administrator shall notify the Parties if the number of Qualifying Pay Periods exceeds 6,364, and, if so, the proportional increase in the Gross Settlement Amount due on account of the increase in Qualifying Pay Periods.
 - b. The Settlement Administrator shall update the PAGA Data using the National Change of Address database prior to mailing checks for the Settlement Sum.
 - c. **Objections to Settlement; Elections Not to Participate in Settlement.** As a PAGA-only settlement, Aggrieved Employees may not object to or opt-out of the Settlement, nor may individuals exclude themselves by electing not to participate in Settlement.
 - a. If any opposition is filed to the motion for approval, including any specific allocations from the Gross Settlement Amount, then not later than five (5) court days before the Approval Hearing, both Parties may file a reply in support of the motion for approval, and PAGA Counsel may also file a reply in support of their requests for Service Award, Attorneys' Fees, and Attorneys' Expenses.
 - b. If the Court does not grant approval of the Settlement or grants approval conditioned on any material change to the Settlement (including, but not limited to, the scope of release to be granted by PAGA Members), then the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval. However, an award by the Court of a lesser amount than that sought by Plaintiff and PAGA Counsel for the Service Award, the Attorneys' Fees payment, or the Attorneys' Expenses payment, will not constitute a material modification to the Settlement within the meaning of this paragraph.
 - c. Upon approval of the Settlement by the Court, the Parties will present for the Court's approval and entry the Judgment substantially in the form attached hereto as Exhibit A. After entry of the Judgment, the Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.
36. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, Plaintiff and Defendant, and their respective counsel, hereby waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such

as, but not limited to, a motion to vacate judgment, a motion for new trial, and any extraordinary writ. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. If an appeal is taken from the Judgment, the time for consummation of the Settlement (including making payments under the Settlement) will be suspended until such time as the appeal is finally resolved and the Judgment becomes Final.

37. **Vacating, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion, petition, or application, the reviewing Court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement (including, but not limited to, the scope of release to be granted by Aggrieved Employees or the State of California), and that Court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher Court, then the Parties shall work together in good faith to address any concerns raised by the reviewing Court and propose a revised Settlement for the approval of the Court not later than thirty days after the reviewing Court's decision vacating, reversing, or materially modifying the Judgment becomes Final. A vacation, reversal, or modification of the Court's award of the Service Award, the Attorneys' Fees payment, or the Attorneys' Expenses payment will not constitute a vacation, reversal, or material modification of the Judgment within the meaning of this paragraph, provided that Defendant's obligation to make payments under this Settlement will remain limited by the Gross Settlement Amount.
38. **Timing of Settlement Funding and Provision of Settlement Shares and Other Payments.** Defendant shall fund the Gross Settlement Amount by depositing the money with the Settlement Administrator. Defendant shall fund the Gross Settlement Amount and the amount necessary to pay Defendant's share of payroll taxes (if any) within sixty (60) calendar days of the Effective Date.
 - a. Within fifteen (15) days after Defendant funds the Gross Settlement Amount, the Settlement Administrator will make payment of all Settlement Shares, Attorneys' Fees, Attorneys' Expenses, Service Awards, and the LWDA Payment, in accordance with this Agreement. Before Settlement Share checks are mailed, the Settlement Administrator shall update address information for Aggrieved Employees through the National Change of Address database.
 - b. If a check is returned because of an incorrect address, the Settlement Administrator will promptly search for a more current address for the Aggrieved Employee and re-mail the check to the Aggrieved Employee no later than seven (7) business days after the receipt of the undelivered check. The Settlement Administrator will also email a copy of the re-mailed check to the Class Member if there is an available email address in the Class Data. The Settlement Administrator will use the Class Data and otherwise work with Defendant to find a more current address. The Settlement

Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, Court orders, and fee, as agreed to with PAGA Counsel and according to the following deadlines, to trace the mailing address of any PAGA Member for whom a check is returned by the U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address using available email addresses, phone numbers, social security numbers, credit reports, LinkedIn, and Facebook; and promptly re-mailing to PAGA Members for whom new addresses are found.

39. **Uncashed Settlement Share Checks.** An Aggrieved Employee must cash his or her Settlement Share check within 180 days after it is mailed to him or her. The expiration date of the check must be conspicuously printed on the check. If a check is returned to the Settlement Administrator or not cashed within 120 days after the last mailing, the Settlement Administrator will make all reasonable efforts to re-mail it to the affected individual at his or her correct address by use of available email addresses, phone numbers, social security numbers, credit reports, LinkedIn and Facebook. If an Aggrieved Employee's check is not cashed within 120 days after its last mailing to the affected individual, the Settlement Administrator will also send the individual a notice informing him or her that unless the check is cashed in the next 60 days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed. If the check remains uncashed by the expiration of the 60 day period after this notice, the funds from such uncashed checks will be paid to Public Counsel as a cy pres recipient. The Parties agree that this disposition results in no "unpaid residue" within the meaning of California Code of Civil Procedure Section 384, as the entire Net Settlement Amount will be paid out to Aggrieved Employees or to promote justice for all Californians. Aggrieved Employees who do not timely cash their Settlement Share shall still remain bound by this Settlement.
40. **Final Report by Settlement Administrator to Court.** Within ten days after final disbursement of all funds from the Gross Settlement Amount, the Settlement Administrator will provide the Parties with a declaration proving a final report on the disbursements of all funds from the Gross Settlement Amount.
41. **Release of Claims.**
 - a. **Aggrieved Employees.** As of the Effective Date and upon full funding of the Gross Settlement Amount by Defendant, Defendant shall receive a release from the Aggrieved Employees and the State of California of all Released Claims as defined herein.

The "Released Claims" are defined as all PAGA claims pled or that could have been pled based on the factual allegations contained in in the Complaint filed in the Action and/or the written notice(s) sent to the Labor

& Workforce Development Agency pursuant to California Labor Code § 2699.3(a)(1) that occurred during the PAGA Period as to the Aggrieved Employees; specifically, PAGA claims for civil penalties predicated on alleged violations of Labor Code sections 201, 202, 203, 204, 221, 222, 223, 224, 226, 210, 218, 218.6, 225.5, 226.3, 1194, 1194.2, 1197, 1197.1, and 2802 that occurred during the applicable PAGA Period and arise from the facts that were alleged or could have been alleged based on the factual allegations in the written notice sent to the Labor & Workforce Development Agency pursuant to California Labor Code § 2699.3(a)(1) or the Complaint in the Action.

- b. **Plaintiff.** Plaintiff, for himself, his successors, assigns, agents, executors, heirs and personal representatives, spouse and attorneys, and any and all of them, voluntarily and with the advice of counsel, to a general and comprehensive release of all of his respective known and unknown claims against Defendant and the Released Parties, including without limitation, all claims that were or could have been alleged in the written notice sent to the Labor & Workforce Development Agency pursuant to California Labor Code § 2699.3(a)(1) and the Complaint in the Action under any state law, federal law, common law, equity or other theory arising in any way out of Plaintiff's former employment with Defendant or any of the Released Parties. As part of this release, Plaintiff further releases all unknown claims against Defendant and any of the Released Parties, covered by California Civil Code Section 1542, which states: "**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.**" Plaintiff understands that he is an individual, a "creditor" and "releasing party" within the meaning of Civil Code section 1542, and thereby expressly waives and relinquishes any and all rights and benefits under Section 1542 of the Civil Code of the State of California and under any statute, rule, or principle of common law or equity, of any jurisdiction, that is similar to Section 1542.
 - c. **PAGA Counsel.** As of the date the Defendant fully funds the Gross Settlement Amount, and except as otherwise provided by this Agreement and the Judgment, PAGA Counsel and any counsel associated with PAGA Counsel waive any claim to costs and attorneys' fees and expenses against Defendant arising from or related to the Action.
42. **No Effect on Other Benefits.** The Settlement Shares will not result in any additional benefit payments (such as 401(k) or bonus) beyond those provided by this Agreement to Plaintiff or Aggrieved Employees, and Plaintiff and Aggrieved Employees will be deemed to have waived all such claims, whether known or unknown by them, as part of their release of claims under this Agreement.
 43. **Limitation on Public Statements About Settlement.** Neither PAGA Counsel nor Defendant's Counsel shall publicize the Settlement prior to the Court granting

approval, other than filing documents with the Court. Plaintiff and PAGA Counsel and Defendant and Defendant's Counsel agree that they will not issue any press releases or initiate any contact with the media about the fact, amount, or terms of the Settlement. If Plaintiff or PAGA Counsel or Defendant or Defendant's Counsel receives an inquiry about the Settlement from the media, they may respond only after the Motion for Approval has been filed and only by confirming the accurate terms of the Settlement. This provision does not limit PAGA Counsel from complying with ethical obligations or from posting court-filed documents on a website for viewing by PAGA Members after preliminary approval. Nothing in this provision shall prevent Defendant or Plaintiff from making any required disclosures.

IV. MISCELLANEOUS TERMS

44. No Admission of Liability.

- a. Defendant and the Released Parties deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, have any liability to anyone under the claims asserted in the Actions, or that but for the Settlement any representative action is appropriate. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendant or the Released Parties, or an admission by Plaintiff that any of the claims were non-meritorious or any defense asserted by Defendant was meritorious. This Settlement and the fact that Plaintiff and Defendant were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with effectuating the Settlement pursuant to this Agreement). Nothing in this Agreement shall be constructed as an admission by Defendant of any liability or wrongdoing as to Plaintiff, Aggrieved Employees, or any other person, and Defendant specifically disclaims any such liability or wrongdoing. Moreover, it is not, and it should not be construed as, any admission of fact or law in this matter or any other matter that a class action, representative action, or any other procedural vehicle aside from an individual action is appropriate. The Parties have entered into this settlement with the intention of avoiding further disputes and litigation with the attendant inconvenience, expenses and risks. Nothing in this Agreement shall be construed as an admission by Plaintiff that Plaintiff's claims do not have merit or that a PAGA action is inappropriate.
- b. Whether or not the Judgment becomes Final, neither the Settlement, this Agreement, any document, statement, proceeding or conduct related to the Settlement or the Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Plaintiff or Defendant or any of the Released Parties, including, but not limited to, evidence of a presumption, concession, indication or admission by any of the Released

Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any of the Released Parties, in any further proceeding in the Actions, or any other civil, criminal or administrative action or proceeding except for purposes of effectuating the Settlement pursuant to this Agreement.

- c. This section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may only be admitted in evidence and otherwise used in any and all proceedings for the limited purpose of enforcing any or all terms of this Agreement or defending any claims released or barred by this Agreement.
- 45. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Agreement or its exhibits other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
- 46. **Attorney Authorization.** PAGA Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement including any amendments to this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the mediator for resolution.
- 47. **No Prior Assignments:** The Parties represent, covenant and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.
- 48. **No Tax Advice:** Neither PAGA Counsel nor Defendant's Counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 49. **Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 50. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

51. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California.
52. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
53. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Actions and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
54. **Nullification.** If the Court for any reason that cannot be cured does not finally approve this Settlement, this Agreement shall be considered null and void and the Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court. Invalidation of any material portion of this Agreement shall invalidate this Agreement in its entirety unless the Parties agree in writing that the remaining provisions shall remain in full force and effect.
55. **Use and Return of Documents and Data.** All originals, copies, and summaries of documents and data provided to PAGA Counsel by Defendant in connection with the mediation or other settlement negotiations in this matter may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule. Within thirty days after the Gross Settlement Amount is fully funded by Defendant, PAGA Counsel will return or destroy and confirm in writing to Defendant the destruction of all such documents and data.
56. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
57. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, addressed as follows:

To Plaintiff and the Aggrieved Employees:

DIVERSITY LAW GROUP, P.C.
Larry W. Lee
Kristen M. Agnew
Nicholas Rosenthal
515 South Figueroa Street, Suite 1250
Los Angeles, CA 90071
Telephone: (213) 488-6555
Facsimile: (213) 488-6554
lwlee@diversitylaw.com
kagnew@diversitylaw.com
nrosenthal@diversitylaw.com

POLARIS LAW GROUP LLP
William L. Marder
501 San Benito Street, Suite 200
Hollister, CA 95023
Telephone: (831) 531-4214
Facsimile: (831) 634-0333
bill@polarislawgroup.com

To Defendant:

Linda Auerbach Allderdice
Samuel J. Stone
Holland & Knight LLP
400 South Hope Street, 8th Floor
Los Angeles, CA 90071
Tel.: (213) 896-2400
Fax: (213) 896-2450
Email: linda.allderdice@hkllaw.com
sam.stone@hkllaw.com

58. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts by facsimile, electronically or email which for purposes of this Agreement shall be accepted as an original. 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 signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
59. **Stay of Litigation.** The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree pursuant to Cal. Code Civ. Proc. § 583.330 that upon the signing of this Agreement the time to bring the Action to trial shall be extended for the entire period of the settlement process, from the mediation on May 2, 2022

until the until the earlier of the Effective Date or the date this Agreement shall not longer be of any force or effect.

60. **Continuing Jurisdiction.** The Court shall retain continuing jurisdiction over the Actions under CCP section 664.6 to ensure the continuing implementation of this Agreement and enforcement of the Settlement until performance in full of the terms of this Settlement.

V. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: 5/24/2022

DocuSigned by:
MAJ JHEW MILLER
Plaintiff Matthew Miller

Dated: 6/17/2022 | 3:28:53 AM EDT

Yasith Weerasuriya
For Defendant Stanbridge University

APPROVED AS TO FORM:

Dated: May 24, 2022



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Facsimile: (831) 634-0333

bill@polarislawgroup.com

Dated: 5/25/2022 | 2:56:50 PM EDT

Linda Auerbach Allderdice

Samuel J. Stone

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Email: linda.allderdice@hklaw.com

sam.stone@hklaw.com

EXHIBIT A

[ORDER GRANTING APPROVAL OF SETTLEMENT AND ENTRY OF JUDGMENT]

DIVERSITY LAW GROUP, P.C.
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Attorneys for Plaintiff and Aggrieved Employees

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

MATTHEW MILLER as an individual and on
behalf of all others similarly situated, and as a
private attorney general,

Plaintiff,

vs.

STANBRIDGE UNIVERSITY, a California
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 30-2021-01206298-CU-OE-CXC

(Assigned for all purposes to the Hon. William
Claster, Dept. CX 104)

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION TO APPROVE
PAGA SETTLEMENT AGREEMENT AND
JUDGMENT**

Date: July 22, 2022

Time: 9:00 a.m.

Dept.: CX104

Reservation No.: 73787090

Complaint Filed: June 17, 2021

Trial Date: None

1 On July 8, 2022, a hearing was held on Plaintiff Matthew Miller's ("Plaintiff") Motion to
2 Approve Settlement Agreement Pursuant to the Private Attorneys General Act (the "Motion"). The
3 Court, having considered all the papers filed and proceedings herein and otherwise being fully informed,
4 and having made this Judgment which constitutes a final adjudication of this matter on the merits, and
5 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 have
8 the same meaning as given in the Settlement Agreement and General Release of All Claims ("Settlement
9 Agreement"), attached as Exhibit A to the Declaration of Nicholas Rosenthal, filed on June 10, 2022.

10 2. Pursuant to the PAGA, Labor Code §§ 2699(l)(2) and (l)(4), the Labor and Workforce
11 Development Agency ("LWDA") has been given notice of the settlement. Pursuant to the PAGA, on the
12 date the Parties filed the Motion seeking approval of the settlement with the Court, Plaintiff submitted to
13 the LWDA a notice of the settlement enclosing a copy of the Settlement Agreement. The Court finds
14 and determines that Plaintiff's notice of the settlement complied with the statutory requirements of the
15 PAGA.

16 3. The Court confirms approval of the settlement as to the following group of individuals,
17 collectively referred to as the "Aggrieved Employees":

18 all individuals who are or were employed by Stanbridge in California
19 during the period of April 14, 2020 and April 9, 2021 who received pay
20 for wages from Stanbridge through direct deposit.

21 4. This Court has jurisdiction over the subject matter of this litigation, over all Aggrieved
22 Employees, and over those persons and entities undertaking affirmative obligations under the settlement.

23 5. The Court finds that the settlement is, in all respects, fair, reasonable, and adequate.
24 Accordingly, the Court hereby finally and unconditionally approves the settlement.

25 6. The Court finds that each Aggrieved Employee, in accordance with the settlement,
26 releases the following "Released Claims" against the Released Parties:

27 [A]ll PAGA claims pled or that could have been pled based on the factual
28 allegations contained in in the Complaint filed in the Action and/or the
written notice(s) sent to the Labor & Workforce Development Agency

pursuant to California Labor Code § 2699.3(a)(1) that occurred during the PAGA Period as to the Aggrieved Employees; specifically, PAGA claims for civil penalties predicated on alleged violations of Labor Code sections 201, 202, 203, 204, 221, 222, 223, 224, 226, 210, 218, 218.6, 225.5, 226.3, 1194, 1194.2, 1197, 1197.1, and 2802 that occurred during the applicable PAGA Period and arise from the facts that were alleged or could have been alleged based on the factual allegations in the written notice sent to the Labor & Workforce Development Agency pursuant to California Labor Code § 2699.3(a)(1) or the Complaint in the Action (the “Released Claims”).

The release only extends to PAGA claims predicated on alleged violations of Labor Code §§ 201, 202, 203, 204, 221, 222, 223, 224, 226, 210, 218, 218.6, 225.5, 226.3, 1194, 1194.2, 1197, 1197.1, and 2802 during the PAGA Period.

7. The Court finds that the Gross Settlement Amount, Net Settlement Amount, and the methodology used to calculate and pay each individual settlement share, in accordance with the settlement, are fair and reasonable.

8. The Court authorizes Phoenix Settlement Administrators to act as the Settlement Administrator.

9. The Court authorizes the Settlement Administrator to calculate and pay the individual Settlement Shares, in accordance with the terms of the settlement.

10. The Court awards the Settlement Administrator in this Action its fees and costs of Four Thousand Five Hundred Dollars (\$4,500.00) in accordance with the terms of the Settlement Agreement.

11. The Court awards to Representative Plaintiff a payment of Five Thousand Dollars (\$5,000.00), which shall be paid to Representative Plaintiff as a Service Award. In exchange, the Representative Plaintiff has agreed to a general release of all claims that he might have against Defendant, including a Civil Code § 1542 release.

12. The Court awards to Plaintiff’s Counsel in this Action its fees of Thirty-Eight Thousand One Hundred Eighty-One Dollars (\$38,181.00) and actual costs of Ten Thousand Eight Hundred Fifty Dollars and Eighty Three Cents (\$10,850.83), in accordance with the terms of the Settlement Agreement.

13. The Court approves the allocations and payment of One Hundred Fifteen Thousand

1 Seven Hundred Dollars (\$115,700.00) for the compromise of claims brought under the PAGA, to be
2 paid in accordance with the terms of the settlement.

3 14. Under the terms of the settlement, the Net Settlement Amount is Fifty Six Thousand
4 Seven Hundred Eighty Two Dollars and Forty One Cents (\$56,782.41). Seventy-five percent (75%) of
5 the Net Settlement Amount will be paid to the State of California Labor and Workforce Development
6 Agency ("LWDA Payment"), and the remaining twenty-five percent (25%) of the Net Settlement
7 Amount shall be distributed to the Aggrieved Employees in accordance with the terms of the settlement.

8 15. Checks for individual Settlement Shares sent to Aggrieved Employees shall be valid for
9 one hundred eighty (180) days after issuance. Funds remaining from any checks for individual
10 Settlement Shares uncashed after one hundred eighty (180) days will be disbursed to the *cy pres*
11 recipient Public Counsel.

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

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

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

20 **IT IS SO ORDERED AND ADJUDGED.**

21
22 DATED: _____

HON. WILLIAM CLASTER
SUPERIOR COURT OF CALIFORNIA

EXHIBIT B

5/31/2022
11:28 AM

DIVERSITY LAW GROUP
Slip Listing

Page 1

Selection Criteria

Slip.Classification Open
Client (hand select) Include: Miller, Matthew v. Stan PAGA
Slip.Transaction Ty 2 - 2

Rate Info - identifies rate source and level

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		
66924	EXP	Olympia	1	75.00	75.00
4/14/2021		Court fees			
WIP		Miller, Matthew v. Stan PAGA			
LWDA					
66975	EXP	Erika Mejia	1	1492.00	1492.00
4/22/2021		Court fees			
WIP		Miller, Matthew v. Stan PAGA			
OneLegal - Complaint					
67286	EXP	Olympia	1	6.96	6.96
4/30/2021		Postage			
WIP		Miller, Matthew v. Stan PAGA			
Postage					
67454	EXP	Erika Mejia	1	93.00	93.00
5/5/2021		Atty Service			
WIP		Miller, Matthew v. Stan PAGA			
Attorney Service - Complaint Service					
67435	EXP	Erika Mejia	1	14.67	14.67
6/3/2021		Court fees			
WIP		Miller, Matthew v. Stan PAGA			
OneLegal - POS of Summons					
67608	EXP	Larry W. Lee	1	1492.00	1492.00
6/18/2021		Court fees			
WIP		Miller, Matthew v. Stan PAGA			
One Legal - Complaint					
67772	EXP	Erika Mejia	1	14.67	14.67
7/6/2021		Court fees			
WIP		Miller, Matthew v. Stan PAGA			
One Legal - Notice of Related Case					
67773	EXP	Erika Mejia	1	14.67	14.67
7/6/2021		Court fees			
WIP		Miller, Matthew v. Stan PAGA			
One Legal - Notice of Related Case					

5/31/2022
11:28 AM

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		
67923	EXP	Olympia	1	22.91	22.91
7/9/2021		Court fees			
WIP		Miller, Matthew v. Stan PAGA			
One Legal - Notice					
68496	EXP	Olympia	1	2.31	2.31
7/31/2021		Postage			
WIP		Miller, Matthew v. Stan PAGA			
Postage					
68495	EXP	Olympia	20	0.25	5.00
7/31/2021		Photocopies			
WIP		Miller, Matthew v. Stan PAGA			
Photocopies					
68494	EXP	Olympia	1	1.22	1.22
7/31/2021		Postage			
WIP		Miller, Matthew v. Stan PAGA			
Postage					
68493	EXP	Olympia	9	0.25	2.25
7/31/2021		Photocopies			
WIP		Miller, Matthew v. Stan PAGA			
Photocopies					
68441	EXP	Olympia	1	17.76	17.76
8/13/2021		Court fees			
WIP		Miller, Matthew v. Stan PAGA			
One Legal - Notice					
68433	EXP	Erika Mejia	1	14.67	14.67
8/13/2021		Court fees			
WIP		Miller, Matthew v. Stan PAGA			
One Legal - POS of Summons					
68432	EXP	Olympia	1	16.73	16.73
8/13/2021		Court fees			
WIP		Miller, Matthew v. Stan PAGA			
One Legal - Notice of Hearing					
68803	EXP	Olympia	6	0.25	1.50
8/31/2021		Photocopies			
WIP		Miller, Matthew v. Stan PAGA			
Photocopies					
68804	EXP	Olympia	1	0.71	0.71
8/31/2021		Postage			
WIP		Miller, Matthew v. Stan PAGA			
Postage					

5/31/2022
11:28 AM

DIVERSITY LAW GROUP
Slip Listing

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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		
68805	EXP	Olympia	14	0.25	3.50
8/31/2021		Photocopies			
WIP		Miller, Matthew v. Stan PAGA			
Photocopies					
68806	EXP	Olympia	1	1.42	1.42
8/31/2021		Postage			
WIP		Miller, Matthew v. Stan PAGA			
Postage					
68947	EXP	Erika Mejia	1	19.82	19.82
9/15/2021		Court fees			
WIP		Miller, Matthew v. Stan PAGA			
One Legal - Request for Dismissal					
68974	EXP	Christine Choo	1	24.97	24.97
9/20/2021		Court fees			
WIP		Miller, Matthew v. Stan PAGA			
One Legal - Notice of Reassignment					
69104	EXP	Olympia	1	22.65	22.65
10/1/2021		Court fees			
WIP		Miller, Matthew v. Stan PAGA			
OneLegal - CMS					
69464	EXP	Olympia	1	15.44	15.44
10/22/2021		Court fees			
WIP		Miller, Matthew v. Stan PAGA			
One Legal - CMS					
71410	EXP	Olympia	1	7475.00	7475.00
4/11/2022		Arbitrators			
WIP		Miller, Matthew v. Stan PAGA			
JAMS Mediation					
Grand Total					
			Billable	0.00	10850.83
			Unbillable	0.00	0.00
			Total	0.00	10850.83

EXHIBIT C

Miller v. Stanbridge University
Time and Task Chart for Nick Rosenthal

Hours	Description of Work
2.4	Factual investigation and research into legality of mandatory deductions for direct deposit.
.6	Draft PAGA Notice.
2.0	Draft Complaint.
3.7	Draft written discovery.
.5	Review data produced by Defendant in advance of mediation and prepare damages analysis.
8.1	Draft mediation brief.
7.1	Attend mediation.
6.5	Draft long form settlement agreement.
8.2	Draft Motion for Approval.
39.1	TOTAL HOURS