

## **JOINT STIPULATION FOR PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT AND RELEASE**

This Joint Stipulation for Private Attorneys General Act Settlement Agreement and Release is made and entered into by and between Plaintiff Lavelle Alderson (“Plaintiff”) on behalf of himself and on behalf of the State of California and all allegedly-aggrieved employees, and Defendant Off Duty Services, Inc. (“Defendant”) (jointly, “the Parties”), subject to the approval of the Court, that the settlement of the Action (as defined below) shall be effectuated upon and subject to the following terms and conditions. Plaintiff and Defendant collectively are referred to herein as the “Parties.” Capitalized terms as used herein shall have the meanings set forth in Section II.A or elsewhere in this Settlement Agreement and Release.

### **I. RECITALS**

WHEREAS, on May 12, 2021, Lavelle Alderson notified the Labor Workforce Development Agency (“LWDA”) of his intent to file an action under California’s Private Attorneys General Act, California Labor Code § 2698 *et seq.* (“PAGA”), contending that Defendant: (1) failed to reimburse Plaintiff and other aggrieved employees for business-related expenses due to the costs of cell phone use to receive Defendant’s updates and instructions via text messages and emails, in violation of Labor Code section 2802 (the “PAGA Letter”);

WHEREAS, Plaintiff allowed the LWDA an opportunity to investigate his claims as required by the Labor Code;

WHEREAS, the LWDA took no action in response to Plaintiff’s notice;

WHEREAS, on July 21, 2021, Lavelle Alderson commenced a lawsuit by filing a Representative Action Complaint on behalf of himself and other similarly situated individuals styled *Lavelle Alderson v. Off Duty Services, Inc.*, Alameda County Superior Court Case No. RG21106370, asserting one PAGA cause of action based upon the Labor Code violations stated in his PAGA Letter;

WHEREAS, during the course of the litigation the Parties engaged in significant formal and informal discovery, including the exchange of written information, documents, and payroll information concerning the Aggrieved Employees;

WHEREAS, on January 18, 2023, the Parties reached agreement on settlement, which was thereafter memorialized in a Memorandum of Understanding signed by the Parties on April 21, 2023;

WHEREAS, the Parties desire to settle, compromise, and avoid litigation relating to the claims described in Plaintiff’s PAGA Letter and in the pleadings in the Action, and have agreed to settle the Action upon the terms and conditions and for the consideration set forth in this Settlement Agreement;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, it is hereby agreed by and between the Parties hereto as follows:

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**II. SETTLEMENT TERMS**

**A. Definitions**

1. “**Aggrieved Employees**” are all current or former non-exempt employees who worked for Defendant as security guards in the State of California at any time during the PAGA Period. Defendant has represented that there are approximately 231 Aggrieved Employees.

2. “**Action**” means the case entitled *Lavelle Alderson v. Off Duty Services, Inc.*, pending in the Superior Court of the State of California for the County of Alameda (“Court”), Case No. RG21106370.

3. “**Attorneys’ Fees**” means such attorneys’ fees as the Court may award to PAGA Counsel for the services they have rendered and will render to the Aggrieved Employees in the Action, and for the costs they have incurred and will incur in the investigation, litigation, and resolution of the Action, and which shall not exceed One-Hundred-Twenty-Five-Thousand Dollars (\$125,000.00).

4. “**Attorneys’ Expenses**” means such litigation costs as the Court may award to PAGA Counsel that PAGA Counsel have incurred and will incur in the investigation, litigation, and resolution of the Action, in an amount no more than \$500 more than the amount actually incurred at the time of filing the motion for final approval, as documented in a declaration from PAGA Counsel, with a list of expenses attached as an exhibit thereto.

5. “**Effective Date**” means the date this Settlement is approved as provided herein and the Court’s order granting Settlement Approval and entry of Final Judgment becomes final and is no longer appealable. For purposes of this Settlement, “becomes final and is no longer appealable” shall mean the earlier of: (a) the date the Court has entered an order approving of a joint stipulation of settlement seeking approval of the representative action settlement and PAGA Counsel execute and return a Waiver of Appeal rights; (b) the date the time for appeal or time to seek permission to appeal or to seek other judicial review of the entry of a Final Judgment approving the Settlement has expired (that is, 65 days) with no appeal or other judicial review having been taken or sought.

6. “**Individual PAGA Payment**” means the portion of the Net Settlement Amount allocated to each Aggrieved Employee following distribution to the LWDA, as calculated pursuant to Section C(6) below. Individual PAGA Payments will be paid to Aggrieved Employees in the form of a check and shall be allocated exclusively as penalties under Labor Code section 2699.

7. “**Net Settlement Amount**” is the amount remaining in the PAGA Settlement Fund once seventy-five percent (75%) of the PAGA Settlement Fund has been distributed to the LWDA.

8. “**PAGA Counsel**” means Hunter Pyle and John J. Darin of Hunter Pyle Law.

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9. **“PAGA Letter”** means the notice Plaintiff provided to the LWDA on May 12, 2021, of his intent to file an action under California’s Private Attorneys General Act, California Labor Code § 2698 *et seq.* (“PAGA”), contending that Defendant (1) failed to reimburse Plaintiff and other aggrieved employees for business-related expenses due to the costs of cell phone use to receive Defendant’s updates and instructions via text messages and emails, in violation of Labor Code section 2802. A copy of this letter is attached to this Settlement Agreement as **Exhibit A**.

10. **“PAGA Period”** means the period from July 21, 2020 through the date of final settlement approval by the Court.

11. **“PAGA Representative Service Award”** means the award described below in section II(B)(2)(d).

12. **“PAGA Settlement Amount”** means the Three-Hundred-Seventy-Five-Thousand Dollars (\$375,000.00) that Defendant will pay in exchange for the representative release of “Released Claims” by the Aggrieved Employees if the Court approves this Settlement and the Effective Date occurs. The PAGA Settlement Amount is inclusive of all Settlement Administration Expenses, Representative Service Award, Attorneys’ Fees, Attorneys’ Expenses, and payments to the LWDA and Aggrieved Employees. The PAGA Settlement Amount shall be all-in with no reversion to Defendant, and Defendant shall not pay more than this amount for the Settlement.

13. **“PAGA Settlement Fund”** means the PAGA Settlement Amount minus (a) the award of Attorneys’ Fees and Attorneys’ Expenses to PAGA Counsel, (b) all Settlement Administration Fees owed to the Settlement Administrator, and (c) any PAGA Representative Service Award approved by the Court. Seventy-five percent (75%) of the PAGA Settlement Fund will be distributed to the LWDA and twenty-five percent (25%) will be distributed to Aggrieved Employees as Individual PAGA Payments.

14. **“Released Claims”** means all PAGA claims, demands, rights, liabilities, penalties, fees, and causes of action that are alleged or could have been alleged against Defendant in the operative Complaint filed in this Action pursuant to PAGA, Labor Code section 2699 *et seq.*, including under Labor Code sections 2802 and/or 2698 *et seq.*, predicated on any Labor Code violations alleged in the operative complaint (including Labor Code section 2802) or that could have been alleged in the operative complaint based on the facts, policies, practices, occurrences, or acts alleged in the operative complaint, or that are based on any alleged failure to reimburse Aggrieved Employees for any expenses incurred through Aggrieved Employees’ use of their personal cell phone for business purposes. The released claims shall not include any non-PAGA claims.

15. **“Settlement”** means the terms agreed to by the Parties and memorialized in this Settlement Agreement.

16. **“Settlement Agreement”** means this document, Joint Stipulation for Private Attorneys General Act Settlement Agreement and Release.

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17. “**Settlement Approval Order and Judgment**” means the settlement approval order and judgment that will be entered by the Court.

18. “**Settlement Administration Fees**” means the amount of fees and costs incurred by the Settlement Administrator awarded by the Court pursuant to the terms of this Agreement, which is not anticipated to exceed Three Thousand Seven Hundred and Fifty Dollars and No Cents (\$3,750.00).

19. “**Settlement Administrator**” means the third-party claims administration firm selected by the Parties and approved by the Court. The Parties have agreed to propose Phoenix Settlement Administrators as the Settlement Administrator for the Court’s consideration and approval.

20. “**Settlement Notice**” means the form of notice that will be sent to each Aggrieved Employee accompanying their Individual PAGA Payments, which shall be substantially in the form attached hereto as **Exhibit B**.

21. “**Void Date**” means the 181st day after issuance of Individual PAGA Payment checks to Aggrieved Employees, upon which the Individual PAGA Payment checks will no longer be valid and negotiable.

**B. Consideration**

1. No Admission of Liability. Plaintiff acknowledges that Defendant denies all allegations and claims in the Action. Defendant has contended and continues to contend that the allegations in the Action have no merit. Defendant specifically denies all of the allegations in Plaintiff’s PAGA Letter and complaint in the Action. This Settlement is a compromise of such disputed claims. Nothing contained in this Settlement Agreement and no documents referred to herein and no action taken to carry out this Settlement may be construed or used as an admission by or against Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever.

2. Monetary Settlement Components. Provided that the Court approves the Settlement and the Effective Date occurs, Defendant will pay the PAGA Settlement Amount of Three-Hundred-Seventy-Five-Thousand Dollars (\$375,000.00). All amounts to be paid to anyone pursuant to this Settlement Agreement shall be paid from this PAGA Settlement Amount, as follows.

- a. Attorneys’ Fees. In full satisfaction of all claims Plaintiff may have for Attorneys’ Fees arising out of the Action, Plaintiff may request an award of attorneys’ fees from the Court, in an amount up to One-Hundred-Twenty-Five-Thousand Dollars (\$125,000.00) to be paid from the PAGA Settlement Amount. Defendant agrees not to oppose Plaintiff’s application for Attorneys’ Fees not to exceed this sum. The Attorneys’ Fees to be awarded to Plaintiff are subject to the approval of the Court and will be paid only from the PAGA Settlement Amount. Any portion of the Attorneys’ Fees not awarded to PAGA Counsel will be added

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to the PAGA Settlement Fund. Plaintiff understands and agrees that this Settlement Agreement shall remain in full force and effect even if the full amount of Attorney's Fees identified herein is not awarded by the Court.

- b. Attorneys' Expenses. In full satisfaction of all claims Plaintiff may have for Attorneys' Expenses arising out of the Action, Plaintiff may request an award of Attorneys' Expenses from the Court, in an amount up to the actual amount of costs PAGA Counsel have incurred and will incur in the investigation, litigation, and resolution of the Action, in an amount as documented in a declaration from PAGA Counsel, with a list of expenses attached as an exhibit thereto. Defendant agrees not to oppose Plaintiff's application for Attorneys' Expenses not to exceed this sum. The Attorneys' Expenses to be awarded to Plaintiff are subject to the approval of the Court and will be paid only from the PAGA Settlement Amount. Any portion of the Attorney's Expenses not awarded to PAGA Counsel will be added to the PAGA Settlement Fund. Plaintiff understands and agrees that this Settlement Agreement shall remain in full force and effect even if the full amount of Attorney's Expenses identified herein is not awarded by the Court.
- c. Settlement Administration Fees. Costs incurred by the Settlement Administrator during administration will not exceed Three Thousand Seven Hundred and Fifty Dollars and No Cents (\$3,750.00).
- d. Plaintiff's Service Award. PAGA Counsel will request a PAGA Representative Service Award for Plaintiff in the amount of Ten Thousand dollars (\$10,000.00). Defendant agrees not to oppose any service award to Plaintiff up to this amount. The service award will be in addition whatever payment Plaintiff is otherwise entitled to receive as an Aggrieved Employee.

Should the Court approve a lesser amount for PAGA Representative Service Award, the difference shall be added back to the PAGA Settlement Fund to be distributed to the LWDA and Aggrieved Employees. Any Court order awarding less than the amount sought by Class Counsel shall not be grounds to rescind the Settlement Agreement or otherwise void the Settlement. The Parties expressly agree that the Court's approval or denial of any request for a service award is not a material condition to this agreement, and is to be considered by the Court separately from the fairness, reasonableness, adequacy, and good faith of the settlement. Any order or proceeding relating to the application by PAGA Counsel of a PAGA Representative Service Award shall not operate to terminate or cancel this agreement. To the extent the Court awards less than the amount of the requested PAGA Representative Service Award amount, the adequacy of the consideration supporting the general release shall not be affected and the requirement for and/or validity of an executed general release by Plaintiff shall remain in force and effect.

- e. PAGA Settlement Fund. The PAGA Settlement Fund will consist of all monies that remain after (a) the award of Attorney's Fees and Attorneys' Expenses to

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PAGA Counsel, (b) all Settlement Administration Fees owed to the Settlement Administrator have been paid from the PAGA Settlement Amount, and (c) the any PAGA Representative Service Award approved by the Court has been paid to Plaintiff. Pursuant to PAGA, seventy-five percent (75%) of the PAGA Settlement Fund will be paid to the LWDA. The remaining twenty-five percent (25%) of the PAGA Settlement Fund (the Net Settlement Amount) will be paid to all Aggrieved Employees as Individual PAGA Payments pursuant to the calculation method set forth in section C(6) below.

3. Aggrieved Employees' Release. Upon the Effective Date, Plaintiff, on behalf of himself, the State of California, and all Aggrieved Employees, releases Defendant from the Released Claims. This release shall be effective for the period of July 21, 2020 through the date this Settlement Agreement receives final approval by the Court. It is the intent of the Parties that the Settlement Approval Order and Judgment entered by the Court shall have full *res judicata* effect and be final and binding upon Aggrieved Employees regarding the Released Claims.

4. Individual Release by Plaintiff. In addition to the Released Claims, in consideration for Defendant's non-opposition to his request for the PAGA Representative Service Award described above, Plaintiff will provide Defendant with a general release from all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule or regulation arising out of, relating to, or in connection with any act or omission by or on the part of Defendant, committed or omitted prior to the execution hereof.

- a. Plaintiff stipulates and agrees that he is not due and owing any additional monies and expressly waives and relinquishes, to the fullest extent permitted by law, the provisions, rights and benefits of section 1542 of the California Civil Code, or any other provision under federal or state law, which provides:

***"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."***

- b. Plaintiff specifically acknowledges that he is aware of and familiar with the provisions of Section 1542 of the California Civil Code, and being aware of Section 1542, hereby expressly waives and relinquishes all rights and benefits that he individually may have under Section 1542, as well as any other statute or common law principle of a similar effect.

5. Escalator Clause. With respect to the Settlement Agreement, Defendant estimates that there were approximately 7,876 pay periods for approximately 231 Aggrieved Employees for the period of July 21, 2020, through November 30, 2021. Plaintiff entering into this Settlement Agreement based on such representations. In the event it is determined that the actual number of pay periods in which alleged violations

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occurred during the PAGA Period exceeds 7,876 by more than 10 percent and at Plaintiff's option, the parties shall agree to engage in a good faith effort to renegotiate the PAGA Settlement Amount. If the renegotiation is unsuccessful, Plaintiff has the right to declare the settlement null and void.

### **C. Settlement Administration Procedures**

1. Settlement Approval Motion. Following full execution of this Settlement Agreement, Plaintiff will request a hearing before the Court to seek approval of the Settlement on a mutually available date. In conjunction with such hearing, PAGA Counsel will present this Settlement Agreement to the Court and will move for the Court issue a Settlement Approval Order and Judgment approving and incorporating by reference the terms and conditions of the Settlement Agreement. PAGA Counsel will be primarily responsible for drafting all documents necessary to obtain approval of the Settlement, though the Parties will meet and confer on such materials as necessary. Defendant agrees not to oppose Plaintiff's motion for Settlement Approval unless the motion is inconsistent with the terms set forth in this Settlement Agreement.

2. LWDA Notice. Pursuant to California Labor Code § 2699(I), Plaintiff will provide a copy of this Settlement Agreement to the LWDA concurrently with the filing of the motion for Settlement Approval. Plaintiff will also file a declaration in support of his motion for Settlement Approval confirming that he has submitted the Settlement to the LWDA in compliance with Labor Code § 2699(I).

3. No Right of Aggrieved Employees to Object or Opt-Out. The Parties agree there is no explicit statutory right for any Aggrieved Employee to object, opt out or otherwise exclude himself or herself from the Settlement. The Parties will take reasonable steps to defend against any attempted intervention, objection/opt out or appeal filed with respect to the Final Order.

4. Judgment and Continued Jurisdiction. The Parties intend this agreement to be admissible and binding under Code of Civil Procedure section 664.4. After entry of the Settlement Approval Order and Judgment, the Court will have continuing and exclusive jurisdiction solely for purposes of addressing: (a) the interpretation and enforcement of the terms of the Settlement; (b) matters relating to the administration of the Settlement; and (c) such post-Judgment matters as may be appropriate under Court rules or as set forth in this Settlement.

5. Provision of Individual PAGA Payment Data to Settlement Administrator. Within thirty (30) days of the entry of the Settlement Approval Order and Judgment, Defendant will provide to the Settlement Administrator with each Aggrieved Employee's (a) name, (b) last known address, and (c) number of pay periods worked during the PAGA Period (the "Individual PAGA Payment Data"). The Individual PAGA Payment Data shall be based on Defendant's payroll and available business records in a format acceptable to the Settlement Administrator. The Settlement Administrator will run a check of the Aggrieved Employees' addresses against those on file with the U.S. Postal Service's National Change of Address List; this check will be performed by the Settlement Administrator only once per Aggrieved Employee. The Individual PAGA Payment Data provided to the Settlement Administrator will remain confidential and will

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not be used or disclosed to anyone, except as required by applicable tax authorities, pursuant to Defendant's express written consent, or by order of the Court.

6. Calculation of Individual PAGA Payments to Aggrieved Employees. Within fifteen (15) days of the receipt of the Individual PAGA Payment Data, the Settlement Administrator shall calculate each Aggrieved Employee's Individual PAGA Payment amount. Individual PAGA Payments will be made pro rata based on the number of eligible bi-weekly pay periods that each Aggrieved Employee worked during the PAGA Period, exclusive of leaves of absence. Individual PAGA Payments will be calculated as follows:  $[(\text{individual's qualifying pay periods}) / (\text{all qualifying pay periods})] \times [\text{Net Settlement Amount}]$ . Individual PAGA Payments will be paid to Aggrieved Employees in the form of a check issued by the Settlement Administrator.

7. Tax Treatment of Individual PAGA Payments. One hundred percent (100%) of each Individual PAGA Payment shall be allocated to miscellaneous income for which an IRS Form 1099 will issue, if required by law, and will not count as earnings by Aggrieved Employees and will not be subject to local, state or federal tax withholdings.

8. Tax Treatment of PAGA Representative Service Award. One hundred percent (100%) of any such award shall be allocated to miscellaneous income for which the Settlement Administrator will issue to Plaintiff an IRS Form 1099, if required by law, and will not count as earnings by Plaintiff and will not be subject to local, state or federal tax withholdings.

9. Delivery of Funds to Settlement Administrator. Within thirty (30) calendar days following the Effective Date, Defendant shall deposit the PAGA Settlement Amount in a Qualified Settlement Fund maintained by the Settlement Administrator.

10. Distribution of Funds. Within ten (10) calendar days after receipt of Defendant's payment to fund the Settlement as provided in this Settlement Agreement, the Settlement Administrator shall do the following:

- a. Disburse the Court-approved Attorney's Fees and Costs to PAGA Counsel. PAGA Counsel agrees to provide the Settlement Administrator with an executed IRS Form W-9 before payments for Attorney's Fees and Costs are issued.
- b. Issue a check payable to the LWDA for seventy-five percent (75%) of the PAGA Settlement Fund.
- c. Calculate Individual PAGA Payments to be made to each Aggrieved Employee from the Net Settlement Amount, pursuant to Section C(6) above.
- d. Mail each Individual PAGA Payment along with a Settlement Notice to each respective Aggrieved Employee's last-known address, as determined pursuant to Section C(5) above. Any checks returned as non-deliverable on or before the Void Date will be sent promptly via regular First-Class U.S. Mail to any forwarding address affixed thereto. If no forwarding address is provided, the Settlement

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Administrator will promptly attempt to determine the correct address using a skip trace, or other search using the name, address or Social Security number of the Aggrieved Employee involved and will then perform a single re-mailing. Any check re-mailings will not extend the 180-day period to cash a check. Any checks issued to Aggrieved Employees shall remain valid and negotiable for one hundred and eighty (180) calendar days from the date of their issuance and then shall become void on the 181st day after issuance, *i.e.*, the Void Date. The Parties agree that, within fourteen (14) calendar days after the Void Date, any unclaimed funds as a result of the failure to cash Individual PAGA Payment checks prior to the Void Date shall be paid by the Settlement Administrator to the California State Controller's Office's Unclaimed Property Division to be held at unclaimed funds in the Aggrieved Employee's name.

11. Administration of Taxes. The Settlement Administrator will be responsible for issuing to Plaintiff, Aggrieved Employees, and PAGA Counsel Form 1099s or other tax forms as may be required by law for all amounts paid pursuant to this Settlement Agreement, and for forwarding all penalties to the appropriate government authorities.

12. Additional Court Filings: Dismissal. Plaintiff shall file a declaration from the Settlement Administrator within forty (40) days of the Effective Date confirming that the PAGA Settlement Amount has been distributed as described above. Assuming that all funds have been distributed, absent other directions from the Court, Plaintiff will file a request for dismissal with prejudice at the same time that he files that declaration.

### **D. Miscellaneous Provisions**

1. No Effect on Employee Benefits. Amounts paid to Plaintiff and other Aggrieved Employees pursuant to this Settlement Agreement do not count as earnings or compensation for purposes of any benefits (e.g., 401(k) plans or retirement plans) sponsored by Defendant.

2. Tax Liability. The Parties make no representation as to the tax treatment or legal effect of the payments called for hereunder, and the Parties are not relying on any statement, representation, or calculation by any of the Parties in this regard. Plaintiff understands and agrees that he will be solely responsible for the payment of any taxes and penalties assessed on the payments made to Plaintiff described herein. Each Party to this Settlement (for purposes of this section, the "Acknowledging Party" and each Party to this Settlement other than the Acknowledging Party, an "other Party") acknowledges and agrees that: (a) no provision of this Settlement Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor will any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended); (b) the Acknowledging Party (i) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Settlement, (ii) has not entered into this Settlement based upon the recommendation of any other Party or any attorney or advisor to any other Party, and (iii) is not entitled to rely upon any communication or disclosure by any attorney or advisor to any other Party to avoid any tax

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penalty that may be imposed on the Acknowledging Party; and (c) no attorney or adviser to any other Party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Settlement Agreement.

3. No Prior Assignments. The Parties and their counsel 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 any portion of any liability, claim, demand, action, cause of action or right herein released and discharged.

4. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein. Any Exhibits to this Settlement Agreement are an integral part of the Settlement.

5. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the entirety of the Parties' settlement terms, and no oral or written representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in the Settlement Agreement and its Exhibits.

6. Amendment or Modification. This Agreement may be amended or modified only by a formal written instrument signed by counsel for all Parties or their successors-in-interest.

7. Authorization to Enter into Settlement Agreement. The Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms. The person or persons signing this Settlement Agreement on behalf of Defendant represent and warrant that he/she/they are authorized to sign this Settlement Agreement on behalf of Defendant. Plaintiff represents and warrants that he is authorized to sign this Settlement Agreement and that he has not assigned any claim covered by this Settlement to a third party.

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

9. Binding on Successors and Assigns. This Settlement Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

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10. California Law Governs. All terms of this Agreement and Exhibits hereto will be governed by and interpreted according to the laws of the State of California.

11. Execution in Counterparts. This Agreement is subject only to the execution of all Parties and final approval of the Court. However, the Settlement Agreement may be executed in one or more counterparts by facsimile, electronic signature, or email which for purposes of this Settlement Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument. Any executed counterpart will be admissible in evidence to prove the existence and contents of this agreement.

12. Acknowledgement that the Settlement is Fair, Adequate and Reasonable. The Parties believe this Settlement is a fair, adequate and reasonable settlement of the Action and have arrived at this Settlement Agreement after arm's-length negotiations, taking into account all relevant factors, present and potential. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness, adequacy and reasonableness of this Settlement.

13. Captions. The captions and paragraph numbers in this Agreement are inserted for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the provisions of this Agreement.

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

15. Representation By Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Agreement, and that this Agreement has been executed with the consent and advice of counsel and reviewed in full. Further, Plaintiff and PAGA Counsel warrant and represent that there are no liens on the Agreement.

16. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Agreement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement Agreement, the Parties may seek the assistance of the Court to resolve such disagreement.

17. Publicity. The Parties agree that Plaintiff and PAGA Counsel will not issue any press release or other public or non-public representation regarding the settlement other than as necessary to obtain Court approval and effectuate the terms of the settlement. PAGA Counsel will not communicate with other wage-and-hour plaintiffs' counsel about this settlement, nor utilize it in any way in marketing or advertising materials or website.

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18. Notices. Unless otherwise specifically provided, all notices, demands or other communications in connection with this Agreement shall be in writing and deemed given (i) on the third business day after mailing, if sent via United States registered or certified mail, return receipt requested, (ii) upon delivery by nationally recognized overnight courier with written delivery confirmation; or (iii) by facsimile or email, addressed as follows:

| <b>To Plaintiff:</b>                                                                                                                                                                                                                | <b>To Defendant:</b>                                                                                                                                                                                                                                                    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Hunter Pyle<br>John J. Darin<br>Hunter Pyle Law<br>505 14th Street, Suite 600<br>Oakland, California 94612<br>Telephone: (510) 444-4400<br>Facsimile: (510) 444-4410<br>Email: hunter@hunterpylelaw.com<br>jdarin@hunterpylelaw.com | Mollie M. Burks<br>Linh T. Hua<br>John V. Ricca<br>Gordon Rees Scully Mansukhani, LLP<br>275 Battery St., Suite 2000<br>San Francisco, CA 94111<br>Telephone: (415) 986-5900<br>Facsimile: (415) 986-8054<br>Email: mburks@grsm.com<br>lhua@grsm.com<br>jricca@grsm.com |

**[Signatures follow on the next page]**

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It is hereby agreed.

Dated: 5/9/2023

**PLAINTIFF**

  
ID: 1VHcVPUR-m-EKmcnyVID6S4  
**Lavelle Alderson**

**DEFENDANT**  
**Off Duty Services, Inc.**

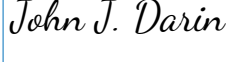
Dated: \_\_\_\_\_

By: Ernesto Daza  
Its: Chief Financial Officer

*Approved as to form:*

Dated: 5/9/2023

**HUNTER PYLE LAW**

  
ID: Cx3h1TDADwGqktUUEgKJAww  
Hunter Pyle  
John J. Darin  
Attorney for Plaintiff

*Approved as to form:*

Dated: \_\_\_\_\_

**GORDON REES SCULLY  
MANSUKHANI, LLP**

\_\_\_\_\_  
Mollie M. Burks  
Linh T. Hua  
John V. Ricca  
Attorney for Defendant

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It is hereby agreed.

**PLAINTIFF**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Lavelle Alderson

**DEFENDANT**

**Off Duty Services, Inc.**

Dated: 5/16/2023

\_\_\_\_\_  
By: Ernesto Daza  
Its: Chief Financial Officer

*Approved as to form:*

**HUNTER PYLE LAW**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Hunter Pyle  
John J. Darin  
Attorney for Plaintiff

*Approved as to form:*

**GORDON REES SCULLY  
MANSEKHANI, LLP**

Dated: 05/16/2023

\_\_\_\_\_  
Mollie M. Burks  
Linh T. Hua  
John V. Ricca  
Attorney for Defendant

## **EXHIBIT 1**

[PAGA Letter to LWDA]

May 12, 2021

***By Electronic Filing and Certified Mail (Return Receipt Requested) to:***

Labor and Workforce Development Agency  
Attn. PAGA Administrator  
455 Golden Gate Avenue, 9th Floor  
San Francisco, CA 94102

Off Duty Services, Inc.  
1908 Avenue D, A100  
Katy, TX 77493

Agent for Service of Process  
National Registered Agents, Inc. (C1941323)  
818 Seventh Street, Ste. 930  
Los Angeles, CA 90017

**RE: Notice of Labor Law Violations, CA Labor Code § 2699.3(a)  
*Lavelle Alderson v. Off Duty Services, Inc.***

Dear Labor and Workforce Development Agency and Employer:

We represent aggrieved employee Lavelle Alderson (“Plaintiff”), a former hourly non-exempt Security Guard employed in California by defendant Off Duty Services, Inc. (“Defendant”). The purpose of this letter is to comply with the statutory exhaustion requirements pursuant to California Labor Code section 2699.3(a)(1). Below we set forth our facts and theories which give rise to the wage and hour violations in this case.

**Facts and Theories Supporting Employers’ Violations of the Law**

Plaintiff is informed and believes that Defendant is a Texas-based security contractor providing security guard services for businesses and other entities in California and other states.

In order to fulfill their security contracts, Defendant employed Plaintiff and other aggrieved employees as Security Guards in California. Defendant requires its Security Guards to download an application called OfficerTRAK to their personal cell phones.

OfficerTRAK is an application developed by Off Duty Management, Inc.

Defendant requires employee Security Guards to use OfficerTRAK to clock in and out of their shifts. OfficerTRAK is equipped with location tracking that does not allow Security Guards to clock in or out until they are on site. Guards are not provided with any kiosk, computer, or

**May 12, 2021**  
**Page 2 of 2**

other method of clocking in and out at the jobsite. This means the application tracks Guards before their shifts. OfficerTRAK also tracks the location of Security Guards during their shifts.

Defendant did not provide Plaintiff with a cell phone for work purposes. Defendant required Plaintiff to download OfficerTRAK to his personal cell phone and to use his personal cell phone to clock in and out of shifts. Defendant also required Plaintiff to use his personal cell phone to communicate with his supervisors during and outside of shifts.

Defendant did not reimburse Plaintiff and other aggrieved employees for cell phone expenses incurred for these necessary business purposes. This practice violated Labor Code section 2802.

Based on the foregoing facts, Plaintiff is asserting PAGA claims on behalf of himself and all other aggrieved employees employed by Defendants in California from May 12, 2020, to the present for its Section 2802 violations.

### **Employers' Labor Code Violations**

Plaintiffs seek civil penalties under PAGA for the following Labor Code violations:

1. Violations of Labor Code section 2802 for failing to reimburse Plaintiffs and other aggrieved employees for business-related expenses due to the costs of cell phone use to receive Defendants' updates and instructions via text messages and emails.

Finally, please consider this letter to constitute notice of Plaintiffs' grievances on behalf of all aggrieved employees. (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 577, as modified (Jan. 12, 2005); *Tipton-Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 608).) We would like to provide Defendants with an opportunity to resolve these grievances. Accordingly, please notify us within 30 days if you intend to do so. If you need longer than that to respond, please let us know.

Thank you in advance for your attention to this matter.

Very Truly Yours,

HUNTER PYLE LAW



John J. Darin

**JD/ds**

## EXHIBIT 2

### ***NOTICE OF PAGA SETTLEMENT***

*Lavelle Alderson v. Off Duty Services, Inc.*

*(Superior Court of the State of California  
for the County of Alameda, Case No. RG21106370)*

«Barcode» «BarcodeString»  
SIMID «SIMID»  
«FirstName» «LastName»  
«Address1» «Address2»  
«City» «State» «Zip»

You are receiving this Notice because of a lawsuit brought by Lavelle Alderson (“Plaintiff”) against Off Duty Services, Inc. (“Defendant”) for civil penalties pursuant to the Private Attorneys General Act, Labor Code § 2698 et seq. (“PAGA”) based on alleged violations of the California Labor Code section 2802.

Defendant denies any and all wrongdoing or liability, but to avoid further time and expense in litigation, Defendant and Plaintiff have agreed to settle the case. The settlement resolves the claims described in the letter attached as Exhibit 1 on behalf of all current and former employees who worked for Defendant as security guards in the State of California between July 21, 2020 through [the date of final approval by the Court] (“Aggrieved Employees”).

According to Defendant’s records, you are an Aggrieved Employee and are therefore entitled to a share of the settlement. Enclosed is your settlement check. The settlement check shall remain valid for one hundred eighty (180) days.

## eSignature Details

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**Signer ID:** CxHh1TDADwGqiktUUEgKJAww  
**Signed by:** John J. Darin  
**Sent to email:** jdarin@hunterpylelaw.com  
**IP Address:** 67.188.226.106  
**Signed at:** May 9 2023, 10:38 am PDT

**Signer ID:** 1VHcvPQxFnFEKmchiyviD6S4  
**Signed by:** Lavelle Alderson  
**Sent to email:** shake881@gmail.com  
**IP Address:** 172.59.128.252  
**Signed at:** May 9 2023, 10:49 am PDT