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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF LOS ANGELES

13 ROBERT NUGENT, as an individual and
on behalf of all others similarly situated,

14 Plaintiffs,
15

16 v.

17 PAYSAFE PAYMENT PROCESSING
SOLUTIONS LLC, a Delaware limited
liability company; and DOES 1 through 50,
18 inclusive,

19 Defendants.
20
21

CASE NO. 21STCV25245

[Assigned for all purposes to the Hon. Elihu M.
Berle, Dept. 6]

**DECLARATION OF DENNIS S. HYUN IN
SUPPORT OF PLAINTIFF'S MOTION TO
APPROVE SETTLEMENT AGREEMENT
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT**

Date: March 17, 2022
Time: 11:00 a.m.
Dept.: 6
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1 I, Dennis S. Hyun, hereby declare and state as follows:

2 1. I am an attorney at law duly admitted to practice before all courts in the State of
3 California and am a member of the law firm of the Hyun Legal, APC, one of the attorneys of
4 record for Plaintiff Robert Nugent (“Plaintiff”), in the above-entitled action.

5 2. I have personal knowledge of the matters set forth herein, and if called upon as a
6 witness to testify thereto, I could and would competently do so.

7 3. I am one of the primary attorneys on this matter. My qualifications are as follows:
8 I received my JD from Loyola Law School in 2002. I was named to the Dean’s Honor List from
9 2000-2002. During law school, I was a Senior Research Editor for Loyola International &
10 Comparative Law Review. I was also a research assistant for Professor Levenson, an extern at
11 the U.S. District Court for the Honorable Audrey B. Collins, and a clerk at the U.S. Attorney’s
12 Office, Criminal Division. I also served as a summer law clerk at the white-collar criminal
13 defense firm, Lightfoot, Vandeveld, *et al.*, which became part of Crowell & Moring LLP. Upon
14 graduation from law school, I served as a research attorney in the Los Angeles County Superior
15 Court for the Hon. J. Stephen Czulger, the Hon. Owen Lee Kwong, the Hon. Laurie D. Zelon,
16 and the Hon. Joanne B. O’Donnell. After my clerkship ended, I practiced as a labor and
17 employment associate for the next 8 years, including most recently as a senior associate at
18 Seyfarth Shaw LLP, one of the most prestigious labor and employment law firms in the country,
19 as well as DLA Piper LLP (US), the largest law firm in the world, and Morgan, Lewis & Bockius
20 LLP. I am currently a shareholder in the law firm Hyun Legal, APC.

21 4. My primary practice has been employment law throughout my entire private
22 career. I have handled a number of wage and hour matters including class actions and individual
23 actions, on behalf of plaintiffs and defendants. I have a practice that encompasses cases in the
24 Orange County Superior Courts, the Los Angeles County Superior Courts, the San Diego County
25 Superior Courts, the United States District Courts for the Southern, Central, Northern and Eastern
26 Districts of California, the California Court of Appeal, and the Ninth Circuit.

27 5. I have served as Class Defense Counsel in a number of wage and hour class
28 actions, including but not limited to: *Bradley v. Networkers Int’l, LLC*, 211 Cal. App. 4th
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1 1129 (2012); *Chiu v. Citrix Systems, Inc.*, C.D. Cal. Case No. SACV11-01121 DOC (RNBx);
2 *Hodge v. Aon Insurance*, Los Angeles Sup. Ct. Case No. BC 265725; *Hoyng v. Aon Insurance*,
3 Los Angeles Sup. Ct. Case No. BC 377184; *Jimenez v. Allstate Ins. Co.*, C.D. Cal. Case No.
4 CV10-08486 JAK (FFMx); *Marino v. BP West Coast Products*, Los Angeles Sup. Ct. Case No.
5 BC 357987; *McEntee v. Ryland Homes*, Los Angeles Sup. Ct. Case No. BC 390868; *McKinstry v.*
6 *Accenture*, C.D. Cal. Case No. SACV11-1335 DOC (ANx); *Munoz v. Decron Properties*, Los
7 Angeles Sup. Ct. Case No. BC387644; and *Rodriguez v. BP West Coast Products*, Los Angeles
8 Sup. Ct. Case No. BC 350736. As defense counsel, I have taken over 50 class member and
9 individual/representative plaintiff depositions. I have drafted class certification and
10 decertification papers, including in *Bradley*, which was initially affirmed by the Court of Appeal,
11 but reversed pursuant to *Brinker v. Superior Court*, 53 Cal. 4th 1003 (2012).

12 6. Currently, I am and/or was lead plaintiff's counsel in the following wage and hour
13 class or representative actions: *Asad v. Chevron Stations, Inc.*, Los Angeles Sup. Ct. Case No.
14 BC470198; *Barrera v. Home Depot (USA), Inc.*, N.D. Cal. Case No.: C 12 5199 LHK (HRL);
15 *Bararsani v. Coldwell Banker*, Los Angeles Sup. Ct. Case No. BC495767; *Barreras v. Michaels*
16 *Stores, Inc.*, N.D. Cal. Case No. C12-04474 PJH; *Brown v. CVS Pharmacy, Inc.*, C.D. Cal. Case
17 No. 2:15-cv-07631-PSG-PJW; *Chatman v. RMI Int'l, Inc.*, Los Angeles Sup. Ct. Case No. BC
18 495755; *Chavez v. Converse, Inc.*, N.D. Cal. Case No. 15-cv-03746-NC; *Dynabursky v.*
19 *AlliedBarton, LLC, et al.*, C.D. Cal. Case No. 8:12-cv-02210-JLS-RNB; *Gonzales v. Wells Fargo*
20 *Bank, N.A.*, Los Angeles Sup. Ct. Case No. BC502826; *Lao v. H&M Hennes & Mauritz*, N.D.
21 Cal. Case No. 5:16-cv-333 EJD; *Lee v. The Pep Boys Manny Moe & Jack of California*, Los
22 Angeles Sup. Ct. Case No. BC 496075; *Magadia v. Wal-Mart Assocs.*, N.D. Cal. Case No. 5:17-
23 cv-00062-LHK; *Naranjo v. Bank of America, N.A.*, N.D. Cal. Case No. C 14-02748 LHK;
24 *Ortegon-Ramirez v. Cedar Fair*, Santa Clara Sup. Ct. Case No. 1-13-CV-254098; *Pace v.*
25 *PetSmart, Inc.*, C.D. Cal. Case No. SACV13-500 DOC; *Rodriguez v. NIKE Retail Services, Inc.*,
26 N.D. Cal. Case No. 5:14-CV-1508 BLF; *Stafford v. Brink's, Incorporated*, Case No. CV 14-
27 01352 MWF (PLAx) and *Vass v. Gardner Trucking*, San Joaquin Sup. Ct. Case No. 39-2013-
28 294819-CU-OE-STK. Additionally, in *Chavez*, Case No. 15-cv-03746-NC, *Dynabursky* Case No.

1 8:12-cv-02210-JLS-RNB, *Pace*, Case No. SACV13-500 DOC, *Rodriguez*, Case No. 5:14-CV-
2 1508 BLF, *Stafford*, Case No. 14-01352 MWF (PLAx), *Gonzales*, Los Angeles Sup. Ct. Case No.
3 BC502826, and *Magadia*, Case No. 5:17-cv-00062-LHK, I was certified as class counsel
4 pursuant to the plaintiff's motion for class certification. Further, in *Stafford* and *Magadia*, we
5 tried these certified class claims via bench trial and prevailed. In *Magadia*, we obtained a \$102
6 million judgment for the class against Walmart, which was reversed on appeal by the Ninth
7 Circuit. Moreover, I have been approved as class counsel in connection with numerous class
8 settlements.

9 7. From the inception of the case, Plaintiff's counsel has zealously represented the
10 interests of Plaintiff and the aggrieved employees. The settlement was obtained for the benefit of
11 the aggrieved employees, as opposed to the individual Plaintiff. Based on my review of all the
12 information, and based on my experience in wage and hour litigation, I believe this settlement to
13 be fair, adequate, and reasonable. Defendant Paysafe Payment Processing Solutions LLC
14 ("Defendant") (Plaintiff and Defendant, collectively, the "Parties") denies, and continue to denies,
15 these allegations and any other contention that Defendant engaged in any misconduct,
16 wrongdoing, or actionable conduct of any kind, including, but not limited to, any violation of the
17 California Labor Code. First, Defendant contends that it need not list the hourly rates and hours
18 worked for overtime adjustments based on the current precedent, including *Magadia v. Wal-Mart*,
19 999 F.3d 668, 679 (9th Cir. 2021), in which the Ninth Circuit held that an employer need not list
20 the hourly rates and hours worked for overtime wage adjustments so long as they were earned in
21 prior pay periods. Plaintiff's counsel was counsel in *Magadia*. In *Magadia*, Plaintiff's counsel
22 obtained a \$102 million judgment against Walmart, which was wiped out on appeal.

23 8. Pursuant to the PAGA, Plaintiff submitted a letter to the LWDA on May 11, 2020
24 (the "PAGA Notice"), asserting violations of Labor Code §§ 201-203, 226(a), 226.3, 233, 246,
25 and 558 against Defendant.

26 9. On July 9, 2021, Plaintiff filed an action in the Superior Court of the State of California
27 for the County of Los Angeles, styled *Robert Nugent, as an individual and on behalf of all others similarly*
28 *situated v. Paysafe Payment Processing Solutions LLC.*, Case No. 21STCV25245 (the "Action"), alleging

1 wage and hour claims for (1) violation of Cal. Labor Code section 226(a) (wage statements); (2) violation
2 of Cal. Labor Code sections 201-204, 233, and 246 (waiting time and sick pay); (3) violation of Cal. Labor
3 Code section 2698, *et seq.* (PAGA); and (4) unfair competition. The first, second and fourth causes of
4 action were brought on behalf of a putative class. However, subsequent to filing this action,
5 Defendant's counsel produced an arbitration agreement containing a class action waiver signed
6 by Plaintiff. Therefore, the Parties settled this action only on a representative basis pursuant to
7 the PAGA.

8 10. Through their respective legal counsel, the Parties have each independently
9 analyzed and investigated the facts and law relevant to the Lawsuit, including, but not limited to
10 data pertaining to the number of employees and pay periods at issue. After evaluating the
11 strengths and weaknesses of their respective positions, considering the time, expense, and risk
12 associated with litigating the Lawsuit to judgment, and engaging in arm's length settlement
13 negotiations, the Parties desire, and have agreed, to fully and finally settle any and all claims in
14 the Lawsuit.

15 11. The \$30,000.00 Settlement Amount equates to 28% of the maximum exposure at
16 the time of negotiations. Defendant represented that there were 553 total pay periods in which an
17 employee received sick pay wages, regardless of whether the employee earned any additional
18 non-discretionary remuneration. As such, this 553-pay period number is overinclusive.
19 Defendant also issued 203 wage statements containing payment of Bonus OT and Retroactive
20 wages to all aggrieved employees. Based on \$100 per violation based on the sick pay claim and
21 \$250 on the wage statement claim, the total exposure is \$55,300.00 and \$50,750.00 for each
22 claim, respectively. The raw average award to each employee is \$22.29 per employee based on
23 approximately 137 aggrieved employees. A true and correct copy of the Parties' Settlement
24 Agreement and Release ("Settlement Agreement") is attached hereto as Exhibit "A," which also
25 attaches the proposed Notice of PAGA Settlement and proposed approval order and judgment as
26 Exhibits A and B, respectively.

27 12. My current billing rate is at \$750.00 per hour. As set forth above, courts have
28 approved my hourly rate of \$650 since 2014. In cases approved in 2018 and 2019, the Santa
Clara County Superior Court approved my hourly rate of \$750 in *Hernandez v. Wells Fargo*

1 *Bank*, Santa Clara Sup. Ct. Case No. 16CV299319, and \$700 in *Huertas v. Chevron Stations*,
2 Santa Clara Sup. Ct. Case No. 17CV309996, and *Chavez v. Hugo Boss, Inc.*, Santa Clara Sup. Ct
3 Case No. 18CV322644. In 2019, the Honorable David Cunningham of the Los Angeles County
4 Superior Court approved my hourly rate of \$700 in connection with awarding attorneys' fees after
5 we prevailed on the certified class action in *Stafford*, Case No. BC532260. Moreover, in *Brown*,
6 C.D. Cal. Case No. 2:15-cv-07631-PSG-PJW, *Pace*, Case No. SACV13-500 DOC, *Barrera* N.D.
7 Cal. Case No.: C 12 5199 LHK (HRL), *Naranjo*, N.D. Cal. Case No. C 14-02748 LHK, *Ortegon-*
8 *Ramirez*, Case No. 1-13-CV-254098, and *Vass*, Case No. 39-2013-294819-CU-OE-STK, the
9 Courts in those cases found my fee request as reasonable, which was supported by a lodestar
10 based on my hourly rate of \$650. Further, Judge Gutierrez in *Brown v. CVS* noted as follows
11 when approving my hourly rate of \$650: "[t]he Court finds that, given the type of work performed
12 and the experience of counsel in this case, **Plaintiff's attorneys performed in the upper**
13 **quartile of similarly situated attorneys**, and so are entitled to fees in the top range of that
14 suggested by the Real Rate Report." *Brown v. CVS Pharmacy, Inc.*, No. CV15-7631 PSG
15 (PJWX), 2017 WL 3494297, at *8 (C.D. Cal. Apr. 24, 2017) (emphasis added). I have incurred a
16 total of 31.5 hours to date. As such, the total of my firm's attorney's fees through the approval
17 hearing is expected to be \$31,125.00 (41.5 hours x \$750). A true and correct copy of the
18 breakdown of my hours is attached hereto as Exhibit "B."

19 13. I have incurred \$229.20 in costs, which consists of one Court Connect appearance
20 and Case Anywhere fees.

21 14. On February 16, 2022, Plaintiff uploaded the instant motion, Settlement
22 Agreement, and proposed order to the LWDA's website. Attached hereto as Exhibit "C" is a true
23 and correct copy of the LWDA confirmation.

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

26 Executed on February 16, 2022, at Los Angeles, California.

27 

28 _____
DENNIS S. HYUN

EXHIBIT “A”

SETTLEMENT AGREEMENT

This Joint Stipulation of PAGA Action Settlement and Release (“Settlement”, “Agreement” or “Settlement Agreement”) is made and entered into by and between Plaintiff Robert Nugent (“Plaintiff”) and Defendant Paysafe Payment Processing Solutions LLC (“Defendant”). Plaintiff and Defendant herein are referred to collectively as the “Parties,” with each being referred to as a “Party.”

WHEREAS, on July 9, 2021, Plaintiff filed an action in the Superior Court of the State of California for the County of Los Angeles, styled *Robert Nugent, as an individual and on behalf of all others similarly situated v. Paysafe Payment Processing Solutions LLC*, Case No. 21STCV25245 (the “Action”), alleging wage and hour claims for (1) violation of Cal. Labor Code section 226(a) (wage statements); (2) violation of Cal. Labor Code sections 201-204, 233, and 246 (waiting time and sick pay); (3) violation of Cal. Labor Code section 2698, *et seq.* (PAGA); and (4) unfair competition;

WHEREAS, the Action involves the claims of approximately 137 current and former employees of Defendant;

WHEREAS, the Parties engaged in significant efforts to obtain the facts regarding the claims asserted, including the exchange of data regarding use of sick time by individuals Plaintiff intended to represent, a review of Defendant’s payroll data, and settlement negotiations;

WHEREAS, the Parties desire to settle, compromise, and avoid litigation relating to the claims described in the pleadings in the Action, and have agreed to settle the Action by agreement, 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:

I. DEFINED TERMS

RELATING TO CLASS MEMBERSHIP:

1. “PAGA Group Members” means all current and former non-exempt California employees who were paid sick pay by Defendant at any time from October 27, 2020 and December 17, 2021.

2. “PAGA Group” is the group of people comprised of the PAGA Group Members.

3. “PAGA Period” means the period from October 27, 2020 and December 17, 2021.

RELATING TO CLASS NOTICE:

4. “PAGA Group List” means the list of all PAGA Group Members that Defendant will diligently and in good faith compile from its records to accurately reflect the name, most recent mailing address as shown in Defendant’s records, Social Security number of PAGA Group Members as shown in Defendant’s records, and number of Eligible Pay Periods, and will be formatted in a readable Microsoft Office Excel spreadsheet. The PAGA Group List shall be kept confidential and shall not be provided to or shared with PAGA Group Counsel or Plaintiff.

5. “PAGA Settlement Notice” and “Notice” means the document attached as Exhibit A.

RELATING TO PAGA GROUP PAYMENT:

6. “Settlement Amount” means the maximum amount that will be paid under this Agreement, inclusive of all payments made to PAGA Group Members, to Plaintiff, to PAGA Group Counsel, to the California Labor and Workforce Development Agency (“LWDA”) in settlement of California Private Attorneys General Act, Cal. Lab. Code §§ 2698, *et seq.* claims, to the Settlement Administrator for Administrative Costs, which will total \$30,000 and no more. The Settlement Amount is allocated as follows: (a) a maximum of \$10,000.00 (33 1/3% of the Settlement Amount) for the payment of PAGA Group Counsel’s Attorney Fees; (b) a maximum of \$5,000.00 for the payment of PAGA Group Counsel’s Costs; (c) a maximum of \$2,500.00 for the payment of Service Award to Plaintiff ; and (d) an amount of not more than \$2,750.00 for Settlement Administration Costs. The PAGA Group Recovery after deduction of Administration Expenses, Attorneys’ Fees, Attorneys’ Expenses, and Individual Settlement Amount to Plaintiff (“Net PAGA Payment”) shall be allocated to Labor Code 2699 penalties, including other civil penalties specified in the Labor Code, of which 75% of the payment will be paid to the LWDA and 25% will be paid to the PAGA Group Members. The PAGA Group Members each will be issued a Form 1099 for their share of the PAGA payments. In the event that the maximum sums stated in subsections (a)-(d) are not approved and awarded by the Court, the unapproved and

awarded sums shall be added to the PAGA Group Recovery. None of these sums shall revert to Defendant.

- a. The Parties agree that the settlement is based on an estimate of 553 pay periods at-issue—i.e., 553 pay periods wherein aggrieved employees were paid sick pay (“Eligible Pay Periods”). In the event the number of Eligible Pay Periods increases by more than 10% (55 pay periods), the Net PAGA Payment shall increase proportionally by the number of Pay Periods in excess of 608 multiplied by the Pay Period value (i.e., Net PAGA Payment divided by 553 Pay Periods). Thus, for examples, should there be a 1% increase in Pay Periods, beyond the 10% threshold, in the PAGA period, then the Net PAGA Payment shall be increased by 1%.

7. “PAGA Group Recovery” means the Settlement Amount less any amounts awarded by the Court for PAGA Group Counsel’s Attorney Fees, PAGA Group Counsel’s Costs, to the State of California for its share of the PAGA claims, Individual Settlement Amount, and Settlement Administration Costs.

RELATING TO OTHER PAYMENTS:

8. “PAGA Group Counsel” means William L. Mader – Polaris Law Group and Dennis S. Hyun – Hyun Legal, APC.

9. “PAGA Group Counsel’s Attorney Fees” means attorneys’ fees agreed upon by the Parties and approved by the Court for PAGA Group Counsel’s fees incurred in investigation of the Actions, litigation of the Actions, resolution of the Actions, administration of the Settlement, including fees incurred through final approval and disbursement of payments under this Settlement and obtaining entry of the Judgment terminating the Actions, and which shall not exceed Ten Thousand dollars (\$10,000.00). Defendant agrees not to challenge or oppose PAGA Group Counsel’s motion or application for attorneys’ fees up to that amount.

10. “PAGA Group Counsel’s Costs” means attorneys’ costs (including expert fees and associated costs) incurred by PAGA Group Counsel in the litigation and settlement of the Action

and agreed upon by the Parties and approved by the Court, including, but not limited to, costs incurred in investigation of the Action, litigation of the Action, resolution of the Action, administration of the Settlement, including costs incurred through final approval and disbursement of payments under this Settlement and obtaining entry of the Judgment terminating the Actions, and which shall not exceed Five Thousand dollars (\$5,000.00). Defendant agrees not to challenge or oppose PAGA Group Counsel's motion or application for costs up to that amount.

11. "Service Award" means the amount that may be paid upon Court approval to Plaintiff in recognition of his efforts and work in prosecuting the Action on behalf of the PAGA Group Members and for his general release of claims, including a waiver of Civil Code § 1542, which shall not exceed Two Thousand Five Hundred dollars (\$2,500.00). The payment is in addition to the Plaintiff's share of the PAGA Group Recovery, and is in consideration for Labor Code claims Plaintiff has brought on his own behalf and in a non-representative capacity. Defendant shall issue an IRS 1099 form for the Service Award to be classified as MISC income.

12. "Settlement Administrator" means a third-party class action settlement administrator agreed to by the Parties and approved by the Court for the purposes of administering this Settlement. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

13. "Settlement Administration Costs" means the costs payable from the Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, calculating estimated amounts per PAGA Group Member, distributing the Settlement Amount, providing necessary reports and declarations, and other duties and responsibilities set forth herein to process this Settlement, and as requested jointly by the Parties, and which shall not exceed Two-Thousand Seven Hundred and Fifty dollars (\$2,750.00).

RELATING TO RELEASED CLAIMS AND RELEASED PARTIES:

14. "PAGA Group Member Release" means the following release of claims, which is given by each PAGA Group Member:

I hereby fully, forever, irrevocably, and unconditionally release and discharge Paysafe Payment Processing Solutions LLC, as well as its predecessors, successors, parents, affiliated and subsidiary corporations (including Lenders Merchant Services, LLC), limited liability companies, limited partnerships, general partnerships and limited liability partnerships, present or past officers, directors, employees, partners, members, managers, representatives, principals, insurers, co-insurers, re-insurers, shareholders, agents, assigns, and attorneys (collectively referred to hereinafter as the “Released Parties”), from all PAGA claims/recovery based on alleged violations of sections 201-204, 226, 233, 246, and 2698 the Labor Code, within the PAGA Periods, and all potential claims reasonably arising out of the facts alleged in Plaintiff’s Complaint and/or PAGA Notice. The Released Claims shall exclude claims for unemployment insurance, disability, and workers’ compensation, and claims outside of the PAGA Period. Further, Released Claims in this Settlement Agreement shall not release any non-PAGA class claims or release any individual claims other than Plaintiff’s individual released claims.

RELATING TO ORDER OF APPROVAL OF PAGA SETTLEMENT:

15. “Settlement Court” means the California Superior Court for the County of Los Angeles, and specifically the courtroom in which the Action, Case No. 21STCV25245 is pending.

16. “Effective Date” means the date the Settlement Court has signed and entered the Order of Approval of PAGA Settlement and Judgment Thereon (Exhibit B hereto) and the Settlement Court’s Order of Approval becomes final and the PAGA claim in the Action is dismissed, assuming there is no appeal of that Order of Approval. The Settlement Court’s Order of Approval shall become final upon the latter of: (i) if no appeal is filed, the expiration of the time for the filing or noticing of any appeal from, or other challenge to, the Settlement Court’s Order of Approval (which time period shall not be less than 60 calendar days after the Settlement Court’s Judgment is entered); (ii) the date of affirmance of an appeal of the Order of Approval becomes final under the California Code of Civil Procedure; or (iii) the date of final dismissal of any appeal from the Order of Approval or the final dismissal of any proceeding on review of any court of appeal decision relating to the Order of Approval.

II. ADDITIONAL TERMS

RELATING TO ORDER OF APPROVAL OF PAGA SETTLEMENT:

17. Notice to the LWDA. The Parties' settlement is expressly conditioned upon the Settlement Court's approval of the Settlement. Plaintiff shall be responsible for timely providing notice to the Labor and Workforce Development Agency and providing Defendant's counsel confirmation of same, including submission of the proposed settlement contemporaneously with the filing of the motion for preliminary approval, under California Labor Code § 2699(l)(2), and submission of any judgment within 10 days after entry of same, under California Labor Code § 2699(l)(3).

18. Settlement Court Approval. The Parties recognize in accordance with Labor Code §2699(l)(2) that Court approval is required in the event of any settlement of a PAGA action ["The superior court shall review and approve any settlement of any civil action filed pursuant to this part."]. However, as explained in *Arias v. Superior Court*, 46 Cal.4th 969 (2009), the Parties are not obligated to follow the class action procedural rules in PAGA cases and therefore need not obtain approval of the PAGA settlement through a motion for primary or final approval. Instead, in order to comply with the requirements of Labor Code § 2699, by January 20, 2022, Plaintiff shall file a motion to the Settlement Court identifying the key terms of the Settlement and requesting that the Court approve the PAGA Penalties provided for in this Settlement Agreement ("Approval Motion"). Plaintiff shall provide for review the Approval Motion to Defendant at least seven (7) calendar days prior to filing, and shall not file without Defendant's approval. The Approval Motion submitted to the Settlement Court shall request the entry of an order approving the Settlement Amount provided for in this Settlement.

19. If the Settlement Court should fail to approve the Settlement as agreed upon by the Parties, the Parties shall coordinate efforts to address the Court's questions or concerns and, if agreement is reached between the Parties, resubmit the Approval Motion or a noticed motion if required by the Court. If the Court does not approve the settlement after five attempts from the Parties, unless the Parties specifically agree to continue with their coordinated efforts to obtain Court approval, (a) the Court fails to approve this Settlement in the form agreed to by the Parties

(except for the amount of attorneys' fees or costs requested), or (b) the Court's approval of this Settlement is reversed, modified, or declared or rendered void, then (i) this Settlement shall be considered null and void; (ii) neither this Settlement nor any of the related negotiations or proceedings shall be of any force or effect; and (iii) all Parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court. Invalidation of any material portion of this Settlement, except for the amount of attorneys' fees and costs, shall invalidate this Settlement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

RELATING TO SETTLEMENT ADMINISTRATION:

20. Delivery of the PAGA Group List. Within fifteen (15) calendar days after the Effective Date, Defendant will compile and send a list of all PAGA Group Members to the Settlement Administrator containing: (1) name; (2) last known home address; (3) number of Eligible Pay Periods as an Aggrieved Employee during the PAGA Period; and (4) social security number ("PAGA Group List"). The format and transmittal of the list shall be in excel format and determined by the requirements of the Settlement Administrator. The Settlement Administrator shall agree not to share the names, addresses or other contact information, or social security numbers (in whole or in part) with any persons or entity, and specifically shall not share such information with PAGA Group Counsel.

21. Delivery of Settlement Amount. Within fifteen (15) calendar days after the Effective Date, Defendant shall transmit the entire Settlement Amount due under this Settlement Agreement to the Settlement Administrator via wire transfer. The Settlement Administrator shall release the PAGA Group Counsel's Attorneys' Fees & Costs to PAGA Counsel within five (5) calendar days of receipt of the Settlement Amount. The Settlement Administrator will also release Individual Settlement Amount to Plaintiffs within five (5) calendar days of receipt of the Settlement Amount.

22. Confirmation of Receipt. Within three (3) days of receipt of the PAGA Group List, the Settlement Administrator shall send an email to the Parties confirming receipt of the PAGA Group List and indicating the number of PAGA Group Members and the number of Eligible Pay Periods included in the data.

23. Notice by First-Class U.S. Mail. Within thirty (30) calendar days after the Effective Date, the Settlement Administrator shall mail to the last known address of all PAGA Group Members via U.S. First Class Mail PAGA Payments with a simple cover letter (See Exhibit A hereto), which has been approved by all Parties, stating only that the payment is made pursuant to a court-approved settlement of claims made against Defendant, by which the Defendant denied liability and no finding of liability is made (“PAGA Settlement Notice”). The mailing will include directions to the Postmaster to forward the payment checks and return all undeliverable payment checks to the Settlement Administrator. For any returned envelopes from this mailing as non-deliverable on or before 30 days after mailing, the Settlement Administrator will use any forwarding address provided to re-mail the returned envelope and, if no forwarding address is provided, will check with the National Change of Address database and perform a skip trace to identify an address to which the envelope may be forwarded. The Settlement Administrator shall undertake such effort and further mailing within no later than 5 days after receipt of the returned envelope. The Settlement Administrator will maintain a report of the date of such re-mailings of the PAGA Settlement Notice. No additional mailings shall occur. It will be conclusively presumed that a PAGA Group Member’s Individual Settlement Amount was received if the payment check has not been returned within thirty (30) days of the original mailing of the payment check. The date of the initial mailing of the payment check shall be conclusively determined according to the records of the Settlement Administrator.

24. Payment to LWDA. The Settlement Administrator shall ensure that 75% of the Net PAGA Payment is paid to the LWDA.

25. Cashing of Checks. Settlement checks shall remain valid and negotiable for one hundred eighty (180) calendar days from the date of their issuance. If there are uncashed checks following this period, the uncashed funds shall escheat to the State Controller’s Office in the name of the PAGA Group Members who did not cash their checks.

26. Release Given by Each Settlement Member. Each Settlement Member consents to, and grants, the Settlement Member Release as defined above.

27. Continued Jurisdiction. After entry of the Settlement Judgment, the Settlement Court will have continuing and exclusive jurisdiction solely for purposes of addressing: (a) the

interpretation and enforcement of the terms of the Settlement; (b) Settlement administration matters; and (c) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement. In the event that either Party brings an action to enforce the terms of this Agreement, the prevailing party shall be entitled to its/his reasonable attorneys' fees and costs.

28. Allocation of the Net PAGA Payment and Reporting of Same to the Settlement Administrator. The Net PAGA Payment shall be allocated among PAGA Group Members by dividing the number of pay periods that each PAGA Group Member used sick pay within the PAGA Period ("Eligible Pay Periods") by the total pay periods that all PAGA Group Members used sick pay within the PAGA Period, and multiplying that fraction by 25% of the Net PAGA Payment to determine that PAGA Group Member's total personal recovery (the "Individual Settlement Member Total Recovery"). The Individual Settlement Member's Total Recovery shall for tax purposes be designated as non-wages and interest and shall be reported using a Form 1099. The Individual Settlement Member Total Recovery and allocation shall be calculated by Settlement Administrator.

29. Administration of Tax Forms. The Settlement Administrator will be responsible for issuing to Plaintiff, Settlement Members, and Class Counsel any 1099 or other tax forms as may be required by law for all amounts paid pursuant to this Settlement, and for forwarding all payroll taxes and penalties to the appropriate government authorities.

30. Tax Allocation. For tax reporting purposes, any payments made to Settlement Members (excluding Individual Settlement Amounts) shall be allocated 80% as penalties and 20% as interest and will be reported using an IRS Form 1099.

31. Tax Liability. Defendant makes no representation as to the tax treatment or legal effect of the payments called for hereunder, and Plaintiffs and PAGA Group Members are not relying on any statement, representation, or calculation by Defendant or by the Settlement Administrator in this regard. Plaintiff and PAGA Group Members understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on the payments described herein and will hold Defendant free and harmless from and against any claims resulting from treatment of such payments as non-taxable damages. Each Party to this Settlement acknowledges and agrees that (1) no provision of this Settlement, 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 CFR Part 10, as amended); (2) each Party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Settlement, (b) has not entered into this Settlement based upon the recommendation of any other Party or any attorney or advisor to any other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or advisor to any other Party to avoid any tax penalty that may be imposed on the Party; and (3) no attorney or advisor to any 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 Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

32. Certification of Completion. Upon completion of administration of the Settlement, the Settlement Administrator will provide a written declaration under oath to certify such completion to the Court and counsel for all Parties.

33. 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.

34. Separate Release of Claims & Rights by Plaintiff. Plaintiff hereby agrees to the additional following General Release in exchange for the consideration provided herein, including the ability to seek Service Award: As of the Effective Date, and in consideration of Defendant's promises and agreements as set forth herein, Plaintiff hereby fully releases the Released Parties from any and all Released Claims and also generally release and discharge the Released Parties from any and all claims, demands, obligations, causes of action, rights, or liabilities of any kind which have been or could have been asserted at any time prior to that Plaintiff's execution (signature) of this Agreement against the Released Parties arising out of any occurrence or failure to act, including but not limited to claims for wages, restitution, penalties, interest, retaliation, defamation, discrimination, harassment or wrongful termination of employment. This release

specifically includes any and all claims, demands, obligations and/or causes of action for damages, restitution, penalties, interest, and attorneys' fees and costs (except as provided by the Settlement Agreement) relating to or in any way connected with the matters referred to herein, whether or not known or suspected to exist, and whether or not specifically or particularly described herein. Specifically, Plaintiff waives all rights and benefits afforded by California Civil Code Section 1542, 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.

Plaintiff acknowledges and agrees that all of the claims for wage and hour and payroll practice violations in the Action are disputed, and that payment under the Settlement constitutes payment in full of any and all amounts allegedly due to them. Plaintiff acknowledges and agrees that California Labor Code section 206.5 is not applicable. That section provides in pertinent part:

An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made.

35. Nullification of Settlement Agreement. In the event that: (a) the Settlement Court does not finally approve the Settlement as provided herein; or (b) the Settlement does not become final for any other reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null and void. Any order or judgment entered by the Settlement Court in furtherance of this Settlement Agreement will likewise be treated as void from the beginning.

36. Arbitration Agreements. The Parties acknowledge that Defendant has entered into Dispute Resolution Agreements with arbitration and class waiver provisions. To the extent necessary, Defendant chooses not to enforce its arbitration agreements with PAGA Group Members solely for the purpose of effectuating this Settlement Agreement.

37. Exhibits Incorporated by Reference. The terms of this Settlement 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 are an integral part of the Settlement.

38. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements with respect to the subject matter hereof may be deemed binding on the Parties.

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

40. Authorization to Enter into Settlement Agreement. The Parties and their counsel warrant and represent their counsel are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. 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, the Parties may seek the assistance of the Settlement Court to resolve such disagreement.

41. 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.

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

43. Execution and Counterparts. This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed by DocuSign and in one or more counterparts. All executed counterparts and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

44. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Actions and have arrived at this Settlement after arm's-length negotiations and in the context of adversarial litigation, 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 and reasonableness of this Settlement.

45. Waiver of Certain Appeals. In the event the Court approves this Settlement, the Parties agree to waive appeals concerning this Settlement.

46. Captions. The captions and section numbers in this Settlement 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 Settlement Agreement.

47. Waiver. No waiver of any condition or covenant contained in this Settlement 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.

48. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one Party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

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

50. 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 Settlement Agreement.

51. Limitation on Communications With the PAGA Group Members: The PAGA Notice letter will be the approved manner for communicating with the PAGA Group Members. Plaintiff and PAGA Group Counsel shall not issue any press release or make any other public representation regarding the Settlement, including posting any information pertaining to this Settlement on social media (Instagram, Facebook, Twitter, LinkedIn, YouTube, Google+, Tumblr, etc.), or on PAGA Group Counsel's websites.

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

It is hereby agreed:

Robert Nugent
Date: _____, 2022

PAYSAFE PAYMENT PROCESSING SOLUTIONS LLC

By:
Its:
Date: _____, 2022

Approved as to form:

POLARIS LAW GROUP


By: William L. Mader
Attorney for Plaintiff Robert Nugent
Date: February 16, 2022

HYUN LEGAL, APC



By: Dennis S. Hyun

Attorney for Plaintiff Robert Nugent

Date: February 16, 2022

Greenberg Traurig, LLP

By: Mark D. Kemple

Attorney for Defendant Paysafe

Payment Processing Solutions LLC

Date: _____, 2022

EXHIBIT A

(Notice of PAGA Settlement)

[CLAIMS ADMINISTRATOR LETTERHEAD]

Mailing Date

NOTICE OF SETTLEMENT

Re: Robert Nugent, as an individual and on behalf of all others similarly situated v. Paysafe Payment Processing Solutions LLC., Los Angeles Superior Court Case No. 21STCV25245

[claims admin info]

Dear Sir or Madam:

The enclosed payment is made to you pursuant to a court-approved settlement between Plaintiff Robert Nugent (“Plaintiff”), on behalf of himself and the people of the State of California and as “aggrieved employees” under the Labor Code Private Attorneys General Act of 2004, section 2698, et seq. (“PAGA”), and Defendant Paysafe Payment Processing Solutions LLC (“Defendant”) in the above-referenced matters (the “Actions”) in which Plaintiffs made claims against Defendant.

Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the above referenced matter, and further denies that the above-referenced action is appropriate for representative treatment for any purpose other than settling the above-referenced matter. No finding of liability has been made. The Parties have reached a settlement, whereby all current and former non-exempt California employees who were paid sick pay by Defendant at any time from October 27, 2020 and December 17, 2021 will receive a portion of the settlement in exchange for the following release:

I hereby fully, forever, irrevocably, and unconditionally release and discharge Paysafe Payment Processing Solutions LLC and Lenders Merchant Services, LLC, as well as their predecessors, successors, parents, affiliated and subsidiary corporations, limited liability companies, limited partnerships, general partnerships and limited liability partnerships, present or past officers, directors, employees, partners, members, managers, representatives, principals, insurers, co-insurers, re-insurers, shareholders, agents, assigns, and attorneys (collectively referred to hereinafter as the “Released Parties”), from all PAGA claims/recovery based on alleged violations of sections 201-204, 226, 233, 246, and 2698 the Labor Code, within the PAGA Periods, and all potential claims reasonably arising out of the facts alleged in Plaintiff’s Complaint and/or PAGA Notice. The Released Claims shall exclude claims for unemployment insurance, disability, and workers’ compensation, and claims outside of the PAGA Period. Further, Released Claims in this Settlement Agreement shall not release any non-PAGA class claims or release any individual claims other than Plaintiff’s individual released claims.

The enclosed check represents your portion of the settlement recovery. Your enclosed check is valid for 180 days from the date of issuance. For tax purposes, an IRS Form 1099 will be issued to you for this payment.

EXHIBIT B

(Proposed Order of Approval)

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6 SUPERIOR COURT OF THE STATE OF CALIFORNIA
7 FOR THE COUNTY OF LOS ANGELES

8 ROBERT NUGENT, as an individual and on
9 behalf of all others similarly situated,

10 Plaintiffs,

11 v.

12 PAYSAFE PAYMENT PROCESSING
13 SOLUTIONS LLC, a Delaware limited
14 liability company; and DOES 1 through 50,
15 inclusive,
16 Defendants.

CASE NO. 21STCV25245

[Assigned for all purposes to the Hon. Elihu M. Berle,
Dept. 6]

**[PROPOSED] ORDER OF APPROVAL
AND FINAL JUDGMENT**

17 The Court has received and considered the Approval Motion filed by Plaintiff, as an individual,
18 and on behalf of the people of the State of California and as an “aggrieved employee” acting as a private
19 attorney general under the Labor Code Private Attorneys General Act of 2004, § 2699, *et seq.* (“PAGA”)
20 in the above captioned action filed on July 9, 2021.

21 **NOW THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:**

22 The Court hereby approves the Parties’ proposed PAGA Settlement and hereby enters FINAL
23 JUDGMENT in favor of Plaintiff and the Aggrieved Employees in the amount of \$30,000. Of this,
24 \$_____ is awarded as attorney fees and costs paid to PAGA Counsel, \$2,500.00 is awarded as
25 Plaintiff’s Service Award, and \$_____ is awarded as administrative costs paid to the claims
26 administrator.

27 This Judgment is entered as part of a Settlement and the Court has made no findings of liability or
28 provided any notice of PAGA violations.

1 The Aggrieved Employees waive any rights to appeal this Judgment.

2 This Court further orders that the First, Second and Fourth Causes of Action be dismissed without
3 prejudice as to all putative class members and with prejudice as to Plaintiff as an individual.

4 This Judgment is intended to be a final disposition in its entirety of the above captioned action.

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6 **IT IS SO ORDERED.**

7 Dated: _____, 2022

8 _____
9 Hon. Elihu M. Berle
10 Judge of the Superior Court
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EXHIBIT “B”

Description of Task	Time
Review and revise PAGA notice	1.5
Draft complaint	4.5
Review client documents	2.4
Draft case management conference statement	3.2
Attend case management conference	1.1
Draft notice of ruling at cmc	1.2
Draft declaration ISO PAGA motion	2.5
Draft proposed order	2.5
Review and revise settlement agreement	5.2
Revise PAGA notice	2.5
Draft motion for approval	4.9
Total	31.5

EXHIBIT “C”