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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

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

Plaintiff,

vs.

MISSION BAY MANAGEMENT, LLC, a
Delaware limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 37-2021-00035853-CU-OE-CTL

[Assigned for all purposes to the Honorable
Eddie C. Sturgeon, Dept. C-67]

**DECLARATION OF SIMON L. YANG IN
SUPPORT OF PLAINTIFF'S UNOPPOSED
EX PARTE APPLICATION RE: PRIVATE
ATTORNEYS GENERAL ACT
SETTLEMENT APPROVAL**

Date: September 21, 2021

Time: 8:30 a.m.

Dept.: C-67

Complaint Filed: August 20, 2021

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

09/17/2021 at 09:28:00 AM
Clerk of the Superior Court
By Kristin Sorianosos, Deputy Clerk

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I, Simon L. Yang, declare as follows:

1. I am an attorney admitted to practice in the State of California and, with the law firm Diversity Law Group, P.C., am counsel of record in this matter. I make this declaration on the basis of my own personal knowledge, except as to those matters stated on information and belief and, as to those matters, I believe them to be true. If called as a witness, I could testify competently as to the facts stated in this declaration.

PROCEDURAL HISTORY

2. On or about June 1, 2021, Plaintiff, Chris Alvarado, submitted written notice under Labor Code § 2699.3 (the “PAGA Notice”) to the LWDA and Defendant, Mission Bay Management, LLC. As set forth in the PAGA Notice, Plaintiff alleged that Defendant failed to pay all similarly situated aggrieved employees their earned wages in a timely manner in violation of California Labor Code § 204. Specifically, Defendant failed to pay Plaintiff and other employees their earned wages within seven days of the last day of the pay period.

3. From the inception of the case, Plaintiff's counsel has zealously represented the interests of the aggrieved employees. Shortly after Plaintiff submitted the PAGA Notice to Defendant, the Parties met and conferred regarding the possibility of an early informal resolution. The Parties agreed to explore the possibility of an informal resolution or schedule a mediation before expending resources on litigation.

4. Defendant asserted defenses to the alleged Labor Code violation, and Plaintiff responded about the applicable law. Defendant disagreed about the law and claimed it would seek summary judgment on liability or proceed to trial. Defendant provided Plaintiff's Counsel with information and documents pertaining to Plaintiff and other Aggrieved Employees and the claims in the Action in order for Plaintiff's Counsel to evaluate Plaintiff's allegations and the potential value the PAGA claim.

5. Following further arm's length negotiations and discussions, the Parties agreed to settlement terms memorialized in the Settlement Agreement, attached hereto as **Exhibit A** (the "Settlement"). The Settlement resolves the State's claims for penalties for Aggrieved Employees,

1 defined as “all current and former employees who were paid wages in at least one pay period in
2 California for Defendant at any time between May 28, 2020 and May 30, 2021.” Based upon
3 Defendant’s records, there are 345 Aggrieved Employees during the PAGA Period. The
4 Settlement is based on the material representation that 345 Aggrieved Employees were paid
5 wages in 4,429 pay periods during the PAGA Period.

6 6. Pursuant to the terms of the Settlement, on August 20, 2021, Plaintiff filed a
7 PAGA complaint in the Superior Court of California, County of San Diego (the “Action”). The
8 Complaint alleges a single cause of action under PAGA for alleged violations of Labor Code §
9 204 violation.

10 **EX PARTE BASIS**

11 7. The instant *Ex Parte* request is warranted because an expedient approval of this
12 Settlement will provide a direct benefit to the impacted employees at issue. The “fixes” provided
13 by the Settlement guarantee future Labor Code compliance and an immediate monetary
14 recovery. An expedient approval also allows Defendant—who quickly “stepped up” to address
15 these issues and ensure Labor Code compliance as PAGA seeks—the opportunity to move on,
16 and focus on future business. Moreover, the ability for some former employees to receive their
17 monetary recovery may be adversely impacted by delay (e.g., employees who may move or
18 change their mailing address without a “forwarding address”).

19 8. The instant *Ex Parte* request is also warranted based on direction from judges of
20 this Court, who have advised that PAGA settlement approvals need not be delayed by motion
21 hearing date availability and also need not take motion hearing dates from other matters
22 requiring noticed motion.

23 **THE PROPOSED SETTLEMENT**

24 9. The Settlement requires Defendant to pay the gross Settlement Amount of
25 \$125,000.00. The Settlement Amount is non-reversionary and is allocated entirely to fund a
26 PAGA Penalty Fund of \$62,250.00 and to pay agreed-upon Attorneys’ Fees, Attorneys’
27 Expenses, an Enhancement Award to Plaintiff, and Settlement Administration Costs.

28 10. The PAGA Penalty Fund will be distributed to the LWDA and Aggrieved

1 Employees. 75% of the PAGA Penalty Fund will be distributed to the LWDA; 25% will be
2 distributed to Aggrieved Employees. The portion of the PAGA Penalty Fund distributed to
3 Aggrieved Employees will be distributed on a pro rata basis, based on the number of pay periods
4 each individual Aggrieved Employee earned wages during the PAGA Period.

5 11. Based on the 4,429 pay periods at issue, the Settlement requires Defendant to pay
6 more than \$28 per pay period. As discussed above, Aggrieved Employees will be allocated
7 payments from the PAGA Penalty Fund in accordance with the PAGA statute, and Aggrieved
8 Employees, on average, would each receive \$45.11. The amount any particular Aggrieved
9 Employee would receive will depend on the number of relevant pay periods for the Aggrieved
10 Employee. This is fair, as it directly allocates greater penalties to Aggrieved Employees who
11 have allegedly suffered more Labor Code violations.

12 12. As part of the Settlement, Defendant does not object to the Court's approval of
13 attorneys' fees of approximately 35% of the Settlement Amount, or \$43,750.00, plus
14 reimbursement of documented litigation costs. Also, as part of the Settlement, Defendant does
15 not object to the Court's approval of an Enhancement Award of \$10,000.00, for Plaintiff's
16 additional general release of claims and waiver of Civil Code § 1542.

17 13. The Settlement provides for the payment of the fees and expenses reasonably
18 incurred by the Settlement Administrator. The Parties have agreed to utilize Phoenix Settlement
19 Administrator to administer the Settlement, with the administration costs not to exceed
20 \$4,000.00.

21 **POTENTIAL CIVIL PENALTIES**

22 14. Using the data provided by Defendant, I performed a comprehensive liability
23 analysis. Pursuant to Labor Code § 210, \$100 is the maximum PAGA penalty available per pay
24 period. Applying a civil penalty of \$100 for each of the 4,429 pay periods at issue, Defendant's
25 maximum exposure for penalties equals \$442,900.00 (\$100 x 4,429).

26 15. Defendant has denied violation of any applicable laws and liability for any claims
27 asserted in the Action. Defendant also claimed it would seek summary judgment on liability or
28 proceed to trial. Although I am reasonably confident that Plaintiff would prevail at trial, I

1 recognize that proceeding in litigation entails significant risk on the underlying merits of
2 Plaintiff's theory, in addition to the still-developing law under PAGA.

3 16. Defendant also argued that even if the Court ultimately found the Defendant
4 violated Labor Code § 204, the alleged violation is a technical one and the Court has discretion
5 under PAGA to reduce the maximum allowable PAGA penalties at its discretion. Defendant also
6 argued that the COVID-19 pandemic and related shutdown orders severely impacted its finances.
7 Considering the risk of Defendant's potential inability to pay further supports the fairness of the
8 proposed settlement. (*Id.*) Even if Plaintiff were to prevail, the State and Aggrieved Employees
9 could be awarded less than the maximum potential recovery.

10 17. The maximum penalty calculation assumes that Plaintiff will prevail on the
11 merits. As discussed above, Plaintiff's claims are contested. Nonetheless, the proposed
12 Settlement achieves an excellent result for the State. The proposed Settlement Amount exceeds
13 28% of the maximum potential penalties, not considering any reduction by the Court. In my
14 experience, the proposed Settlement exceeds, both in terms of the total dollar amount and as a
15 percentage of overall settlement value, the typical PAGA settlement.

16 18. I strongly believe that Plaintiff can prevail at trial. However, all things considered,
17 including the substantial benefits to be received pursuant to the compromise and settlement of
18 the litigation, I believe that settlement on the terms set forth in the Settlement is appropriate and
19 in the best interests of the State.

20 **ATTORNEY EXPERIENCE**

21 19. My firm has a great deal of experience in wage and hour class action litigation
22 and has had PAGA settlements approved and been approved as class counsel in a number of
23 matters.

24 20. I am one of the primary attorneys on this matter. My qualifications are as follows:
25 After completing my undergraduate education at The Wharton School at the University of
26 Pennsylvania in 2004 with concentrations in Management and Human Resources, I continued
27 studying labor and employment issues by enrolling in post-graduate education at the School of
28 Labor and Employment Relations at the University of Illinois. I determined before enrolling in

1 law school that I wanted to practice labor and employment law in California. I thus received my
2 J.D. from UCLA School of Law in 2008. During law school, I spent the summer of 2006 with
3 the National Labor Relations Board, Region 21, and the summer of 2007 with the law firm of
4 Seyfarth Shaw LLP in 2007.

5 21. Upon graduating from law school in 2008, I practiced labor and employment law
6 at Seyfarth Shaw LLP, a well-regarded labor and employment firm. I was elevated to partner in
7 2019. My practice focused on wage and hour class, collective, and representative actions, with a
8 particular emphasis on matters involving the Labor Code Private Attorneys General Act of 2004
9 (“PAGA”). During my time with Seyfarth Shaw LLP, I was a primary attorney on numerous
10 wage and hour class, collective, and representative actions that resulted in published opinions,
11 including for example, *Ehret v. WinCo Foods, LLC*, 26 Cal. App. 6th 1 (2018) (affirming
12 summary judgment in PAGA action based on absence of meal period violations in light of
13 collectively bargained waiver of meal periods on shifts of not more than six hours), and *Ruelas v.*
14 *Costco Wholesale Corporation*, 67 F. Supp. 3d 1137 (C.D. Cal. Sept. 8, 2014) (obtaining
15 dismissal of wage statement allegations in PAGA representative action). I was also able to obtain
16 experience litigating representative claims or wage and hour matters through trial and appeal.
17 *E.g.*, *Velazquez v. Costco Wholesale Corporation*, 603 Fed. App’x 584 (9th Cir. Mar. 25, 2015)
18 (reversing award of waiting-time penalties based on lack of evidence supporting any willful
19 failure to pay wages); *Ward v. Costco Wholesale Corporation*, 552 Fed. App’x 631 (9th Cir. Jan.
20 9, 2014) (affirming bench-trial judgment in favor of defendant against named plaintiff and 18
21 opt-in plaintiffs in collective action with involving deductions from final paychecks). I also
22 litigated class certification on numerous matters, including matters before this court. *E.g.*,
23 *Martinez v. Guess?, Inc.*, Los Angeles Superior Court Case No. BC 498326 (denial of class
24 certification on behalf of retail employees alleging off-the-clock work).

25 22. Based on my experience in wage and hour class, collective, and representative
26 actions, I have been interviewed and quoted in articles published in the Northern California
27 Record about legislative efforts to reform PAGA. I also have published articles on myriad topics
28 relevant to wage and hour class and representative action litigation, including for example

1 articles on California kin care requirements in *Employee Relations Law Journal* (Vol. 36, No. 2),
2 the extraterritorial application of California employment laws in *The Recorder* (134RD Year No.
3 28), and California meal and rest break laws in *California Transportation News*, a publication of
4 the California Construction Trucking Association.

5 23. In 2020 I left Seyfarth Shaw LLP and joined my current firm, Diversity Law
6 Group, P.C., which also focuses primarily on employment law. I have handled a number of wage
7 and hour class and representative actions and continue litigating such matters in numerous
8 Superior Courts and District Courts. From matters with both Seyfarth Shaw LLP and Diversity
9 Law Group, P.C., I have successfully mediated the resolution of dozens of wage and hour class,
10 collective, and representative actions. No courts have ever found me to be inadequate class
11 counsel.

12 24. Concurrent with the filing of Plaintiff's *Ex Parte* Application, my office uploaded
13 the application, Settlement Agreement, and proposed order to the LWDA's website.

14 25. I understand that the attorneys' fees awarded in this action will be split 65% to
15 Diversity Law Group, P.C. and 35% to Polaris Law Group.

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

18 Executed on this September 16, 2021, at Los Angeles, California.

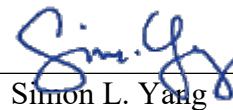
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Simon L. Yang

EXHIBIT A

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into between Plaintiff, Christopher Alvarado, acting in a Private Attorney General capacity, and Defendant, Mission Bay Management, LLC.

I. DEFINITIONS

The following terms, when used in this Agreement, shall have the following meanings:

1. “Action” means the matter entitled *Christopher Alvarado v. Mission Bay Management, LLC* to be filed in the San Diego County Superior Court and as set forth in Plaintiff’s correspondence to the California Labor and Workforce Development Agency (“LWDA Letter”) dated on or about May 28, 2021.

2. “Aggrieved Employees” consists of all current and former employees who were paid wages in at least one pay period in California for Defendant at any time between May 28, 2020 and May 30, 2021.

3. “Defendant” means Mission Bay Management, LLC.

4. “Complaint” means the matter entitled *Christopher Alvarado v. Mission Bay Management, LLC* asserting those same allegations as set forth in Plaintiff’s May 28, 2021 letter to the LWDA to be filed in the San Diego County Superior Court upon execution of this Settlement Agreement.

5. “Court” means the Superior Court of California for the County of San Diego.

6. “Effective Date” means the date the Court enters an Order approving this Agreement.

7. “Individual PAGA Payment” means the amount to be paid to each Aggrieved Employee based on the formula described herein.

8. “LWDA” means the California Labor and Workforce Development Agency.

9. “Gross Settlement Amount” is the non-reversionary sum of One Hundred and Twenty-Five Thousand Dollars and Zero Cents (\$125,000.00), which represents the total amount payable under this Agreement by Defendant, including all payments to Aggrieved Employees, payment to the LWDA, payment of Plaintiff’s Counsel’s fees and costs, payment of Plaintiff’s enhancement award and payment to the Settlement Administrator for administration costs.

10. “PAGA Penalty Fund” is the amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts (if approved by the Court) are subtracted from the Gross Settlement Amount: (a) Plaintiff’s Counsel’s fees up to 35% of the Gross Settlement Amount, currently estimated at \$43,750.00; (b) Plaintiff’s verified costs up to \$5,000.00; (c) Plaintiff’s enhancement award of \$10,000.00 and (d) administration costs up to \$4,000.00.

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11. “PAGA” means the California Labor Code Private Attorneys General Act, California Labor Code § 2698, *et seq.*

12. “PAGA Period” means the time period from May 28, 2020 to May 30, 2021.

13. “Released Parties” means Defendant and all of Defendant’s former, present, and future owners, parents, and subsidiaries, and all of their current, former, and future officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, agents, successors, assigns, accountants, insurers, or legal representatives.

14. “PAGA Released Claims” mean any and all claims, rights, demands, liabilities and causes of action for civil penalties under the PAGA pled in the Complaint in the Action, or that could be brought based on the factual allegations that are pled in the Complaint in the Action, that arose during the PAGA Period, including any PAGA-based claims for violation of Labor Code § 204, any related claims for attorneys’ fees, costs, or interest resulting therefrom.

15. “Parties” mean Plaintiff and Defendant.

16. “Plaintiff” means Christopher Alvarado.

17. “Plaintiff’s Counsel” means Larry Lee of Diversity Law Group, P.C.

18. “Settlement” means the resolution of the Action pursuant to a Court order approving the Agreement.

19. “Settlement Administrator” means Phoenix Settlement Administrator.

II. RECITALS

1. Plaintiff alleges that Defendant failed to compensate Aggrieved Employees for all wages in a timely manner in violation of Labor Code § 204, and as a result of the foregoing, is liable for civil penalties under the PAGA.

2. On May 28, 2021, Plaintiff provided written notice to the LWDA and Defendant asserting claims for civil penalties pursuant to PAGA stemming from alleged violations of the California Labor Code described above.

3. Within 10 days of the Parties mutual execution of this Agreement, Plaintiff will file the Complaint in the Action.

4. The Parties engaged in an informal exchange of documents and information prior to reaching a resolution in this matter. Defendant provided Plaintiff’s Counsel with information and documents pertaining to Plaintiff and other Aggrieved Employees and the claims in the Action in order for Plaintiff’s Counsel to investigate Plaintiff’s allegations and value the PAGA claim.

5. This Agreement is based on the material representation that 345 Aggrieved Employees were paid wages in 4,429 pay periods during the PAGA Period.

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III. **OPERATIVE TERMS OF SETTLEMENT AGREEMENT**

The Parties agree as follows:

1. **Non-Admission.** Nothing in this Agreement shall be construed to be an admission by Plaintiff that his claims do not have merit or by Defendant of any liability or wrongdoing as to Plaintiff, Aggrieved Employees, or any other person. Defendant specifically disclaims any such liability or wrongdoing. The Parties have entered into this Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and risks. This Agreement and any related court documents or orders are not and may not be cited or admitted as evidence of liability.

2. **Gross Settlement Amount.** Defendant shall pay One Hundred and Twenty-Five Thousand Dollars and Zero Cents (\$125,000.00) as the non-reversionary Gross Settlement Amount. Defendant will not pay more than the Gross Settlement Amount unless there are more than 4,429 pay periods during the PAGA Period. In the event that there are more than 4,429 pay periods, the Gross Settlement Amount shall be increased by \$28.00 per additional pay period). The Gross Settlement Amount shall be paid as follows:

a. Defendant shall deposit \$15,000 of the Gross Settlement Amount with the Settlement Administrator within ten (10) business days after Plaintiff's Execution of this Agreement.

b. Defendant shall thereafter deposit \$10,000 of the Gross Settlement Amount with the Settlement Administrator per month for eleven (11) consecutive months, until the entirety of the Gross Settlement Amount has been deposited with the Settlement Administrator. Defendant shall make the first of the eleven (11) consecutive monthly installment payments of \$10,000 within thirty (30) days following the initial deposit of the amounts referred to in paragraph 2a, and each subsequent monthly installment payment within 60 days, 90 days, 120 days, and so on, until the eleventh monthly installment payment is paid within 330 days of the initial deposit referred to in paragraph 2a. If the Gross Settlement Amount increases as a result of there being more than 4,429 pay periods, the amount of the Gross Settlement Amount exceeding \$110,000.00 shall also be divided amongst and paid in the course of the eleven (11) monthly installment payments.

3. **PAGA Penalty Fund.** The Parties agree that the following amounts should be subtracted from the Gross Settlement Amount, if approved by the Court, resulting in a PAGA Penalty Fund to distribute to the LWDA and Aggrieved Employees:

a. **Plaintiff's Counsel's Fees and Costs.** Defendant will not oppose Plaintiff's request for attorneys' fees in the amount up to thirty-five percent (35%) of the Gross Settlement Amount (currently estimated to be \$43,750.00) and costs incurred in prosecuting this Action, up to \$5,000.00. In the event the Court approves a payment of less than these amounts, any unawarded amounts will be included in the PAGA Penalty Fund (although Plaintiff may appeal an order granting less than the full amount sought for attorneys' fees and costs). If the Court believes the attorneys' fees or costs should be reduced, the other terms of this Agreement will remain in effect and any such reduction will not affect the remaining terms, other than adjusting the amount of the PAGA Penalty Fund. Defendant, via the Settlement Administrator, will report these payments on IRS Form 1099 issued to Plaintiff's Counsel.

b. Plaintiff's Enhancement Award. Defendant will not oppose Plaintiff's request for an enhancement award in the amount of \$10,000.00 for his service to the LWDA and the Aggrieved Employees and the risk he undertook by attaching his name to the Action. In the event the Court approves a payment of less than the requested amount, any unawarded amount will be included in the PAGA Penalty Fund (although Plaintiff may appeal an order granting less than the full amount sought for Plaintiff's enhancement award). If the Court believes the enhancement award should be reduced, the other terms of the Agreement will remain in effect and any such reduction will not affect the remaining terms, other than adjusting the amount of the PAGA Penalty Fund. Defendant, via the Settlement Administrator, will report this payment on IRS Form 1099 issued to Plaintiff.

c. Administration Costs. Defendant will not oppose the Settlement Administrator's costs in the amount up to \$4,000.00 for administering the Settlement. In the event the Court approves a payment of less than this amount, the difference will be added to the PAGA Penalty Fund. Defendant, via the Settlement Administrator, will report this payment on IRS Form 1099 issued to the Settlement Administrator.

4. Allocation of the PAGA Penalty Fund. The PAGA Penalty Fund shall be distributed pursuant to Lab. Code § 2699(i) as follows:

a. 75% of the PAGA Penalty Fund shall be distributed to the LWDA.

b. 25% of the PAGA Penalty Fund shall be paid to Aggrieved Employees. This portion of the PAGA Penalty Fund shall be paid to all Aggrieved Employees pro rata based on the proportional number of pay periods each Aggrieved Employee was paid wages during the PAGA Period.

The Parties agree that should the Court deny approval of the Agreement based on the allocation of the Gross Settlement Amount or the PAGA Penalty Fund, the Parties agree to re-negotiate the allocation of funds in good faith in an effort to obtain approval of the Agreement.

5. Representative PAGA Release. In his capacity as a Private Attorney General or "aggrieved employee" acting on behalf of himself, the State of California, and Aggrieved Employees, and in consideration of the enhancement award awarded to him, Plaintiff hereby releases Defendant and Released Parties, from any and all of the PAGA Released Claims that arose during the PAGA Period.

6. PAGA Released Claims. Plaintiff agrees that upon entry of an Order approving the Agreement, all Aggrieved Employees will release any and all PAGA Released Claims against the Released Parties that arose during the PAGA Period. Upon entry of the Order approving the Agreement and judgment entered thereon, Plaintiff and all Aggrieved Employees will be forever barred from pursuing any and all of the PAGA Released Claims that arose during the PAGA Period against the Released Parties.

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7. **Plaintiff's General Release.** In light of his enhancement award described above, Plaintiff personally agrees to release, in addition to the PAGA Released Claims, all claims, whether known or unknown, under federal law or state law, to the fullest extent permitted by law, against the Released Parties. Plaintiff further understands that this release includes unknown claims and that he is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, 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.

Notwithstanding the above or anything else in this Agreement, this waiver and release does not apply to: (i) those rights as a matter of law that cannot be waived, including, but not limited to, workers' compensation claims, (ii) rights or claims arising out of this Agreement after the date this Agreement is executed by Plaintiff, and (iii) rights or claims arising out of this Agreement. The Agreement in no way affects Plaintiff's entitlement or benefits to be received by Plaintiff in workers' compensation pursuant to the jurisdiction of workers' compensation.

8. **No Right to Opt-Out.** The Parties agree that there is no statutory right for any Aggrieved Employee to opt out or otherwise exclude himself or herself from the Settlement.

9. **Covenants and Representations by Plaintiff and Plaintiff's Counsel.**

a. Plaintiff represents and warrants that he has not assigned or transferred or purported to assign or transfer to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Agreement.

b. Plaintiff acknowledges that he has read this Agreement, that he fully understands his rights, privileges, and duties under the Agreement, and enters into this Agreement freely and voluntarily, and without duress. Plaintiff further acknowledges that he had the opportunity to consult with his attorneys to explain the terms of this Agreement and the consequences of signing this Agreement.

10. **Confidentiality.** Except as provided below, to the extent necessary to effectuate the Agreement, or as required by court or legal process, Plaintiff and Plaintiff's Counsel will keep the terms of this Agreement confidential. Neither Plaintiff nor Plaintiff's Counsel shall issue a press release, hold a press conference, publish information about the Agreement on any website or through any social media or otherwise publicize the Agreement or communicate its terms (including the amount) in public or in private, other than as necessary to obtain Court approval of this Agreement or unless otherwise required by the court or legal process. The Parties and Plaintiff's Counsel agree that they will not initiate or have contact with the press, respond to any press inquiry, or have any communication with the press about the Action. Notwithstanding the above, for the limited purpose of establishing adequacy of counsel in future actions, Plaintiff's Counsel may reference the Action by name and case number in a declaration establishing adequacy as class or representative counsel.

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To permit judicial review and approval of the PAGA Payment, as required by Labor Code Section 2698, *et seq.*, Plaintiff's Counsel will file the Agreement with the Court and submit the Agreement to the LWDA as part of the Parties' seeking Court approval of the Agreement, pursuant to Lab. Code § 2699(1)(2).

11. **Termination of Agreement.** If the Court does not approve the Agreement, if the Court does not enter judgment, as provided for in this Agreement, or if appellate review is sought and, on such review, the Court's decision is materially modified or reversed, or, except as otherwise set forth herein, if one or more of the terms of the Agreement is not approved or is materially modified or reversed or found to be invalid, then either of the Parties shall have the right within ten (10) days of written notice thereof to elect to terminate the Agreement, in which case the Agreement shall have no force or effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Agreement, with the exception of Plaintiff's filing of the Complaint. Should the Agreement be terminated by either Party, Plaintiff hereby agrees that Defendant's deposits of the Gross Settlement Amount to the Settlement Administrator will remain with the Settlement Administrator and will not be distributed in any part prior to the Effective Date. The Parties hereby agree that should the Court not approve this Agreement, all deposits of the Gross Settlement Amount by Defendant to the Settlement Administrator will be returned to Defendant within thirty (30) days of the Court's entry of an order denying or refusing to approve this Agreement, unless the Parties seek to re-submit a settlement for approval.

12. **Judgment.** As part of the Motion to approve the Agreement, Plaintiff shall submit a proposed order or judgment for entry of judgment in the Action in accordance with the terms of the Agreement. The proposed order or judgment shall provide that the court retains jurisdiction over the Action for the purpose of enforcing the terms of the Settlement following approval of the Agreement. This Agreement is expressly conditioned upon the Court entering judgment as set forth herein. The judgment will not release or bar any claims other than the PAGA Released Claims as to Plaintiff and Aggrieved Employees.

IV. ADMINISTRATION OF SETTLEMENT

1. **Settlement Administrator.** The Parties agree to use Phoenix Settlement Administrators to handle the administration of this Settlement.

2. **Provision of Information for Aggrieved Employees.**

Within ten (10) business days after Plaintiff's Execution of this Agreement, Defendant shall confirm the sum total of all pay periods Aggrieved Employees were paid wages during the PAGA Period. Within fifteen (15) business days after the Effective Date, Defendant shall provide the Settlement Administrator with information for Aggrieved Employees. Defendant will in good faith compile from its records a list of Aggrieved Employees that will be in a computer-readable format, such as a Microsoft Excel spreadsheet, and shall include each Aggrieved Employee's full name, last known mailing address, total pay periods Aggrieved Employees were paid wages during the PAGA Period, and Social Security number. Because Social Security numbers are included in the list, the Settlement Administrator will maintain the list in confidence, and access shall be limited to those with a need to use the list as part of the administration of the Settlement.

Within seven (7) business days of receiving the Aggrieved Employees' information from Defendant, the Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the estimated individual settlement payments to each Aggrieved Employee and the data used to calculate said payments. The Settlement Administrator shall obtain approval from all counsel of the calculations before mailing Individual PAGA Payments.

3. **Explanatory Letter and Individual PAGA Payments.** After receipt of the information for Aggrieved Employees and prior to the mailing of any Individual PAGA Payments, the Settlement Administrator will perform a search on the National Change of Address database to update the Aggrieved Employees' addresses.

Within two (2) business days of receiving the final deposit of the Gross Settlement Amount from Defendant and having received approval from counsel of the payment calculations as provided above, the Settlement Administrator shall mail copies of the explanatory letter, which has been mutually approved by the Parties and is attached hereto as **Exhibit A**, in English, along with Individual PAGA Payments to all Aggrieved Employees via regular First Class U.S. Mail.

The Settlement Administrator will calculate the amount to be received by each Aggrieved Employee, which will be based on the formula set forth in Section III.4., *supra*. The Settlement Administrator will send each Aggrieved Employee a check for his or her Individual PAGA Payment along with an explanatory letter. Checks will remain negotiable for 180 days. Each Individual PAGA Payment shall be deemed penalties/interest and reported using IRS Form 1099.

4. **Undeliverable Notices.** The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Aggrieved Employee. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Aggrieved Employee.

Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement 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 perform a single re-mailing.

Defendant fully discharges its obligation to those Aggrieved Employees to whom they will pay an Individual PAGA Payment through the mailing of a check, regardless of whether such checks are actually received and/or negotiated by Aggrieved Employees. Funds represented by checks returned as undeliverable after a re-mailing, and funds represented by checks remaining un-cashed for more than 180 days after issuance, will be tendered to the State Controller's Office under the unclaimed property fund laws in the names of the Aggrieved Employees to whom the checks were issued.

5. **Payment of Remainder.** Within two (2) business days of receiving the final deposit of the Gross Settlement Amount from Defendant and having received approval from counsel, the Settlement Administrator will distribute the following additional payments: (1) the 75% share of the PAGA Penalty Fund to the LWDA; (2) Court-approved attorneys' fees and costs to Plaintiff's Counsel; (3) Court-approved enhancement award to Plaintiff; and (4) Court-approved administration costs to the Settlement Administrator.

6. **Accounting.** Within fifteen (15) business days of receiving the final deposit of the Gross Settlement Amount from Defendant and having received approval from counsel of the payment calculations, the Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid from the Agreement.

7. **Tax Consequences.** Individual PAGA Payments made under this Agreement will be attributed 100% as penalties and interest and paid via IRS Form 1099 issued to each Aggrieved Employee. Neither Plaintiff nor Defendant, nor counsel for either of the Parties, makes any representations or warranties with respect to tax consequences of any payment under this Agreement.

V. **MISCELLANEOUS PROVISIONS**

1. **Mutual Preparation and Drafting.** The Parties have had a full opportunity to negotiate the terms and conditions of this Agreement. The Parties agree that the terms and conditions of this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that neither Plaintiff nor Defendant shall be considered the "drafter" of this Agreement for purposes of having terms construed against that Party. This Agreement will not be construed more strictly against one Party 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 arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Agreement.

2. **Successors.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, assigns, administrators and successors.

3. **Costs and Fees.** The Parties shall each bear their own costs, attorneys' fees, expert fees, mediator fees, and other fees incurred in connection with the Action and Plaintiff's claims, except as otherwise set forth specifically herein.

4. **Governing Law.** This Agreement shall be construed under and governed by the laws of the State of California. This Agreement shall be deemed to have been entered into in the County of San Diego, California, and all questions of validity, interpretation or performance of any of its terms or of any rights or obligations of the Parties to this Agreement shall be governed by California law. If any legal or equitable action is necessary to enforce the terms of this Agreement, it shall be brought in the State of California, County of San Diego.

5. **Complete Agreement.** The Parties each acknowledge and represent that no promise or representation not contained in this Agreement has been made to them and acknowledge and represent that this Agreement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the PAGA Released Claims in the Action.

6. **Nullification of Settlement.** In the event that: (i) the Court does not approve the Agreement as provided herein; or (ii) the Settlement does not become final for any other reason, then this Agreement and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions unless otherwise required under this Agreement.

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7. **Judgment and Continued Jurisdiction.** After approval of this Agreement, the Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-Judgment matters as may be appropriate under court rules or as set forth in this Agreement. Plaintiff will submit a proposed judgment in conformity with this Agreement to be entered by the Court, which shall constitute a final and binding resolution of the claims in the Action.

8. **Amendment or Modification.** This Agreement may be amended or modified only by a written instrument, signed by either the Parties or their successors-in-interest or counsel for all Parties or an order by the Court relating to nonmaterial terms.

9. **Authorization to Enter into Settlement.** Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to affect the implementation of the Agreement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties may seek the assistance of the Court to resolve such disagreement.

10. **Execution and Counterparts.** This Agreement is subject only to the execution of all Parties. However, the Agreement may be executed 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.

11. **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties believe this Agreement is a fair, adequate and reasonable settlement of the Action, and have arrived at this Agreement after arms-length negotiations by experienced counsel. 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 Agreement.

12. **Invalidity of Any Provision.** Before declaring any provision of this Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable.

13. **Severability.** If any term or provision of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will continue to be valid and will be performed, construed and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

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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. **Enforcement Action.** In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions. In any proceeding to enforce the terms of this Agreement, the Parties may disclose the terms of this Agreement to the extent necessary to enforce the Agreement, but shall make all efforts to preserve the confidentiality of this Agreement, including but not limited to filing the relevant provisions of the Agreement and/or discussion of these terms under seal or conditionally under seal to the fullest extent appropriate and possible.

16. **Representation by Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Agreement, and this Agreement has been executed with the consent and advice of counsel and reviewed in full.

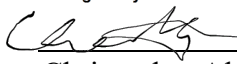
17. **Binding Agreement.** The Parties warrant that they understand and have full authority to enter into this Agreement, and further intend that this Agreement will be fully enforceable and binding on all Parties and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms under California Code of Civil Procedure section 664.6 and any other applicable statute or law, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

18. **Denial of Liability.** The Parties expressly recognize that the making of this Agreement does not in any way constitute an admission or concession of wrongdoing on the part of Defendant. Nothing in this Agreement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of this Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation of any federal, state or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Agreement may be used in any Court proceeding that has as its purpose the interpretation, implementation or enforcement of the Agreement or any orders or judgments of the Court entered into in connection therewith.

IN WITNESS THEREOF, the Parties each acknowledge that they have read the foregoing Agreement, accept and agree to the provisions contained in this Agreement and hereby execute it voluntarily and with full understanding of its consequences.

[Signatures continued on next page]

Dated: 8/18/2021

DocuSigned by:

87A211FC905B14F3
Christopher Alvarado, Plaintiff

Dated: _____

Mission Bay Management, LLC

By: _____

Its: _____

APPROVED AS TO FORM:

Dated: August 19, 2021

DIVERSITY LAW GROUP, P.C.

By:  _____

Larry Lee
Attorney for Plaintiff
Christopher Alvarado

Dated: _____

FISHER & PHILLIPS LLP

By: _____

Adam F. Sloustcher
Attorney for Defendant
Mission Bay Management, LLC

Dated: _____

Christopher Alvarado, Plaintiff

Dated: 19-August-2021

Mission Bay Management, LLC

By: Gabriel Rosenthal

Its: General Counsel

APPROVED AS TO FORM:

Dated: _____

DIVERSITY LAW GROUP, P.C.

By: _____
Larry Lee
Attorney for Plaintiff
Christopher Alvarado

Dated: August 19, 2021

FISHER & PHILLIPS LLP

By: _____
Adam F. Sloustcher
Attorney for Defendant
Mission Bay Management, LLC