

1 Thomas M. Diachenko, Esq. (CSBN 140763)
2 LAW OFFICES OF THOMAS M. DIACHENKO, APC
3 1916 Third Avenue
4 San Diego, California 92101
5 Telephone: (619) 699-5870

6 Attorneys for Plaintiff
7 KIMBERLY FUDGE

8 Christine D. Baran (SBN 158603)
9 E-Mail: cbaran@fisherphillips.com
10 Lyle M. Chan (SBN 299037)
11 E-Mail: lchan@fisherphillips.com
12 FISHER & PHILLIPS LLP
13 2050 Main Street, Suite 1000
14 Irvine, California 92614
15 Telephone: (949) 851-2424
16 Facsimile: (949) 851-0152

17 Attorneys for Defendants
18 SOAP MAT, LLC and LAURA ROSSI

19
20 SUPERIOR COURT OF THE STATE OF CALIFORNIA
21
22 FOR THE COUNTY OF SAN DIEGO - NORTH COUNTY REGIONAL CENTER
23

24 KIMBERLY FUDGE,
25
26 Plaintiff,
27
28 v.

29 SOAP MAT, LLC a California Limited
30 Liability Company; LAURA ROSSI, and;
31 DOES 1-100, inclusive,
32
33 Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

08/05/2022 at 02:43:00 PM

Clerk of the Superior Court
By Carlos Terriguez, Deputy Clerk

CASE NO.: 37-2021-00027209-CU-OE-NC
[Unlimited Jurisdiction]

*Assigned for all purposes to the
Honorable Blaine K. Bowman, Dept. N31*

**JOINT STIPULATION REQUESTING
APPROVAL OF REPRESENTATIVE PAGA
SETTLEMENT**

Complaint Filed: June 23, 2021
Trial Date: October 14, 2022

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1 3. On or about November 19, 2021, Defendants filed an Answer containing a general
2 denial of all material allegations in the operative Complaint.

3 4. The Parties have engaged in informal discovery, with the parties exchanging
4 Defendants' documents and data relevant to Plaintiff's individual claims, including but not
5 limited to, time and payroll records, workweeks data, and Defendants' operations and
6 employment policies, practices, and procedures. The Parties wish to avoid the uncertainties and
7 expense of trial, and the total number of PAGA Members, including Plaintiff, is approximately
8 only 47 people.

9 5. The Parties agreed to a confidential settlement of Plaintiff's individual claims and
10 a separate settlement for Plaintiff's PAGA claim totaling \$5,000 .

11 6. Attached hereto as **Exhibit 1** is the fully executed PAGA Settlement Agreement
12 ("PAGA Settlement," or "PAGA Agreement") setting forth the terms of the settlement.

13 7. The Total PAGA Settlement Amount agreed to in the PAGA Settlement is \$5,000
14 ("Settlement Payment"); subject to Court approval, Plaintiff's Counsel shall receive \$1,000 of
15 the Settlement Payment as attorneys' fees. The remaining funds after the amounts allocated to
16 the attorneys' fees have been deducted from the Settlement Payment will be referred to as the
17 "Net PAGA Settlement" totaling \$4,000 in PAGA civil penalties. A total of seventy-five percent
18 (75%), or \$3,000, of the Net PAGA Settlement shall be paid to the Labor and Workforce
19 Development Agency ("LWDA"). The remaining twenty-five percent (25%), or \$1,000, of the
20 Net PAGA Settlement shall be payable to the PAGA Members as set forth in the PAGA
21 Settlement.

22 8. On or about July 27, 2022, Plaintiff provided notice of the PAGA Settlement to
23 the LWDA by electronically submitting a copy of the PAGA Settlement.

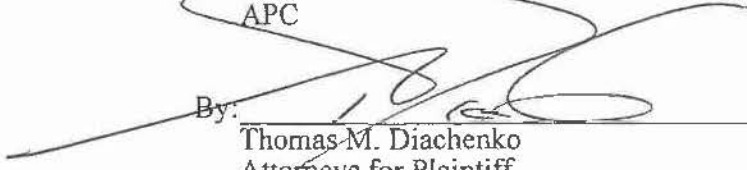
24 9. WHEREAS, attached hereto as **Exhibit 2** is the e-mail confirmation from the
25 LWDA regarding the submission of the PAGA Settlement.

26 10. WHEREFORE, IT IS HEREBY STIPULATED AND AGREED BY THE
27 PARTIES HERETO, THROUGH THEIR RESPECTIVE COUNSEL, AS FOLLOWS: The
28 Settlement is fair, adequate, and reasonable, as it represents a reasoned compromise reached

1 through arm's-length negotiations and considers the risks, complexity, and expense of further
2 litigation.

3 DATE: July 28, 2022

LAW OFFICES OF THOMAS M. DIACHENKO,
APC

By: 

Thomas-M. Diachenko
Attorneys for Plaintiff
KIMBERLY FUDGE

8
9 August 1
10 DATE: July 28, 2022

FISHER & PHILLIPS LLP

By: 

Christine D. Baran
Lyle M. Chan
Attorneys for Defendants
SOAP MAT, LLC and LAURA ROSSI

1 **~~PROPOSED~~ ORDER**

2 This Court has reviewed the stipulation submitted by Plaintiff Kimberly Fudge
3 (“Plaintiff”) and Defendants Soap Mat, LLC and Laura Rossi (“Defendants”) (collectively, the
4 “Parties”) in support of approval of a PAGA Settlement pursuant to the California Labor Code
5 Private Attorneys General Act of 2004, California Labor Code section 2698 et seq. (“PAGA”).
6 The PAGA Settlement and Release Agreement (“PAGA Settlement,” or “PAGA Agreement”),
7 is attached hereto as **Exhibit 1**. Based upon this review, and the findings below, the Court finds
8 good cause to enter this order.

9 **FINDINGS:**

10 1. Unless otherwise specified, defined terms in this Order granting approval of the
11 PAGA Settlement (“Order”) have the same definition as the terms of the PAGA Settlement.

12 2. The Court has jurisdiction over the subject matter of this litigation, over all hourly
13 paid, non-exempt employees of Defendants who worked for Defendants from June 23, 2020
14 through May 30, 2022 (“PAGA Members” and “PAGA Period”), and over those persons or
15 entities undertaking affirmative obligations under the PAGA Settlement.

16 3. On June 28, 2021, Plaintiff served a notice letter to the California Labor and
17 Workforce Development Agency (“LWDA”) and Defendants, pursuant to California Labor Code
18 Section 2699.3, to notify the LWDA of the alleged California Labor Code violations. The
19 LWDA did not respond to Plaintiff’s correspondence.

20 4. On June 23, 2021, Plaintiff filed her lawsuit against Defendants, entitled *Kimberly*
21 *Fudge v. Soap Mat, LLC, et al* in the San Diego Superior Court, Case No. 37-2021-00027209,
22 which included individual claims for wrongful termination and unpaid wages. On September 10,
23 2021, after the sixty-five (65) day notice period required by PAGA expired, Plaintiff filed her
24 First Amended Complaint asserting a PAGA cause of action (hereinafter both Complaints are
25 referred to as the “Action”). In doing so, Plaintiff sought on behalf of the State of California, to
26 represent herself and all hourly paid, non-exempt employees of Defendants who worked for
27 Defendants from June 23, 2020 through May 30, 2022.

28 5. On or about November 19, 2021, Defendants filed an Answer containing a general

1 denial of all material allegations in the operative Complaint.

2 6. The Parties expressly acknowledge in the PAGA Settlement that the PAGA
3 Settlement is entered into solely for the purpose of compromising significantly disputed claims,
4 and that nothing contained therein is an admission of liability or wrongdoing by Defendants.

5 7. The Court determines that there is sufficient evidence to suggest that the PAGA
6 Settlement was entered into in good faith, that the PAGA Settlement is fair, reasonable, and
7 adequate under the circumstances, and that the Parties have satisfied the standards and applicable
8 requirements for approval of a settlement of claims brought under the PAGA.

9 8. The Court finds that pursuant to California Labor Code Section 2699(1)(2) and
10 (1)(4), the LWDA was given timely notice of the PAGA Settlement. On July 27, 2022, Plaintiff
11 submitted to the LWDA a notice of the PAGA Settlement, attached to which was a copy of the
12 PAGA Settlement. Plaintiff's notice of PAGA Settlement complied with the requirements of
13 California Labor Code section 2699(1)(2).

14 **IT IS HEREBY ORDERED THAT:**

15 1. The terms of the PAGA Settlement are fair, adequate, and reasonable, and the
16 Settlement is approved under California Labor Code section 2699(1)(2).

17 2. The Court affirms approval of the PAGA Settlement in the attached Exhibit 1 as
18 to the following group of individuals, collectively referred to as the "PAGA Members": all hourly
19 paid, non-exempt employees of Defendants who worked for Defendants from June 23, 2020
20 through May 30, 2022.

21 3. Upon the Effective Final Settlement Date and payment by Defendants of the
22 Gross Settlement Amount of \$5,000 as set forth in Exhibit 1, this PAGA Settlement forever bars
23 Plaintiff, the LWDA, and all PAGA Members on behalf of themselves or as representatives
24 acting as proxy or agent of the LWDA, and each of their heirs, executors, administrators,
25 attorneys, agents, predecessors, successors, and assigns ("Releasing Parties"), for the period
26 spanning June 23, 2020 through May 30, 2022, from pursuing any action for claims, rights,
27 demands, liabilities and causes of action for civil penalties under the PAGA against Defendants
28 and each of their past, present and future respective subsidiaries, dba's, affiliates, PEOs, staffing

1 agencies, parents, predecessors, successors, divisions, joint ventures, investors and assigns, and
2 their respective current and former employees, agents, managing agents, partners, servants,
3 consultants, directors, officers, shareholders, members, principals, independent contractors, joint
4 venturers, representatives, insurers, coinsurers, reinsurers, attorneys, and personal or legal
5 representatives (“Released Parties”) based on the factual allegations and Labor Code Sections
6 alleged or that could have been alleged against the Released Parties arising out of the facts,
7 circumstances, and primary rights at issue in the First Amended Complaint, including but not
8 limited to allegations of, and/or violation of, California Labor Code § § 7, 98, 98.6, 200, 201,
9 201.5, 201.7, 202, 203, 203.1, 204, 206, 206.5, 209, 210, 212, 215, 216, 218, 218.5, 218.6, 221,
10 222-224, 225, 225.5, 226, 226(a), 226.3, 226.6, 226.7, 227, 227.3, 232, 246, 256, 351, 500, 510,
11 512, 516, 552, 558, 558.1, 1102.5, 1174, 1174.5, 1175, 1182.12, 1193.6, 1194, 1194.2, 1194.3,
12 1197, 1197.1, 1197.5, 1198, 1198.5, 1199, 2502, 2551, 2698 et. seq., 2699(a), 2699, 2699.3,
13 2699.5, 2751, 2800 and 2802, the IWC Order 4-2001, sections 2, 4, 7, 11, 12, 20, and Civil Code
14 3289 and all applicable Wage orders (the “PAGA Released Claims”). This release applies
15 whether or not a given PAGA Member receives or cashes his or her portion of the Net PAGA
16 Settlement allocable to each PAGA Member as consideration for the settlement and release of
17 claims for penalties under the PAGA (“PAGA Settlement Share”).

18 4. The total PAGA Settlement amount of \$5,000, the Net PAGA Settlement, and the
19 methodology used to calculate and pay each PAGA Settlement Share, in accordance with the
20 PAGA Settlement, is approved under California Labor Code section 2699(1)(2).

21 5. The Court approves an award of \$1,000.00 in attorneys’ fees from the Gross
22 Settlement Amount to Plaintiff’s Counsel as attorney fees. The remaining funds after the
23 amounts allocated to the attorney fees have been deducted from the Gross Settlement Amount
24 will be referred to as the “Net PAGA Settlement” totaling \$4,000.00 in PAGA civil penalties. A
25 total of seventy-five percent (75%), or \$3,000.00, of the Net PAGA Settlement shall be paid to
26 the Labor and Workforce Development Agency (“LWDA”). The remaining twenty-five percent
27 (25%), or \$1,000.00, of the Net PAGA Settlement shall be payable to the PAGA Members as set
28 forth in the PAGA Settlement, Exhibit 1 herein.

1 6. If a PAGA Member fails to cash the check or deposit the check, which shall
2 remain valid for no less than one-hundred eighty days (180) calendar days after the date of
3 issuance, Defendants will distribute the funds represented by the uncashed check(s) as set forth
4 in the PAGA Settlement.

5 7. Pursuant to Code of Civil Procedure section 664.6, after entry of the request for
6 dismissal of the Action, with prejudice, the Court shall have continuing jurisdiction solely for
7 purposes of addressing: (i) the interpretation and enforcement of the terms of the PAGA
8 Settlement, (ii) PAGA Settlement administration matters, and (iii) such matters as may be
9 appropriate under court rules or applicable law, or as set forth in the PAGA Settlement.

10 8. Nothing in this Order or PAGA Settlement is intended or will be construed as an
11 admission of liability or wrongdoing by Defendants. This PAGA Settlement and the fact that
12 Plaintiff and Defendants are willing to settle the Action will have no bearing on, and will not be
13 admissible in connection with, any litigation (other than solely in connection with the PAGA
14 Settlement).

15 9. Within ten (10) calendar days after entry of this Order approving the PAGA
16 Settlement, Plaintiff shall submit a copy of the Order to the LWDA in compliance with California
17 Labor Code section 2699(1)(3).

18 10. Within thirty (30) calendar days after Defendants distribute the Net PAGA
19 Settlement to the LWDA and PAGA Members, Defendants shall provide Plaintiff a declaration
20 confirming the same, and within fourteen (14) calendar days after Plaintiff receives Defendants'
21 declaration, Plaintiff shall file a request for dismissal with prejudice of the Action.

22 **IT IS SO ORDERED.**

23 08/05/2022
24 DATED: _____

By: 

Hon. Blaine K. Bowman
Judge of the Superior Court

Exhibit 1

Private Attorneys General Act (Cal. Lab. Code § 2698, Et Seq.) Settlement Agreement

This Stipulation of Settlement (“PAGA Settlement Agreement” or “Stipulation of Settlement” or “Settlement”) is made by and between the Named Plaintiff, Kimberly Fudge (herein “Plaintiff”), on her own behalf and on behalf of all members of the PAGA Group, as defined below, and Defendants Soap Mat, LLC and Dr. Laura Rossi (herein “Defendants”) in the lawsuit entitled *Kimberly Fudge v. Soap Mat, LLC, et al.*, San Diego Superior Court Case No. 37-2021-00027209. The term “Party” or “Parties” as used herein shall refer to Plaintiff, Defendants, or both, as may be appropriate. This PAGA Settlement Agreement resolves all claims asserted against Defendants pertaining to the claims in the Litigation pursuant to and subject to the definitions, recitals, and terms and conditions set forth herein, which by this reference become an integral part of this Stipulation of Settlement, subject to the approval of the Court.

I. DEFINITIONS

A. Agreement. The terms “Agreement” or “Settlement Agreement” are used synonymously herein to mean this PAGA Settlement Agreement for purposes of Resolution.

B. Aggrieved Employees means all hourly paid, non-exempt employees of Defendants who worked for Defendants during the PAGA Period

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

D. Date of Approval. The terms “Date of Approval” or “Approval” as used herein mean the date of the Court’s approval of the PAGA Settlement Agreement.

E. Defendants. The term “Defendants” as used herein means: Defendant Soap Mat, LLC and Dr. Laura Rossi.

F. Defendants’ Counsel. The term “Defendants’ Counsel” as used herein means: Christine Baran and Lyle Chan of Fisher Phillips LLP, who are counsel for and acting on behalf of Defendants.



G. Effective Final Settlement Date. The term “Effective Final Settlement Date” means the effective date of this Settlement which shall be the date of final affirmation of the Court’s signed Order approving this PAGA Settlement (“Final Approval”).

H. Individual PAGA Payment. The term Individual PAGA Payment means the payment to the Aggrieved Employees for its twenty-five percent (25%) share of the GSA (after the deduction of any award of attorneys’ fees and costs) or (\$1,000.00) allocated toward penalties under the PAGA.

I. Litigation. The term “Litigation” as used herein means the action entitled *Kimberly Fudge v. Soap Mat, LLC, et al.* filed in San Diego Superior Court, Case No. 37-2021-00027209 on September 10, 2021, as well as any and all claims asserted in Plaintiffs’ written notice to the California Labor and Workforce Development Agency (“LWDA”) dated June 28, 2021 (hereinafter “PAGA Notice”).

J. Gross Settlement Amount. The term “Gross Settlement Amount,” “GSA,” or “Settlement Payment” as used herein is the total amount of Five Thousand Dollars and Zero Cents (\$5,000.00) which shall be paid by Defendants thirty (30) days after the Effective Final Settlement Date, for resolution of Plaintiff’s cause of action for civil penalties under the Labor Code Private Attorneys’ General Act, codified at Labor Code Section 2698, *et seq* (PAGA) and from which attorneys’ fees, the Individual PAGA Payment and the LWDA Payment shall be made and allocated as follows, subject to Court approval: (a) Plaintiff’s Counsel’s award of attorneys’ fees and costs up to the requested amount of One Thousand Dollars and Zero Cents (\$1,000.00) of the GSA; and (b) the remaining Four Thousand Dollars and Zero Cents (\$4,000.00) of the GSA, after deducting item (a), shall be allocated between the State of California Labor and Workforce Development Agency (“LWDA”) and Aggrieved Employees (hereinafter “PAGA Payment”). The PAGA Payment shall be allocated as follows: Seventy-five percent (75%) or Three Thousand Dollars and Zero Cents (\$3,000.00) to the LWDA reflecting penalties under the PAGA (“LWDA Payment”) and twenty-five percent (25%) or One Thousand Dollars and Zero Cents (\$1,000.00) to the Aggrieved Employees (including Named Plaintiff) on a pro rata basis based on the Pay



Periods worked in the PAGA Period ("Individual PAGA Payment").

K. LWDA Payment. The term "LWDA Payment" means the payment to the LWDA for its seventy-five percent (75%) share of the GSA (after the deduction of any award of attorneys' fees and costs) or (\$3,000.00) allocated toward penalties under the PAGA.

L. Named Plaintiffs. The term "Named Plaintiff" as used herein means Kimberly Fudge. The term Named Plaintiff shall be used synonymously with the term PAGA Representative.

M. PAGA Payment. The term "PAGA Payment" shall mean that portion of the GSA after deducting approved Counsel fees and costs, to be allocated and paid to the LWDA and Aggrieved Employees for resolution of Plaintiff's cause of action for civil penalties under PAGA.

N. PAGA Period. The term "PAGA Period" shall refer to the time period from June 23, 2020, through May 30, 2022. Defendants represent there are approximately 982 aggregate pay periods during the PAGA Period, and as provided in Section VII D. below.

O. Plaintiffs' Counsel. The term "Plaintiff's Counsel" as used herein means: Thomas M. Diachenko of the Law Offices of Thomas M. Diachenko, APC, who is counsel for and acting on behalf of Named Plaintiff and Aggrieved Employees.

P. "Released Parties" shall mean Defendants and each of their past, present, and future respective subsidiaries, dba's, affiliates, PEOs, staffing agencies, parents, predecessors, successors, divisions, joint ventures, investors and assigns, and their respective current and former employees, managing agents, partners, servants, consultants, agents, directors, officers, shareholders, members, principals, independent contractors, joint venturers, representatives, insurers, coinsurers, reinsurers, attorneys, and personal or legal representatives.

Q. Resolution. The term "Resolution" as used herein means this Agreement to resolve the Litigation.

BACKGROUND

A. On June 23, 2021, Named Plaintiff brought an action against Defendants in the San Diego County Superior Court, Case No. 37-2021-00027209 asserting causes of action for (1) Failure to Pay Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods;

(4) Failure to Provide Rest Periods; (5) Pay Stub & Time Record Violations; (6) Waiting Time Penalties; (7) Unfair Business Practices; (8) Retaliation; (9) Failure to Accommodate; (10) Disability Discrimination; (11) Violation of Public Policy (the "Litigation").

B. On June 28, 2021, Named Plaintiff filed with the LWDA and served on Defendants a notice under Labor Code section 2699 stating her intent to serve as a proxy of the LWDA to recover civil penalties for Aggrieved Employees for various Labor Code violations, including: California Labor Code § § 7, 98, 98.6, 200, 201, 201.5, 201.7, 202, 203, 203.1, 204, 206, 206.5, 209, 210, 212, 215, 216, 218, 218.5, 218.6, 221, 222-224, 225, 225.5, 226, 226(a), 226.3, 226.6, 226.7, 227, 227.3, 232, 246, 256, 351, 500, 510, 512, 516, 552, 558, 558.1, 1102.5, 1174, 1174.5, 1175, 1182.12, 1193.6, 1194, 1194.2, 1194.3, 1197, 1197.1, 1197.5, 1198, 1198.5, 1199, 2502, 2551, 2698 et. seq., 2699(a), 2699, 2699.3, 2699.5, 2751, 2800 and 2802, the IWC Order 4-2001, sections 2, 4, 7, 11, 12, 20, and Civil Code 3289 (PAGA Notice).

C. On September 10, 2021, after sixty-five (65) days had passed without any communication from the LWDA, Named Plaintiff filed a First Amended Complaint against Defendants adding a twelfth cause of action in the Litigation for Violations of Labor Code Section 2699 PAGA Claims.

D. Following the filing of the Litigation, Named Plaintiff and Plaintiff's Counsel engaged in good faith, arms-length negotiations with Defendants and Defendants' counsel. Through those negotiations, the Parties were able to reach a Resolution.

E. Plaintiffs' Counsel conducted an investigation of the law and facts relating to the claims asserted in the Litigation and has concluded, taking into account the sharply contested issues involved, the expense and time necessary to pursue the Litigation, the risks and costs of further prosecution of the Litigation, the risk of an adverse outcome, the uncertainties of complex litigation, and the benefits to be received by the Named Plaintiff and Aggrieved Employees pursuant to this Agreement, that a settlement with Defendants on the terms and conditions set forth herein is fair, reasonable, adequate, and in the best interests of the Aggrieved Employees. Named Plaintiff, on her own behalf and as a representative pursuant to PAGA, has agreed to settle the



Litigation with Defendants on the terms set forth herein.

F. Defendants concluded that, because of the substantial expense of defending against the Litigation, the length of time necessary to resolve the issues presented herein, the inconvenience involved, and the concomitant disruption to its operations, it is in its best interests to accept the terms of this Agreement. Defendants deny each of the allegations and claims asserted against it in the Litigation. However, Defendants nevertheless desire to settle the Litigation for the purpose of avoiding the burden, expense, and uncertainty of continuing litigation and for the purpose of putting to rest the controversies engendered by the Litigation.

G. This Agreement is intended to and does effectuate the full, final, and complete resolution of all allegations and claims that were asserted in the Litigation by Named Plaintiff arising under the PAGA or that could have been asserted in the Litigation based on the facts alleged, and to the extent permitted by law, of the State of California and Aggrieved Employees as released below herein.

II. JURISDICTION

The Parties agree that the Court has jurisdiction over the Parties and the subject matter of this Litigation. The Litigation includes claims that, while Defendants deny entirely, would, if proven, authorize the Court to grant relief pursuant to the applicable statutes. After the Effective Final Settlement date and pursuant to California Code of Civil Procedure Section 664.6 the Parties agree that the Court shall retain jurisdiction of this action solely for the purpose of interpreting, implementing, and enforcing this Resolution consistent with the terms set forth herein, and the Parties and their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing this Agreement and all orders and judgments entered in connection therewith.

III. STATEMENT OF NO ADMISSION

A. The Parties enter into this Settlement Agreement to resolve the dispute that has arisen between them and to avoid the burden, expense, and risk of continued litigation. In entering into this Settlement Agreement, Defendants do not admit, and specifically deny, having violated any federal, state,



or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to its employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Defendants of any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Settlement Agreement, this Settlement Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendants or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local or other applicable law. Nor shall anything in this Settlement Agreement be construed or deemed an admission that the Litigation was properly brought as a representative action under California Business and Professions Code section 17200 and/or a private attorney general action under PAGA. Nor shall anything in this Settlement Agreement or in the Court's Approval be deemed a waiver of Defendants' right to enforce arbitration agreements, if any, of Aggrieved Employee, Named Plaintiff, or otherwise in the future.

B. 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 the negotiations leading to this Agreement or the Resolution, is intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be used, or be admissible in any way in this case or 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. The Parties themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in this case or any other judicial, arbitral, administrative, investigative, or other forum or proceeding, as purported 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, or for any other purpose. Notwithstanding the foregoing, this Agreement may be used in any proceeding before



the Court that has as its purpose the interpretation, implementation, or enforcement of this Agreement or any orders or judgments of the Court entered in connection with the Resolution.

C. None of the documents produced or created by Named Plaintiff or the Aggrieved Employees in connection with the claims procedures or claims resolution procedures constitute, and are not intended to constitute, an admission by Defendants 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.

D. Nothing in this Agreement will be construed as an admission or acknowledgement of any kind that any group should or would be given collective treatment in the Litigation or in any other action or proceeding. Further, neither this Agreement nor the Court's actions with regard to this Agreement will be admissible in any court or other tribunal regarding the propriety of collective treatment. In the event that this Agreement is not approved by the Court, is terminated, or otherwise fails to be enforceable, Named Plaintiff will not be deemed to have waived, limited, or affected in any way any claims, rights, or remedies in the Litigation, and Defendants will not be deemed to have waived, limited, or affected in any way any of their objections or defenses in the Litigation including but not limited to any defenses pertaining to jurisdiction and/or enforceability of applicable arbitration agreements.

IV. RELEASE AND CONFIDENTIALITY

A. Release as to All PAGA Group Members.

Upon the Effective Final Settlement Date and payment by Defendants of the Settlement Payment, Named Plaintiff and each Aggrieved Employee, on behalf of themselves or as representatives acting as proxy or agent of the LWDA, and their respective heirs, executors, administrators, attorneys, agents and assigns, fully and finally release and discharge Released Parties for the duration of the PAGA Period, from all claims, rights, demands, liabilities and causes of action for civil penalties under PAGA based on the factual allegations and Labor Code Sections alleged or that could have been alleged in the Litigation, including without limitation Labor Code sections 7, 98, 98.6, 200, 201, 201.5, 201.7, 202, 203, 203.1, 204, 206, 206.5, 209, 210, 212, 215,



216, 218, 218.5, 218.6, 221, 222-224, 225, 225.5, 226, 226(a), 226.3, 226.6, 226.7, 227, 227.3, 232, 246, 256, 351, 500, 510, 512, 516, 552, 558, 558.1, 1102.5, 1174, 1174.5, 1175, 1182.12, 1193.6, 1194, 1194.2, 1194.3, 1197, 1197.1, 1197.5, 1198, 1198.5, 1199, 2502, 2551, 2698 et. seq., 2699(a), 2699, 2699.3, 2699.5, 2751, 2800 and 2802, the IWC Order 4-2001, sections 2, 4, 7, 11, 12, 20, and Civil Code 3289, and all applicable Wage Orders. The PAGA Released Claims exclude the release of claims not permitted by law.

B. Publicity.

Except for information which the Parties and their counsel must provide the Court for purposes of approval of the PAGA Settlement, the Named Plaintiff and her counsel agree and represent that they have not and will not publish the Resolution. More specifically, Named Plaintiff and her counsel agree that they will not report the Settlement in any medium or in any publication, shall not post or report anything regarding the claims of Named Plaintiff or the Settlement on any website, and shall not contact any reporters or media regarding the Settlement. However, nothing in the provision shall be construed as preventing the Parties from taking following actions: (a) the Parties shall have the right to disclose the Resolution as may be required under federal or state tax and/or securities laws or under Generally Accepted Accounting Principles; (b) the Parties may refer to the Resolution, describe its terms, and file the settlement agreement with the Court, and the California LWDA in connection with any proceedings which are reasonably necessary to obtain Approval of the Settlement; and, (c) the Parties or their representatives may communicate with accountants or legal advisors regarding the Resolution. Except for the previously listed exceptions, in response to any inquiries about the Litigation, the Parties may state that "the case was resolved, and it was resolved confidentially."

V. DISTRIBUTION OF THE GSA

The distribution of the Gross Settlement Amount and administration of the Settlement Agreement will be conducted by Defendants, and thus the Parties do not anticipate any amount of the Gross Settlement Amount to be allocated to settlement administration.



VI. ADMINISTERING THE SETTLEMENT

Within 15 days of the Effective Final Settlement Date, Defendants shall create a list of Aggrieved Employees ("Aggrieved Employee List") containing the (1) name; (2) last known home address; (3) the Aggrieved Employee's social security number or other identifying information; and (4) the number of pay periods for each Aggrieved Employee during the Covered Period. Neither the Aggrieved Employee List nor any information contained therein shall be distributed to Plaintiff's Counsel at any time.

Within thirty (30) calendar days of the Effective Settlement Date, provided there is no objection by the LWDA as to any material term of the Settlement Agreement prior to Court Approval of this Settlement, Defendants will cause payment of a check in the amount of \$1,000.00 paid to Named Plaintiff's Counsel for attorneys' fees and costs. "Material Term" is one requiring material changes to the Basic Settlement Terms as defined in Paragraph XII of this Agreement.

Within thirty (30) calendar days of the Effective Settlement Date, provided there is no objection by the LWDA as to any material term of the Settlement Agreement prior to Court Approval, Defendants will cause payment of a check in the amount of \$3,000.00 to the LWDA (LWDA Payment) and \$1,000 to the Aggrieved Employees (Individual PAGA Payment) in accordance with the terms of this Resolution. Concurrently with sending each Aggrieved Employee their share of the Settlement Amount or Individual PAGA Payment, Defendants will include a "Notice of PAGA Action Settlement" (attached hereto as **Exhibit "A"**) along with each Aggrieved Employee's check. Defendants shall send each Aggrieved Employee their check via U.S. First Class mail to each Aggrieved Employee's address with directions to the Postmaster to return all undeliverable mail to Defendant.

VII. COMPUTATION AND DISTRIBUTION OF PAYMENTS

A. Distribution Formula.

Aggrieved Employees will receive a lump sum payment as good and valuable consideration for the waiver and release of claims set forth in Section V(A), above, in an amount determined by the Defendants in accordance with the provisions of this Agreement.

The lump sum payment to each member of the PAGA Group will be determined by



dividing the total number of pay periods worked by the individual Aggrieved Employee during the PAGA Period divided by the total number of pay periods worked by all Aggrieved employees during the PAGA Period, then multiplying the result by \$1,000.00. Individual PAGA Payment checks shall remain valid and negotiable for one hundred and eighty (180) calendar days after the date of their issuance. Within seven (7) calendar days after expiration of the 180-day period, checks for such payments shall be transmitted to the California Controller's Unclaimed Property Fund.

VIII. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN

The amounts paid under this Agreement do not represent a modification of any previously credited hours of service under any employee benefit plan, policy, or bonus program sponsored by Defendants. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under, benefit plans (self-insured or not) sponsored by Defendants', policies, or bonus programs. Any payments made under the terms of this Resolution shall not be applied retroactively, currently, or on a going forward basis as salary, earnings, wages, or any other form of compensation for the purposes of Defendants' benefit plan, policy, or bonus program. Defendants retains the right to modify the language of its benefit plans, policies, and bonus programs to effect this intent and to make clear that any amounts paid pursuant to this Resolution are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies, and bonus programs for purpose of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Resolution.

IX. PLAINTIFF'S COUNSEL'S ATTORNEYS' FEES AND LITIGATION COSTS

Defendants shall not oppose distribution of Named Plaintiffs' Counsel One Thousand Dollars and Zero Cents (\$1,000.00), which represents 20% of the Gross Settlement Amount for all past and future attorneys' fees necessary to prosecute, settle, and obtain an Effective Final Settlement in the PAGA claims.



Should the Court approve a lesser percentage or amount of fees and/or Litigation costs than the amount that Named Plaintiffs' Counsel ultimately seeks, then the unapproved portion or portions shall revert to the Gross Settlement Amount.

X. TAXATION AND ALLOCATION

For withholding tax characterization purposes and payment of taxes, the Gross Settlement Amount shall be deemed and allocated by the Parties as follows ("Net Settlement Allocation"): 100% as penalties for which a form 1099 will be distributed by the Defendants at times and in the manner required by the Internal Revenue Code.

XI. COURT APPROVAL

This Agreement and the Resolution is contingent upon approval by the Court. Named Plaintiff and Defendants agree to take all steps as may be reasonably necessary to secure Approval of the Resolution, to the extent not inconsistent with the terms of this Agreement and will not take any action adverse to each other in obtaining Court Approval of the Resolution in all respects.

XII. NULLIFICATION OF THE SETTLEMENT AGREEMENT.

In the event: (i) the Court does not enter an Approval Order of the Settlement and/or does not approve the Released Claims specified herein without requiring material changes to the Basic Settlement Terms (Basic Settlement Terms include monetary sums to be paid in the Settlement; the parameters of the Released Claims and the covered PAGA Period; and revisions to Defendants' Option To Nullify The Settlement Agreement as contained herein); or (ii) the Settlement does not become final for any other reason (e.g., an objection by the LWDA), this Settlement Agreement shall be null and void. Any order or judgment entered by the Court in furtherance of this Settlement Agreement shall be treated as void from the beginning, and the Stipulations and Recitals contained herein shall be of no force or effect and shall not be treated as an admission by the Parties or their counsel. In such a case, the Parties shall be returned to their respective statuses as of the date and time immediately prior to the execution of this Settlement Agreement, and the Parties shall proceed in all respects as if this Settlement Agreement had not been executed.



XIII. APPRISAL AND CERTIFICATION OF SETTLEMENT ADMINISTRATION BY DEFENDANTS

Upon completion of administration of the Settlement, the Defendants shall provide written certification of such completion to Plaintiffs' Counsel and Defendants' Counsel.

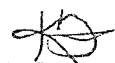
XIV. MISCELLANEOUS PROVISIONS

A. Stay of Litigation.

The Parties agree that upon full execution of this Settlement, the matter is stayed in its entirety except for any filings and/or motion work necessary to attain Court approval of the Settlement. Should the Court not grant approval of the Motion for Approval of Settlement, the stay will be lifted thirty (30) days thereafter and the Parties will be restored to their positions prior to the Settlement and the Settlement shall be null and void. Upon mutual agreement by the Parties, after these thirty (30) days expires, the Parties may agree to additional extensions of this stay in order to work towards obtaining Court approval, and this agreement between the Parties must be in writing.

B. Interpretation of the Agreement.

This Agreement constitutes the entire agreement between Named Plaintiff and Defendants pertaining to the Resolution of claims arising out of the PAGA as alleged in the Litigation. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other written or oral representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary, or contradict its terms. In entering into this Agreement, the Parties agree that this Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and enforced under the laws of the State of California, both in its procedural and substantive aspects, without regard to its conflict of laws provisions. Any claim arising out of or relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior Court of the State of California for the County of San Diego and Named Plaintiff and Defendants hereby consent to the personal jurisdiction of the Court over them solely in connection therewith. The foregoing is only limited



to disputes concerning this Agreement and in no way limits or negates the enforceability and effect of any other agreements signed by employees of Defendants. Named Plaintiff, on her own behalf and on behalf of Aggrieved Employees, and Defendants participated in the negotiation and drafting of this Agreement and had available to them the advice and assistance of independent counsel. As such, neither Named Plaintiff nor Defendants may claim that any ambiguity in this Agreement should be construed against the other.

The terms and conditions of this Agreement constitute the exclusive and final understanding and expression of all agreements between Named Plaintiff and Defendants with respect to the Resolution of the claims arising out of the PAGA as alleged in the Litigation. The Agreement may be modified only by a writing signed by counsel for all Parties or their successors-in-interest.

C. Further Cooperation.

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

D. Confidentiality of Documents.

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

E. Counterparts.

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

F. Authority.

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



G. No Third-Party Beneficiaries.

Named Plaintiff, Aggrieved Employees, Defendant, and Released Parties are direct beneficiaries of this Agreement, but there are no third-party beneficiaries.

H. Deadlines Falling on Weekends or Holidays.

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

I. Severability.

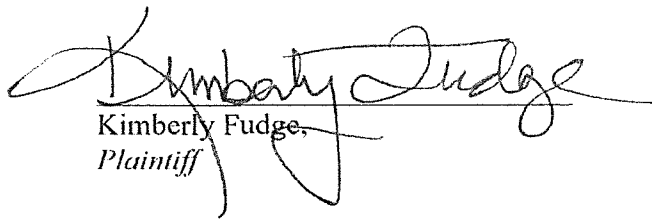
In the event that any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision if Defense Counsel and Plaintiffs' Counsel, on behalf of the Parties and Aggrieved Employees, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

K. Defendant's Fees and Costs

All of Defendants' own legal fees, costs, and expenses incurred in this Action shall be borne by Defendants.

Plaintiff:

Dated: June 24, 2022


Kimberly Fudge,
Plaintiff

Defendant:

Dated: _____, 2022

By: Dr. Laura Rossi
Its: Chief Executive Officer
on behalf of Soap Mat, LLC'

G. No Third-Party Beneficiaries.

Named Plaintiff, Aggrieved Employees, Defendant, and Released Parties are direct beneficiaries of this Agreement, but there are no third-party beneficiaries.

H. Deadlines Falling on Weekends or Holidays.

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I. Severability.

In the event that any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision if Defense Counsel and Plaintiffs' Counsel, on behalf of the Parties and Aggrieved Employees, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

K. Defendant's Fees and Costs

All of Defendants' own legal fees, costs, and expenses incurred in this Action shall be borne by Defendants.

Plaintiff:

Dated: _____, 2022

Kimberly Fudge,
Plaintiff

Defendant:

Dated: 6/29, 2022

Laura Rossi
By: Dr. Laura Rossi
Its: Chief Executive Officer
on behalf of Soap Mat, LLC

APPROVED AS TO FORM ONLY:

Plaintiff:

Dated: 6/24, 2022

**LAW OFFICES OF THOMAS M.
DIACHENKO, APC**



Thomas M. Diachenko, Esq.
Attorneys for *Plaintiff Kimberly Fudge*

Defendants:

Dated: _____, 2022

FISHER & PHILLIPS LLP

Christine D. Baran, Esq.
Lyle M. Chan, Esq.
Attorneys for *Defendants Soap Mat, LLC and
Dr. Laura Rossi*

APPROVED AS TO FORM ONLY:

Plaintiff:

Dated: _____, 2022

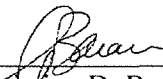
**LAW OFFICES OF THOMAS M.
DIACHENKO, APC**

Thomas M. Diachenko, Esq.
Attorneys for *Plaintiff Kimberly Fudge*

Defendants:

Dated: _____ July 7, 2022

FISHER & PHILLIPS LLP



Christine D. Baran, Esq.
Lyle M. Chan, Esq.
Attorneys for *Defendants Soap Mat, LLC and
Dr. Laura Rossi*

Exhibit 2

Malia Johnson

From: DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
Sent: Wednesday, July 27, 2022 4:50 PM
To: Malia Johnson
Subject: Thank you for your Proposed Settlement Submission

07/27/2022 04:49:29 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

**PROOF OF SERVICE
(CCP §§1013(a) and 2015.5)**

I, the undersigned, am at least 18 years old and not a party to this action. I am employed in the County of Orange with the law offices of Fisher & Phillips LLP and its business address is 2050 Main Street, Suite 1000, Irvine, California 92614.

On August 5, 2022, I served the following document(s) **JOINT STIPULATION REQUESTING APPROVAL OF REPRESENTATIVE PAGA SETTLEMENT** on the person(s) listed below by placing ☐ *the original* ☒ *a true copy* thereof enclosed in sealed envelope(s) addressed as follows:

Thomas M. Diachenko, Esq.
LAW OFFICE OF THOMAS M.
DIACHENKO, APC
1916 Third Avenue
San Diego, CA 92101

Attorneys for Plaintiff
KIMBERLY FUDGE

Tel: (619) 699-5870
Email: Thom@DiachenkoLaw.com

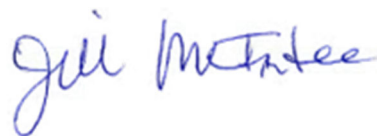
- ☐ **[by MAIL]** - I enclosed the document(s) in a sealed envelope or package addressed to the person(s) whose address(es) are listed above and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in Irvine California, in a sealed envelope with postage fully prepaid.
- ☐ **[by FAX]** - Based on an agreement of the parties to accept service by fax transmission, I faxed the document(s) to the person(s) at fax number(s) listed above from fax number (949) 851-0152. The fax reported no errors. A copy of the transmission report is attached.
- ☐ **[by OVERNIGHT DELIVERY]** - I enclosed the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the person(s) at the address(es) listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight carrier.
- ☒ **[by ELECTRONIC SERVICE]** - Based on a court order or an agreement of the parties to accept service by electronic transmission, I electronically served the document(s) to the person(s) at the electronic service address(es) listed above.
- ☐ **[by PERSONAL SERVICE]** - I delivered the document(s) to the person(s) at the address(es) listed above by (1) (a) personal delivery, or (b) by leaving the documents in an envelope/package with an individual in charge of the office, or (c) by leaving them in a conspicuous place in the office between the hours of 9:00 a.m. and 6:00 p.m., or (2) by messenger – a copy of the Messenger Declaration is attached.

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

Executed August 5, 2022, at Irvine, California.

Jill McIntee

By:



Print Name

Signature