

PRIVATE ATTORNEY GENERAL ACT SETTLEMENT AGREEMENT AND RELEASE

This Private Attorney General Act Settlement Agreement and Release (“Settlement Agreement”) is entered into by and between Danica Johnson, Diana Palafox, Vanessa Corona and Robert Lopez (“Plaintiffs”), for themselves and as representatives of the State of California and the Aggrieved Employees (as defined in Section 3(a)(5) below), on the one hand, and, on the other, Defendants Skori, Inc. and Rube Balayan. (“the company”), subject to approval by the Court. The term “Party” or “Parties” as used herein shall refer to Plaintiffs, the company or both, as may be appropriate.

1. **Recitals.** This Settlement Agreement is made with reference to the following facts:

(a) Plaintiffs are former employees of Skori, Inc.

(b) On June 7, 2021, plaintiffs’ counsel, Buchsbaum Haag, LLP, submitted a letter to the California Labor and Workforce Development Agency (“LWDA”) on behalf of plaintiffs, to notify the LWDA pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code section 2698, *et seq.*) of plaintiffs’ intent to seek civil penalties under PAGA and all other remedies available under PAGA, including and not limited to under Labor Code section 558, for CFI’s alleged violations of Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 1194, 1198, 1198.5, 2802 and the applicable Industrial Welfare Commission Wage Orders in conformity with Labor Code section 2699.3 (the “PAGA Notice”);

(c) On October 4, 2021, plaintiffs filed the First Amended Complaint for Civil Penalties Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), California Labor Code §2698, *et seq.* (“Operative Complaint”), commencing a representative action under PAGA against the company and Balayan, entitled *Danica Johnson, et al. v. Skori, Inc., et al.* (Case #21STCV21340). The Operative Complaint asserts a single cause of action for penalties under PAGA, for violations of multiple provisions of the Labor Code and applicable Industrial Welfare Commission Wage Orders.

(e) On March 28, 2022, the Parties mediated the Action during a full-day mediation with Jeffrey Krivis. Prior to mediation, the company voluntarily produced clocking and payroll data for a sample of the allegedly aggrieved employees, and also provided data on the size of the PAGA class. The Action resolved at mediation;

(f) There has been no determination on the merits of the Action or the PAGA Notice but, in order to avoid additional cost and the uncertainty of litigation, the Parties desire to resolve the Released Claims (as defined in Section 8(a) below) as of the date of execution of this Settlement Agreement.

2. **Nonadmission of Wrongdoing.** The Parties agree that neither this Settlement Agreement nor the furnishing of the consideration for this Settlement Agreement shall be deemed or construed at any time for any purpose as an admission by the Released Parties of wrongdoing or evidence of any liability or unlawful conduct of any kind.

3. **Consideration.**

(a) In consideration for plaintiffs signing this Settlement Agreement and complying with its terms, the company shall pay the maximum of SIXTY THOUSAND DOLLARS AND ZERO CENTS (\$60,000.00) (the "Total Settlement Amount") to resolve the Action and Released Claims, which will be paid as follows:

(1) Attorneys' fees of up to 33.3% of the Total Settlement Amount which sum is (\$19,980.00) and reimbursement of litigation costs and expenses up to the amount of (\$12,000.00) (collectively, "Attorneys' Fees and Costs") to Plaintiffs' Counsel, which the company will not contest.

(2) An enhancement fee of up to \$1,000 to each of the named plaintiffs (Johnson, Palafox and Corona), which the company will not contest.

(3) Costs and expenses of administration of the Settlement up to the amount of EIGHT THOUSAND DOLLARS AND ZERO CENTS (\$8,000.00) ("Settlement Administration Costs") to Simpluris, or another third party to be chosen (the "PAGA Settlement Administrator").

(4) The amounts stated in Paragraphs 1 – 3 above, once approved by the Court, shall be paid from the Total Settlement Amount. The balance remaining after these deductions is referred to as the "Net Settlement Amount."

(5) Seventy-five percent (75%) of the Net Settlement Amount shall be distributed to the LWDA ("LWDA Payment"); and the remaining twenty-five percent (25%) shall be distributed to the Aggrieved Employees, defined solely for purposes of this Settlement as former and current employees of Skori, Inc. who worked in California as non-exempt employees at any time during the period between June 7, 2020 and May 28, 2022 (the "Aggrieved Employees"). The Aggrieved Employees are estimated to consist of approximately 191 individuals. The 25% portion of the Net Settlement Amount payable to Aggrieved Employees is referred to as the "Employees' Portion."

(b) Because this is a settlement of PAGA claims for civil penalties only, no portion of the Settlement is allocated to unpaid wages. One Hundred Percent (100%) of the payments for Attorneys' Fees and Costs, Enhancement Fee, and the Net Settlement Amount to be paid to the LWDA and Aggrieved Employees as described in Section 3(a) above will be treated and reported for tax purposes as non-wage payments and the Settlement Administrator will be responsible for issuing IRS Forms 1099 as required.

4. **Court Approval is Required.** Plaintiffs understand and agree that the State of California and Aggrieved Employees, including Plaintiffs would not receive the consideration specified in Section 3(a) above, except for Plaintiffs' execution of this Settlement Agreement, and the fulfillment of the promises contained herein, as well as Court approval of the Settlement. If this Settlement Agreement is not approved by the Court, it shall be null and void. However, the parties will work in good faith to address any non-monetary concerns the court may have about the terms of the settlement and resubmit approval papers if necessary.

5. **Disbursal of Settlement Funds/Dismissal of Action.**

(a) Subject to Section 4 above, the company shall remit to the PAGA Settlement Administrator the sums described more fully in Section 3(a) above within 10 calendar days after all of the following has occurred: (i) the Settlement Agreement is fully executed by all Parties and their counsel; and (ii) the Court has entered an order approving the Settlement Agreement,.

(b) Upon complete distribution of the Total Settlement Amount by the PAGA Settlement Administrator in accordance with this Settlement Agreement, the Settlement Administrator will notify the parties of distribution of the entire Total Settlement Amount, and within ten (10) business days of such notification, plaintiffs will seek dismissal of the Action in its entirety with prejudice.

6. **Approval and Implementation of the PAGA Settlement.**

(a) The Parties will cooperate in obtaining an order from the Court approving this Settlement Agreement and dismissal of the Action based thereon, as described herein. The Parties' further agree to cooperate in the drafting and/or filing of any further documents and/or filings reasonably necessary to be prepared and/or filed, and to take all steps that may be requested by the Court relating in order to obtain approval and implementation of this Settlement Agreement, and the payments described in Section 3(a) above.

(b) The Parties shall seek to obtain Court approval of this Settlement Agreement by way of an unopposed motion to be filed by plaintiffs' Counsel.

(c) The Parties expressly acknowledge that the Court's approval of the Settlement Agreement is a condition precedent to any payments described in this Settlement Agreement. Therefore, the Parties further acknowledge that, should the Court not grant approval of this Settlement Agreement and/or should the Court refuse to grant dismissal of the action and closure of the case based on the Settlement, the entirety of this Settlement Agreement shall be null and void.

7. **Payment of PAGA Settlement Sum / Notice to Recipients.**

(a) Subject to Court approval of this Settlement Agreement, payment of the sums described in Section 3(a) above shall be made by the company by transmitting the required sums to a qualified settlement account established by the PAGA Settlement Administrator for administration of this Settlement, within fourteen (14) calendar days of the Court's order granting approval of this Settlement Agreement. If the date by which payment by the company is due falls on a Saturday, Sunday or legal holiday in the State of California, then the due date shall be extended the next following day which is not a Saturday, Sunday or legal holiday in the State of California.

(b) Each Aggrieved Employee will be entitled to a *pro rata* share of 25% of the Net Settlement Amount (i.e., the Employees' Portion) based upon the number of pay periods they each worked between June 7, 2020 and May 28, 2022 ("Compensable Pay Periods"), based on the company's payroll records. Specifically, to calculate each PAGA Settlement Member's share of the Employees' Portion ("Individual Settlement Share"), the PAGA Settlement Administrator shall: (1) for each Aggrieved Employee, divide the number of

Compensable Pay Periods he or she individually worked by the total aggregate number of Compensable Pay Periods worked by all Aggrieved Employees, and then (ii) multiply this amount by the Employees' Portion to arrive at each Aggrieved Employee's Individual Settlement Share.

(1) One Hundred Percent (100%) of all Individual Settlement Shares are to be considered penalties and will not be subject to local, state or federal payroll tax withholdings. All Aggrieved Employees who cash, deposit, or otherwise negotiate their Individual Settlement Share checks shall receive an IRS Form 1099 for their Individual Settlement Share as required by the IRS.

(c) The Parties agree to retain Simpluris, or some other reputable third-party administrator, to serve as the PAGA Settlement Administrator;

(d) The PAGA Settlement Administrator shall distribute each Individual Settlement Share by way of check, along with a cover letter agreed to by the Parties and approved by the Court, in the following manner:

(1) No later than seven (7) calendar days after the Court's order granting approval of the Settlement, the company shall provide the PAGA Settlement Administrator with a list of all Aggrieved Employees (the "Aggrieved Employees List"), containing the following information for each Aggrieved Employee: (i) first and last name; (ii) last known address; (iii) last known telephone number; (iv) social security number; (v) Compensable Pay Periods.

(2) The PAGA Settlement Administrator shall conduct one (1) National Change of Address ("NCOA") search for all individuals identified on the Aggrieved Employee List.

(3) No later than fourteen (14) calendar days after the PAGA Settlement Administrator's receipt of the Total Settlement Amount and Aggrieved Employee List, the PAGA Settlement Administrator shall mail the agreed-upon Cover Letter and Individual Settlement Share checks (together, the "PAGA Settlement Package") to all Aggrieved Employees by first-class United States mail. For each PAGA Settlement Package that is returned undeliverable, the PAGA Settlement Administrator shall promptly attempt to locate an alternate, updated address for the Aggrieved Employee at issue, by using an address refresher database and shall attempt one (1) re-mailing of the PAGA Settlement Package.

(4) The Individual Settlement Share checks issued to Aggrieved Employees shall remain valid for one hundred twenty (120) calendar days, and thereafter shall be transferred to the California State Controller's Unclaimed Property Fund in the name of the aggrieved employee.

(e) Also no later than fourteen (14) calendar days after the PAGA Settlement Administrator receives the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement Administrator shall transmit the LWDA Payment to the LWDA.

8. **Release of Claims by Plaintiffs, Aggrieved Employees, and the State of California.**

(a) Upon the Effective Date, and except as to the rights and obligations created by this Settlement Agreement, plaintiffs and Aggrieved Employees, individually and on behalf of their heirs, executors, administrators, representatives, attorneys, successors and assigns, and the State of California, on behalf of itself and its administrators, representatives, and assigns, will be deemed to have knowingly and voluntarily released and forever discharged the company, including the company's parent corporation, affiliates, subsidiaries, divisions, predecessors, insurers, successors and assigns, and their current and former employees, attorneys, officers, directors and agents thereof, both individually and in their business capacities, and their employee benefit plans and programs and the trustees, administrators, fiduciaries and insurers of such plans and programs (collectively, the "Released Parties"), to the full extent permitted by law, of and from the Action and from any and all claims asserted and unasserted, arising during the period from June 7, 2020 through May 28, 2022, for civil penalties under California Labor Code section 2698, *et seq.* ("PAGA") as well as any interest, fees, and costs available under PAGA, based on the factual allegations in the Operative Complaint and in plaintiffs' June 7, 2020 PAGA letter, and all claims that could have been alleged based on the factual allegations contained collectively therein, including, but not limited to, claims for failure to pay overtime and/or meal/rest period premium wages by failing to include all remuneration in calculating the regular rate of pay; failing to pay premium wages to non-exempt employees to compensate them for workdays the company failed to provide compliant meal periods; failing to pay premium wages to non-exempt employees to compensate them for workdays the company failed to provide compliant rest breaks; failure to timely pay wages during employment, failure to timely pay wages upon termination, failure to provide compliant wage statements, and failure to maintain requisite payroll records; and for violations of Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 1194, 1198, 2802 and applicable Industrial Welfare Commission Wage Orders in conformity with Labor Code section 2699.3. This release only applies to PAGA claims and aggrieved employees are not releasing their individual Labor Code claims.

9. **No Transfer/Assignment of Claims.** Plaintiffs warrants and represents that they have not assigned or transferred or purported to assign or transfer to any person or entity all or any part of or any interest in any claim released under this Settlement Agreement. Plaintiffs are solely responsible for the satisfaction of any assignment or lien to any lien holder and will indemnify and hold the Released Parties harmless against any liens, damages, penalties, fines, fees, assessments, taxes or attorneys' fees that may be imposed against or incurred by any of the Released Parties as a result of the Action of any lien holder or any lien claimant or any court in relation to any interest which any third party may have in any claim which Plaintiffs are releasing under this Settlement Agreement or any interest in any of the proceeds paid to plaintiffs or plaintiffs' Counsel under this Settlement Agreement.

10. **Liens and Attorneys' Fees/Indemnification.**

Plaintiffs are solely responsible for any liens made in connection with any services performed on plaintiffs' behalf by any attorney, consultants, or expert witnesses. Each Party solely is responsible for any fees and costs he, she or it has incurred including, but not limited to, fees for attorneys, consultants and expert witnesses. Plaintiffs acknowledges that none of the Released Parties are responsible for the payment of any fees incurred on behalf of

plaintiffs in connection with the prosecution of the Action, except to the extent the Settlement Agreement provides for payment of Attorneys' Fees and Costs.

11. **Governing Law and Interpretation.**

(a) This Settlement Agreement shall be governed and conformed in accordance with the laws of the State of California provided, however, that parol evidence shall not be admissible to alter, vary or supplement the term of this Settlement Agreement. Should any provision of this Settlement Agreement be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable such provision immediately shall become null and void, leaving the remainder of this Settlement Agreement in full force and effect.

(b) In the event of a breach of any provision of this Settlement Agreement, any Party reserves the right to institute an action specifically to enforce any term or terms of this Settlement Agreement or seek damages for breach. In an action to enforce any term or terms of this Settlement Agreement or to seek damages for breach of this Settlement Agreement, the prevailing Party in that action shall be entitled to recover reasonable attorney's fees and costs from the non-prevailing Party.

12. **Amendment.** This Settlement Agreement may not be modified, altered or changed except in writing and signed by both Parties wherein specific reference is made to this Settlement Agreement, subject to approval by the Court.

13. **Miscellaneous.**

(a) This Settlement Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which, taken together shall constitute the same instrument. A signature made on a faxed or electronically mailed copy of the Settlement Agreement or a signature transmitted by facsimile or electronic mail shall have the same effect as the original signature.

(b) The section headings used in this Settlement Agreement are intended solely for convenience of reference and shall not in any manner amplify, limit, modify or otherwise be used in the interpretation of any of the provisions hereof.

(c) This Settlement Agreement was the result of negotiations between the Parties and their respective counsel. In the event of vagueness, ambiguity or uncertainty, this Settlement Agreement shall not be construed against the Party preparing it, but shall be construed as if both Parties prepared it jointly.

(d) If plaintiffs or the company fail to enforce this Settlement Agreement or to insist on performance of any term, that failure does not mean a waiver of that term or of the Settlement Agreement. The Settlement Agreement remains in full force and effect anyway.

HAVING ELECTED TO EXECUTE THIS SETTLEMENT AGREEMENT, TO FULFILL THE PROMISES AND TO RECEIVE THE CONSIDERATION SET FORTH IN SECTION 3(a) ABOVE PLAINTIFFS AND DEENDANT, FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTER INTO THIS SETTLEMENT AGREEMENT.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Settlement Agreement as of the date set forth below:

Date: December 8, 2022

DANICA JOHNSON
Individually and On Behalf of the State of
California and Aggrieved Employees

Date: December 8, 2022

VANESSA CORONA
Individually and On Behalf of the State of
California and Aggrieved Employees

Date: December 8, 2022

DIANA PALAFOX
Individually and On Behalf of the State of
California and Aggrieved Employees

Date: December 8, 2022

SKORI, INC.

Date: December 8, 2022

By:

RUBEN BALAYAN,

Approved as to form and content.

BUCHSBAUM HAAG, LLP

Date: December 8, 2022

By:

BRENT BUCHSBAUM
Attorneys for PLAINTIFFS

LEW FIRM, LLC

Date: December 8, 2022

By:

ISAIAH ARTEST
Attorneys for Defendants

