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JYM ENTERPRISES, INC.

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

JESSICA CESENA, on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

JYM ENTERPRISES, INC., a California
Corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No.: 21STCV27949

REPRESENTATIVE PAGA ACTION

**JOINT STIPULATION OF PAGA
REPRESENTATIVE ACTION
SETTLEMENT AND RELEASE OF
CLAIMS**

*[Assigned for All Purposes to the Hon.
Monica Bachner; Dept. 71]*

Complaint Filed: July 29, 2021

FAC Filed:

Trial Date: None Set

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12 JESSICA CESENA, on behalf of herself and others similarly situated
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1 This Joint Stipulation of Representative Action Settlement and Release of Claims
2 (“Settlement” or “Agreement”) is made and entered into by and between Plaintiff JESSICA
3 CESENA (“Plaintiff” or “Class Representative”), individually and on behalf of the State of
4 California, all aggrieved employees, and Defendant JYM ENTERPRISES, INC. (“Defendant”).
5 Plaintiff and Defendant are collectively referred to herein as “the Parties.”

6 **I. DEFINITIONS**

7 The following definitions are applicable to this Settlement, in addition to other terms defined
8 elsewhere in this Settlement:

9 1. “Action” shall mean the operative Complaint of the civil action commenced on July
10 29, 2021, filed and maintained by Plaintiff against Defendant in the Superior Court of California,
11 County of Los Angeles, Case No. 21STCV27949.

12 2. “Aggrieved Employees” shall mean all persons who, during the Representative
13 Period, have previously been or currently are employed in California by Defendant, as a non-
14 exempt employee. An “Aggrieved Employee” shall mean an individual who is a member of the
15 Aggrieved Employees (or if any such person is incompetent, deceased, or unavailable due to
16 military service, the person’s legal representative or successor in interest evidenced by reasonable
17 verification).

18 3. “Aggrieved Employees’ Notice” shall mean the Notice of Settlement and Approval,
19 a sample of which is attached hereto as Exhibit A. The Aggrieved Employees’ Notice shall further
20 contain (i) an Aggrieved Employee’s first and last name, (ii) last known address, (iii) employee
21 identification number, if applicable, (iv) the Aggrieved Employee’s Individual Pay Periods, and (v)
22 the Aggrieved Employee’s individual share of the Aggrieved Employees’ Payment.

23 4. “Aggrieved Employees’ Payment” shall mean the remaining twenty-five percent
24 (25%) of the PAGA Payment to be distributed on a *pro rata* basis based upon the number of Pay
25 Periods worked by each Aggrieved Employee.

26 5. “Aggrieved Employees’ Payment Share” shall mean the value of each Aggrieved
27 Employee’s share of the Aggrieved Employees’ Payment as provided by this Agreement.

28 6. “Defense Counsel” shall mean the attorneys representing Defendant in the Action,

Matthew C. Sgnilek and Andrea Rosenkranz of O'Hagan Meyer.

7. "Effective Date" shall mean the date by which this Settlement is approved by the Superior Court by entry of the Judgment and the Judgment becomes Final. If no appeal is filed, the Effective Date shall occur 60 calendar days from entry of Judgment by the Court. If a timely appeal is filed, the Judgment shall become final on the date all appeals from the Judgment have been fully adjudicated. The occurrence of the Effective Date is a prerequisite to any obligation of Defendant to pay any funds into the Settlement Account.

8. "Individual Pay Periods" shall mean the number of Pay Periods for an individual Aggrieved Employee.

9. "Judgment" shall mean the Order of Final Judgment entered by the Superior Court that the Parties anticipate will be entered following an Approval Hearing on the Settlement in this Action.

10. "LWDA Payment" shall mean the payment to the California Labor and Workforce Development Agency ("LWDA") constituting seventy-five percent (75%) of the PAGA Payment.

11. "Maximum Settlement Amount" shall mean the Maximum Settlement Amount of Five Hundred Thousand Dollars and Zero Cents (\$500,000.00) payable by Defendant as provided by this Agreement.

12. "PAGA Counsel" shall mean the attorneys representing Plaintiff in the Action, David Yeremian, Esq. and Roman Shkodnik, Esq. of David Yeremian & Associates, Inc. and Walter Haines, Esq. of United Employees Law Group, PC.

13. "PAGA Counsel's Fees Payment" shall mean Two Hundred Thousand Dollars and Zero Cents (\$200,000.00) subject to approval by the Superior Court as PAGA Counsel's attorneys' fees incurred in connection with the Action, including fees incurred in pre-filing investigation, filing of the Action, and all related litigation activities, this Settlement, and all post-Settlement compliance procedures.

14. "PAGA Counsel's Litigation Expenses Payment" shall mean the actual litigation expenses and/or costs expended by PAGA Counsel's subject to approval by the Superior Court incurred in connection with the Action, including pre-filing investigation, filing of the Action, and

1 all related litigation activities, this Settlement, and all post-Settlement compliance procedures.
2 PAGA Counsel's expenses are not to exceed Fifteen Thousand Dollars and Zero Cents
3 (\$15,000.00).

4 15. "PAGA Payment" shall mean the Maximum Settlement Amount, less (i) the PAGA
5 Counsel's Fees Payment approved by the Superior Court; (ii) the PAGA Counsel's Litigation
6 Expenses Payment approved by the Superior Court; (iii) the Settlement Administrator Payment
7 approved by the Superior Court; and (iv) any other fees or expenses (other than PAGA Counsel's
8 Fees Payment and PAGA Counsel's Litigation Expenses Payment) incurred in implementing the
9 terms and conditions of this Agreement as approved by the Superior Court.

10 16. "Pay Period" shall mean any pay period in which an Aggrieved Employee actually
11 received payment from Defendant as a non-exempt employee.

12 17. Defendant represents that as of June 3, 2022, the number of pay periods worked by
13 the Aggrieved Employees during the Representative Period is approximately 14,044. If it is
14 determined that the pay periods through the earlier of approval of the settlement or 30 calendar days
15 following mediation (i.e., August 8, 2022) exceeds 16,151 (14,044 plus 15% of 14,044), then
16 Defendant shall have the option of either (i) increasing the PAGA Payment by an amount
17 determined by the following formula: $[\text{Actual Number of Pay Periods} - 16,151] / 14,044 \times \text{PAGA}$
18 Payment ; or (ii) changing the end date of the PAGA Period to a date for which there are no more
19 than 16,151 pay periods.

20 18. "Representative Period" shall mean the period of time from July 28, 2020, through
21 August 8, 2022.

22 19. "Settlement Administrator" shall mean Phoenix Settlement Administrators proposed
23 by the Parties and appointed by the Superior Court to administer the Settlement.

24 20. "Settlement Administrator Payment" shall mean the payment to the Settlement
25 Administrator for its fees and expenses in administering this Settlement.

26 21. "Superior Court" shall mean the Superior Court of California for the County of Los
27 Angeles.

1 **II. RECITALS**

2 22. On July 28, 2021, PAGA Counsel's, on behalf of Plaintiff and the Aggrieved
3 Employees, gave written notice to the LWDA of the Labor Code violations Defendant are alleged to
4 have violated ("LWDA Exhaustion Letter").

5 23. On July 29, 2021, Plaintiff commenced the Action against Defendant by filing a
6 Class Action Complaint pleading causes of action for (1) Failure to Pay Minimum Wages; (2)
7 Failure to Pay Overtime Wages; (3) Non-Compliant Meal Periods; (4) Non-Compliant Rest Breaks;
8 (5) Non-Compliant Wage Statements; (6) Reimbursement of Necessary Business Expenses; (7)
9 Failure to Keep Required Payroll Records; (8) Failure to Timely Pay Final Wages; and (9) Unfair
10 Business Practices. On October 4, 2021, Plaintiff amended his Complaint to add a tenth cause of
11 action for Civil Penalties pursuant to the Private Attorneys' General Act ("PAGA").

12 24. On November 12, 2021, in light of the arbitration agreement signed by Plaintiff
13 during her employment with Defendant, the Court dismissed the class allegations contained within
14 Plaintiff's first nine causes of action, leaving only her individual claims and tenth cause of action
15 for Civil Penalties pursuant to PAGA as a viable cause of action.

16 25. Defendant denies and continue to deny all of Plaintiff's material allegations.
17 Specifically, Defendant contends (1) it did not fail to pay the Aggrieved Employees any regular
18 wages, straight time wages, minimum wages, and/or overtime wages owed; (2) it provided the
19 Aggrieved Employees with all meal periods according to law; (3) it provide the Aggrieved
20 Employees with all rest breaks according to law; (4) it provided the Aggrieved Employees with
21 accurate itemized wage statements, consistent with Labor Code Section 226; (5) it properly
22 maintained all payroll records; (6) it did not fail to timely pay the Aggrieved Employees wages due
23 and owing during employment; (7) it did not fail to timely pay the Aggrieved Employees wages due
24 and owing upon separation; (8) the Aggrieved Employees is not entitled to penalties under PAGA;
25 and (9) Defendant is not liable for penalties, attorneys' fees, or costs of litigation to Plaintiff or the
26 Aggrieved Employees.

27 26. In connection with the Action, and in order to work toward a mediated resolution
28 without the time and expense of formal discovery, the Parties produced voluminous documents and

1 data (including, by Defendant, human resources documents and policies, time records, and payroll
2 data during the Representative Period) which were reviewed, investigated, and analyzed by PAGA
3 Counsel's.

4 27. On June 9, 2022, the Parties in Action participated in a full day of mediation before
5 an experienced employment and class and representative action mediator, Todd Smith, Esq., which
6 resulted in a settlement of the Action (the "Mediation").

7 28. The Settlement described in this Agreement represents a compromise and settlement
8 of highly disputed claims. Nothing in this Settlement is intended or will be construed as an
9 admission by Defendant that Plaintiff's claims in the Action have any merit or that it has any
10 liability to Plaintiff, the Aggrieved Employees, or the State on those claims, or as an admission by
11 Plaintiff that Defendant's defenses in Action have any merit. This Settlement is intended to fully,
12 finally, and forever compromise, release, resolve, discharge, and settle the released claims subject to
13 the terms and conditions set forth in this Settlement.

14 29. Based on their own thorough, independent investigation and evaluation of this case,
15 PAGA Counsel's is of the opinion that the Settlement of the Action with Defendant for the
16 consideration and on the terms set forth in this Settlement is fair, reasonable, adequate, and in the
17 best interest of the Aggrieved Employees in light of all known facts and circumstances, including
18 the risk of significant costs and delay, the defenses asserted by Defendant including the risks of
19 adverse determinations on the merits, and numerous potential appellate issues. Although Defendant
20 contends that it has no liability in the Action, Defense Counsel shares PAGA Counsel's belief that
21 the Settlement represents a fair and adequate settlement given the respective risks associated with
22 the case.

23 30. Based on the foregoing Recitals, the Parties agree as follows:

24 **III. PROCEDURE FOR APPROVING SETTLEMENT**

25 31. **Motion for Approval of Settlement by the Superior Court.** Plaintiff will move
26 the Superior Court for an order granting Approval of the Settlement and approving the Aggrieved
27 Employees' Notice (attached as Exhibit A to this Stipulation) ("Motion for Approval"). The
28 hearing on the Motion for Approval of Settlement shall be scheduled as soon as the matter may be

1 heard. Any unresolved disagreement among the Parties concerning the Aggrieved Employees'
2 Notice or other documents necessary to implement the Settlement will be referred first to Todd
3 Smith, Esq., and if no resolution is reached, then to the Superior Court.

4 32. At the hearing on the Motion for Approval, the Parties anticipate that they will
5 jointly appear, support the granting of the Motion for Approval, and obtain an order granting
6 approval of the Settlement, and granting approval of the Aggrieved Employees' Notice.

7 33. Should the Superior Court require any amendments to this Agreement or the Motion
8 for Approval, the Parties agree to work jointly to resolve any issues in order to secure the Superior
9 Court's Approval.

10 34. Should the Superior Court decline to approve any material aspects of the Settlement,
11 the Settlement will be null and void and the Parties will have no further obligations under it. In
12 such event, the Parties shall be returned to their respective positions as of the date and time
13 immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects as
14 if this Agreement had not been executed.

15 35. Upon approval of the Settlement by the Superior Court, the Parties will present for
16 the Superior Court's approval and entry a Proposed Final Order and Judgment. The entry of the
17 Order and Judgment shall permanently bar all Aggrieved Employees from prosecuting against
18 Defendant any claims for PAGA penalties through the Representative Period, which were or could
19 have been brought in this Action, whether known or unknown, as well as all claims as set forth in
20 the Release contained in Section V of this Agreement.

21 36. After entry of the Judgment, the Superior Court will have continuing jurisdiction
22 over the Action and the Settlement solely for purposes of (i) enforcing this Settlement, (ii)
23 addressing settlement administration matters, and (iii) addressing such post-Judgment matters as
24 may be appropriate under court rules or applicable law.

25 37. In conjunction with the Motion for Approval, Plaintiff will also file a Request for
26 Dismissal, with Prejudice, of Plaintiff's individual claims contained within her first nine causes of
27 action of the Action.

28 38. **Aggrieved Employees' Notice.** After the Superior Court enters its order granting

1 Approval, every Aggrieved Employee will be provided with the Aggrieved Employees' Notice (in
2 English and Spanish) which will include the Aggrieved Employees' Notice completed to reflect the
3 order granting Approval of the Settlement and the Aggrieved Employee's information as follows:

4 (a) Within twenty-one (21) calendar days after the Motion for Approval is
5 granted, the Defendant will provide to the Settlement Administrator the "Aggrieved Employees'
6 Data," which shall consist of an electronic database containing each Aggrieved Employee's (i) first
7 and last name, (ii) last known mailing address, (ii) Social Security number or Tax ID, (iii) employee
8 identification number, if applicable, and (iv) total number of Individual Pay Periods. If any or all of
9 the Aggrieved Employees' Data is unavailable to Defendant, Defendant will so inform PAGA
10 Counsel's prior to the date on which Defendant are required to submit the Aggrieved Employees'
11 Data to the Settlement Administrator and the Parties will make their best efforts to reconstruct or
12 otherwise agree upon the Aggrieved Employees' Data prior to when it must be submitted to the
13 Settlement Administrator. If the Parties are unable to agree, the dispute will be resolved by the
14 Settlement Administrator. This information will otherwise remain confidential and will not be
15 disclosed to anyone, except as required to applicable taxing authorities, as required to carry out the
16 reasonable efforts to identify Aggrieved Employees' information as described in this Paragraph
17 38(a), pursuant to Defendant's express written authorization, or by order of the Superior Court.

18 (b) If an Aggrieved Employees' Notice is returned by the U.S. Postal Service
19 because of an incorrect address, the Settlement Administrator will promptly, and not later than five
20 (5) calendar days from receipt of the returned packet, search for a more current address for the
21 Aggrieved Employee and re-mail the Aggrieved Employees' Notice to the Aggrieved Employee.
22 The Settlement Administrator will use the Aggrieved Employees' Data and otherwise work with
23 Defense Counsel or utilize its own resources such as skip traces to find a more current address. The
24 Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-
25 upon job parameters, court orders, and fee, to trace the mailing address of any Aggrieved Employee
26 for whom an Aggrieved Employees' Notice is returned by the U.S. Postal Service. These
27 reasonable steps shall include the tracking of all undelivered mail; performing address searches for
28 all mail returned without a forwarding address; and promptly re-mailing to Aggrieved Employee for

1 whom new addresses are found.

2 **39. Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms
3 and conditions of this Settlement, Plaintiff, Aggrieved Employees, Defendant, and their respective
4 counsel hereby waive any and all rights to appeal from the Judgment, including all rights to any
5 post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, a motion
6 for new trial, a motion under Code of Civil Procedure Section 473, and any extraordinary writ, and
7 the Judgment therefore will become non-appealable by them at the time it is entered. The waiver of
8 appeal does not include any waiver of the right to oppose any appeal, appellate proceedings, or
9 post-judgment proceedings. If an appeal is taken from the Judgment, the time for consummation of
10 the Settlement (including making payments under the Settlement) will be suspended until such time
11 as the appeal is finally resolved and the Judgment, consistent with the terms of this Settlement,
12 becomes Final.

13 **40. Vacating, Reversal, or Material Modification of Judgment on Appeal or**
14 **Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other
15 motion, petition, writ, or application, the reviewing court vacates, reverses, or modifies the
16 Judgment such that there is a material modification to the Settlement, and that court's decision is
17 not completely reversed and the Judgment is not fully affirmed on review by a higher court, then
18 either Party will have the right to void the Settlement, which the Party must do by giving written
19 notice to the other Parties, the reviewing court, and the Superior Court, not later than fourteen (14)
20 calendar days after the reviewing court's decision vacating, reversing, or materially modifying the
21 Judgment becomes final. For the purposes of this paragraph, a "material change" is a change to the
22 terms outlined in the accepted Memorandum of Understanding, a copy of which is attached hereto
23 as Exhibit B. A vacation, reversal, or modification of the Superior Court's award of the PAGA
24 Counsel's Fees Payment and/or PAGA Counsel's Litigation Expenses Payment will not constitute a
25 vacation, reversal, or material modification of the Judgment within the meaning of this paragraph.

26 **41. Establishment of Settlement Account.** The Settlement Administrator shall
27 establish a Settlement Account within ten (10) calendar days of the Effective Date and notify the
28 Parties when the Settlement Account has been established. The Settlement Administrator shall also

1 provide Defendant with an itemized statement for the total amount to be deposited into the
2 Settlement Account, which shall equal the Maximum Settlement Amount (“Settlement Account
3 Deposit”). Within twenty-one (21) calendar days after receiving notification of the Settlement
4 Account and statement for the Settlement Account Deposit, Defendant shall pay into the Settlement
5 Account an amount equal to the Settlement Account Deposit. Defendant shall have no obligation to
6 pay any additional funds into the Settlement Account.

7 **42. Payment of Aggrieved Employees’ Payment Shares.** The Settlement
8 Administrator shall pay to each Aggrieved Employee his or her Aggrieved Employees’ Payment
9 Share from the Settlement Account. The Settlement Administrator shall pay each Aggrieved
10 Employees’ Payment Share by sending a check in the appropriate amount to the Aggrieved
11 Employee at the address indicated in the Aggrieved Employees’ Data. Such payment, with the
12 Aggrieved Employees’ Notice, shall be sent by the Settlement Administrator via U.S. Mail within
13 ten (10) calendar days of its receipt of the Settlement Account Deposit from Defendant.

14 **43. Uncashed Aggrieved Employees’ Payment Share Checks.** Any checks paid to
15 Aggrieved Employees shall be negotiable for one hundred eighty (180) calendar days from the date
16 of their issuance. An Aggrieved Employee must cash his or her Settlement Share check within one
17 hundred eighty days (180) calendar days after it is mailed to him or her. If a check remains
18 uncashed after one hundred eighty (180) calendar days from the initial mailing, or if a check is
19 returned to the Settlement Administrator as undeliverable during the one hundred eighty-day period,
20 the Settlement Administrator shall take all reasonable efforts to identify the Aggrieved Employee’s
21 correct address, including the performance of a “skip-trace.” If an updated address can be
22 identified, the Settlement Administrator shall issue another check to the Aggrieved Employee and
23 mail it to the Aggrieved Employee at his or her updated address. If an updated address for the
24 Aggrieved Employee cannot be identified, if a reissued check is once again returned to the
25 Settlement Administrator as undeliverable, or if the reissued check remains uncashed after one
26 hundred eighty (180) calendar days, the Settlement Administrator will keep an accounting of such
27 funds and shall give notice to the Parties of the total balance of uncashed Aggrieved Employees’
28 Payment Shares. An Aggrieved Employee who fails to negotiate or receive their Aggrieved

1 Employees' Payment Share check despite the procedures described above shall nevertheless remain
2 bound by the Settlement and the releases contained herein.

3 44. The funds represented by Aggrieved Employees' Payment Share checks remaining
4 uncashed for more than one hundred eighty (180) calendar days after issuance shall be voided and
5 then shall be transmitted to the Controller of the State of California to be held pursuant to the
6 Unclaimed Property Law, California Code of Civil Procedure § 1500, *et seq.* in the names of those
7 Aggrieved Employees who did not cash their checks until such time they claim their property.
8 After the expiration of the 180-calendar day check cashing period, as outlined above, the Settlement
9 Administrator shall begin the process of transferring the funds in accordance with California Code
10 of Civil Procedure §§ 1500-1582 and the timing requirements set forth by the Office of the State
11 Controller. The Parties agree that this disposition results in no "unpaid residue" under California
12 Civil Procedure Code § 384, as the entire Aggrieved Employees' Payment will be paid out to
13 Aggrieved Employees, whether or not they all cash their settlement checks.

14 45. **Final Reports by Settlement Administrator to Superior Court.** Within ten (10)
15 calendar days after transmission of any remaining unclaimed funds to the Controller of the State of
16 California, the Settlement Administrator will serve on the Parties and file with the Superior Court a
17 declaration providing a final summary report on the transmission of any remaining unclaimed funds
18 to the Controller of the State of California.

19 46. **Payment of PAGA Counsel's Fees Payment and PAGA Counsel's Litigation**
20 **Expenses Payment.** The Settlement Administrator shall pay to PAGA Counsel the PAGA
21 Counsel's Fees Payment and PAGA Counsel's Litigation Expenses Payment from the Settlement
22 Account. The Settlement Administrator shall pay the PAGA Counsel's Fees Payment and PAGA
23 Counsel's Litigation Expenses Payment by sending a check in the appropriate amount to PAGA
24 Counsel at the address provided for in Paragraph 66. Such payment shall be sent by the Settlement
25 Administrator via U.S. Mail within ten (10) calendar days of its receipt of the Settlement Account
26 Deposit from Defendant.

27 **IV. SETTLEMENT TERMS AND CONDITIONS**

28 47. **Aggrieved Employees' Payment Shares.** Subject to the terms and conditions of

1 this Settlement, the Settlement Administrator will calculate the Aggrieved Employees' Payment
2 Shares for each Aggrieved Employee within ten (10) calendar days after Defendant provide the
3 Settlement Administrator with the Aggrieved Employees' Data. The Aggrieved Employees'
4 Payment Share for each Aggrieved Employee will be calculated as follows, understanding that the
5 formulas below do not constitute an admission by either Party, and are intended only to provide a
6 practical means to simplify and administer the claims process:

7 (a) **Number of Aggrieved Employees and Pay Periods.** Defendant shall
8 determine the total number of Aggrieved Employees and the aggregate number of Pay Periods for
9 those Aggrieved Employees as of the close of the Representative Period. This information shall be
10 provided to the Settlement Administrator along with the Aggrieved Employees' Data as described
11 in Paragraph 37(a) above.

12 (b) **Calculation of the Pay Period Value.** The Settlement Administrator shall
13 determine the value of a Pay Period ("Pay Period Value") by taking the Aggrieved Employees'
14 Payment amount and dividing it by the sum of all Aggrieved Employees' Pay Periods.

15 (c) **Calculation of Aggrieved Employees' Payment Shares.** The Settlement
16 Administrator shall assign to each Aggrieved Employee an Aggrieved Employees' Payment Share
17 which shall be equal to the Pay Period Value multiplied by each Aggrieved Employee's Individual
18 Pay Periods. Upon calculation of each Aggrieved Employee's share of the Aggrieved Employees'
19 Payment, the Settlement Administrator shall furnish to PAGA Counsel's and Defense Counsel a
20 worksheet containing a list of employee identification numbers for the Aggrieved Employees with
21 their corresponding Individual Pay Periods and Aggrieved Employees' Payment Share.

22 48. **Taxes and Withholdings.** Each Aggrieved Employees' Payment Share is intended
23 to settle each Aggrieved Employee's claims for civil penalties. Accordingly, one hundred percent
24 (100%) of each Aggrieved Employees' Payment Share shall represent civil penalties. The
25 Aggrieved Employees' Payment Share shall be paid to the Aggrieved Employee in full without
26 deductions or withholdings, and the Settlement Administrator shall issue an IRS Form 1099 to each
27 Aggrieved Employee for that amount, unless the Aggrieved Employees' Payment Share is \$600 or
28 less. Each Aggrieved Employee shall be individually responsible for their own share of applicable

1 income tax withholdings and deductions for his or her Aggrieved Employees' Payment Share.

2 49. **Total Payment Amount.** Except as provided for in Paragraph 17, in no event will
3 the Defendant be required to pay more than the Maximum Settlement Amount for distribution to
4 PAGA Counsel, the Aggrieved Employees, the LWDA, Settlement Administrator, or for any other
5 costs or expenses not otherwise enumerated.

6 50. **Payments to Plaintiff and PAGA Counsel and Others.** Subject to the terms and
7 conditions of this Settlement, the Settlement Administrator will make the following payments out of
8 the Maximum Settlement Amount as follows:

9 (a) **To PAGA Counsel:** PAGA Counsel will apply to the Superior Court for the
10 PAGA Counsel's Fees Payment in an amount not to exceed Two Hundred Thousand Dollars and
11 Zero Cents (\$200,000.00). PAGA Counsel's will also submit to the Superior Court a memorandum
12 of costs for the PAGA Counsel's Litigation Expenses Payment in an amount not to exceed Fifteen
13 Thousand Dollars and Zero Cents (\$15,000.00) as request reasonable costs of suit to be paid from
14 the Maximum Settlement Amount. Defendant will not oppose these requests. The Settlement
15 Administrator will pay the amounts approved by the Superior Court out of the Maximum Settlement
16 Amount. Withholding and deductions will not be taken from the PAGA Counsel's Fees Payment or
17 PAGA Counsel's Litigation Expenses Payment and one or more IRS Forms 1099 will be issued to
18 PAGA Counsel's with respect to those payments.

19 (b) **To the Settlement Administrator:** The Settlement Administrator will be
20 paid from the Maximum Settlement Amount its reasonable fees and expenses as approved by the
21 Superior Court, which are estimated to be Seven Thousand Dollars and Zero Cents (\$7,000.00).

22 (c) **To the LWDA:** As part of their Motion for Approval, the Parties will jointly
23 apply to the Superior Court for approval of the LWDA Payment in the estimated amount of Two
24 Hundred and Eight Thousand, Five Hundred Dollars and Zero Cents (\$208,500.00), which shall
25 constitute the LWDA's seventy-five percent (75%) share of the estimated Two Hundred and
26 Seventy Eight Thousand Dollars and Zero Cents (\$278,000.00) in civil penalties paid under this
27 Settlement. The remaining estimated Sixty-Nine Thousand, Five Hundred Dollars and Zero Cents
28 (\$69,500.00) in civil penalties shall be distributed on a *pro rata* basis based upon the number of pay

1 periods worked by each Aggrieved Employee (“Aggrieved Employees’ Payment”).

2 **51. Appointment of Settlement Administrator.** The Parties will ask the Superior
3 Court to appoint Phoenix Settlement Administrators, a qualified and experienced administrator
4 based in California where the Action is venued, to serve as the Settlement Administrator, which, as
5 a condition of appointment, will agree to be bound by this Agreement with respect to the
6 performance of its duties and its compensation. The Settlement Administrator’s duties will include
7 (i) calculating Aggrieved Employees’ Payment Shares; (ii) preparing, printing, and mailing the
8 Aggrieved Employees’ Notice to all Aggrieved Employees; (iii) using reasonable measures to
9 contact all Aggrieved Employees, including conducting a National Change of Address search on all
10 Aggrieved Employees before mailing the Aggrieved Employees’ Notice to each Aggrieved
11 Employee’s address; (iv) re-mailing the Aggrieved Employees’ Notice to the Aggrieved
12 Employee’s new address for those Aggrieved Employees whose address had changed; (v) setting up
13 a toll-free telephone number to receive calls from Aggrieved Employees; (vi) issuing the checks to
14 effectuate the payments due under the Settlement; (vii) using reasonable measures to deliver issued
15 checks to Aggrieved Employees, including use of a “skip-trace” for undeliverable checks; and (viii)
16 otherwise administering the Settlement pursuant to this Agreement. The Settlement Administrator
17 will have the final authority to resolve all disputes concerning the calculation of an Aggrieved
18 Employee’s Aggrieved Employees’ Payment Share, subject to the terms set forth in this Agreement.
19 The Settlement Administrator’s reasonable fees and expenses are estimated to be Seven Thousand
20 Dollars and Zero Cents (\$7,000.00) and will be paid out of the Maximum Settlement Amount, as set
21 forth herein, subject to Court approval.

22 **V. RELEASE OF CLAIMS**

23 **52. Aggrieved Employees Released Claims.** Upon the Effective Date, the Released
24 Parties shall be entitled to a release from the State of California, the LWDA, Plaintiff (as
25 representative of the State of California, the LWDA, and the general public), and the Aggrieved
26 Employees all claims for PAGA penalties that were alleged, or reasonably could have been alleged,
27 based on the facts and legal theories alleged in the operative complaint and LWDA Exhaustion Letter ,
28 including claims for civil penalties based on the following: (i) failure to pay all regular rate wages,

1 minimum wages, straight wages, and overtime wages due; (ii) failure to provide compliant meal
 2 periods and/or pay meal period premium wages; (iii) failure to provide compliant rest breaks and/or
 3 pay rest break premium wages; (iv) failure to timely pay wages during employment; (v) failure to
 4 provide complete, accurate wage statements; (vi) failure to pay wages timely at time of termination
 5 or resignation; (vii) failure to maintain records in accordance with Labor Code Section 1174; (viii)
 6 failure to reimburse necessary expenditures; and/or (ix) claims, causes of action or legal theories of
 7 relief seeking civil penalties under the California Labor Code Private Attorneys General Act of
 8 2004 plead in the operative complaint and underlying LWDA exhaustion letter (the “Released
 9 Claims”). The Released Parties include Defendant and its past, present and/or future, direct and/or
 10 indirect, officers, directors, members, managers, employees, agents, representatives, attorneys,
 11 insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates,
 12 divisions, predecessors, successors, assigns, and joint venturers. Aggrieved Employees cannot opt
 13 out of or object to the foregoing release. In no event shall the release of the Aggrieved Employees
 14 Released Claims in this Settlement release any individual claims of any individual Aggrieved
 15 Employees.

16 53. The Released Claims, coupled with the approval Order and Judgment has full *res*
 17 *judicata* effect, is final, and precludes and bars any future suits involving the PAGA Released
 18 Claims between July 28, 2020, and August 8, 2022. *Arias v. Sup Ct. (Angelo Dairy)* (2009) 46
 19 Cal.4th 969, 986 (“Because an aggrieved employee’s action under the Labor Code Private
 20 Attorneys General Act of 2004 functions as a substitute for an action brought by the government
 21 itself, a judgment in that action binds all those, including nonparty aggrieved employees, who
 22 would be bound by a judgment in an action brought by the government”).

23 54. **PAGA Counsel.** As of the Effective Date, and except as otherwise provided by this
 24 Settlement, PAGA Counsel and any counsel associated with PAGA Counsel waive any further
 25 claims to costs and attorneys’ fees and expenses against Defendant or the Released Parties arising
 26 from or related to the Action, including but not limited to claims based on the Labor Code, the Code
 27 of Civil Procedure, PAGA, the Business and Professions Code, or any other contract, statute or law
 28 (“PAGA Counsel’s Released Claims”).

1 55. **No Effect on Other Benefits.** The payment of Aggrieved Employees' Payment
2 Shares will not result in any additional employee benefit payments (such as 401(k), vacation, or
3 bonus) and shall not have any effect on the eligibility for, or calculation of, any employee benefit.

4 **VI. MISCELLANEOUS TERMS**

5 56. **No Admission of Liability.** Defendant denies that it has engaged in any unlawful
6 activity, has failed to comply with the law in any respect, or has any liability to anyone under the
7 claims asserted in the Action. This Settlement is entered into solely for the purpose of
8 compromising highly disputed claims. Nothing in this Settlement is intended or will be construed
9 as an admission of liability or wrongdoing by Defendant, an admission by Plaintiff that any of her
10 claims were non-meritorious, or any defense asserted by Defendant was meritorious. This
11 Settlement and the fact that Plaintiff and Defendant were willing to settle the Action will have no
12 bearing on, and will not be admissible in connection with, any litigation (other than solely in
13 connection with the Settlement).

14 57. Whether or not the Judgment becomes Final, neither the Settlement, any document,
15 statement, proceeding or conduct related to the Settlement, nor any reports or accounting of those
16 matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be
17 evidence for any purpose adverse to the Released Parties, including, but not limited to, evidence of
18 a presumption, concession, indication or admission by any of the Released Parties of any liability,
19 fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in
20 evidence against any of the Released Parties, or any other civil, criminal or administrative action or
21 proceeding except for purposes of effectuating this Settlement.

22 58. Notwithstanding Paragraph 57 of this Settlement, any and all provisions of this
23 Settlement may be admitted in evidence and otherwise used in any and all proceedings to enforce
24 any or all terms of this Settlement, or in defense of any claims released or barred by this Settlement.

25 59. **Integrated Agreement.** After this Settlement is signed and delivered by all Parties
26 and their counsel, this Settlement and its exhibits will constitute the entire agreement between the
27 Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties,
28 covenants, or inducements have been made to any Party concerning this Settlement or its exhibits

1 other than the representations, warranties, covenants, and inducements expressly stated in this
2 Settlement and its exhibits.

3 **60. Attorney Authorization.** PAGA Counsels and Defense Counsel warrant and
4 represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate
5 action required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its
6 terms, and to execute any other documents required to effectuate the terms of this Settlement. The
7 Parties and their counsel will cooperate with each other and use their best efforts to affect the
8 implementation of the Settlement. In the event the Parties are unable to reach agreement on the
9 form or content of any document needed to implement the Settlement, or on any supplemental
10 provisions that may become necessary to effectuate the terms of this Settlement, the Parties will
11 seek the assistance of mediator Todd Smith, Esq., and if no resolution is reached the Superior Court,
12 and in all cases all such documents, supplemental provisions and assistance of the court will be
13 consistent with this Settlement.

14 **61. Modification of Agreement.** This Agreement, and any and all parts of it, may be
15 amended, modified, changed, or waived only by an express written instrument signed by all Parties,
16 their successors-in-interest, and/or the Parties' respective counsel, as authorized.

17 **62. Settlement Binding on Successors.** This Settlement Agreement will be binding
18 upon, and inure to the benefit of, the successors of each of the Parties.

19 **63. Applicable Law.** All terms and conditions of this Settlement and its exhibits will be
20 governed by and interpreted according to the laws of the State of California, without giving effect to
21 any conflict of law principles or choice of law principles.

22 **64. Cooperation in Drafting.** The Parties have cooperated in the drafting and
23 preparation of this Settlement. This Settlement will not be construed against any Party on the basis
24 that the Party was the drafter or participated in the drafting.

25 **65. Fair Settlement.** The Parties and their respective counsel believe and warrant that
26 this Settlement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at
27 this Settlement through arms-length negotiations, taking into account all relevant factors, current
28 and potential.

66. **Headings.** The descriptive heading of any section or paragraph of this Settlement is inserted for convenience of reference only and does not constitute a part of this Settlement.

67. **Notice.** All notices, demands or other communications given under this Settlement will be in writing and deemed to have been duly given as of the third business day after mailing by U.S. Mail, addressed as follows:

To PAGA Counsel's:

DAVID YEREMIAN & ASSOCIATES, INC.
David Yeremian, Esq.
Roman Shkodnik, Esq.
2540 Foothill Boulevard, Suite 201
La Crescenta, CA 91214

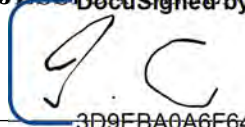
To Defense Counsel:

Matthew C. Sgnilek, Esq.
Andrea Rosenkranz, Esq.
O'HAGAN MEYER
3200 Park Center Drive, Suite 700
Costa Mesa, CA 92626

68. **Execution in Counterpart.** This Settlement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile signatures, scanned PDF signatures, and electronic signatures will be presumptive evidence of execution of the original, which shall be produced on reasonable request. Any executed counterpart will be admissible to prove the existence and contents of this Settlement.

DATED: 8/24/2022

JESSICA GESENA

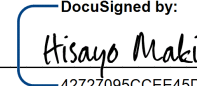
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DATED: 8/26/2022

JYM ENTERPRISES, INC.

By:

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Its:

VP

1 DATED: 8/24/2022

DAVID YEREMIAN & ASSOCIATES, INC.
UNITED EMPLOYEES LAW GROUP, PC

2
3 By:



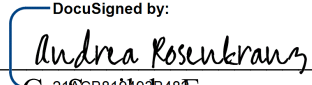
David Yeremian, Esq.
Roman Shkodnik, Esq.
Walter Haines, Esq.

6 Attorney for Plaintiff
7 JESSICA CESENA

8 DATED: 8/24/2022

O'HAGAN MEYER

9
10 By:

DocuSigned by:


Matthew C. Sgiller, Esq.
Andrea Rosenkranz, Esq.

13 Attorneys for Defendant
14 JYM ENTERPRISES, INC.