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Attorneys for Plaintiff and the Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

ALLEN JOHNSON, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

FS PALO ALTO EMPLOYMENT, INC., a
Delaware corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 21CV389927

(Assigned for all purposes to the Hon. Sunil R.
Kulkarni, Dept. 1)

**DECLARATION OF NICHOLAS
ROSENTHAL IN SUPPORT OF
PLAINTIFF'S MOTION TO APPROVE
SETTLEMENT AGREEMENT PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT**

Date: March 2, 2023

Time: 1:30 P.M.

Dept.: 1

Complaint Filed: November 4, 2021

Trial Date: None

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I, Nicholas Rosenthal, declare as follows:

1. I am an attorney at law, duly licensed to practice before all Courts in the State of California, and am with the law firm Diversity Law Group, counsel of record for Plaintiff Allen Johnson (“Plaintiff”). I have personal knowledge of the facts set forth below and if called to testify I could and would do so competently.

CASE SUMMARY

2. On or about August 31, 2021, Plaintiff submitted written notice under Labor Code § 2699.3 (the “PAGA Notice”) to the California Labor and Workforce Development Agency (“LWDA”) and Defendant FS Palo Alto Employment, Inc. (“Defendant”). As set forth in the PAGA Notice, Plaintiff alleged that Defendant violated California Labor Code §§ 201-203, 204, 226, 226.7, 510, 512, 558, 1194, 1197, and 1197.1, based on Defendant’s failure to pay all minimum and/or overtime wages owed for time spent undergoing check in and out procedures; failure to provide off-duty meal and rest breaks; and failure to provide accurate itemized wage statements. Attached as **Exhibit A** is a true and correct copy of the PAGA Notice submitted on August 31, 2021.

3. On September 23, 2021, Plaintiff filed a class action lawsuit in Santa Clara County Superior Court (the “Class Action”). The Class Action complaint alleges causes of action for (1) violation of Labor Code §§ 1194, 1197, and 1197.1; (2) violation of Labor Code §§ 510 and 558; (3) violation of Labor Code §§ 226.7 and 512; (4) violation of Labor Code § 226.7; (5) violation of Labor Code § 226(a); and (6) violation of Business and Professions Code § 17200, *et seq.*

4. On November 4, 2021, Plaintiff filed a separate, related action against Defendant. Plaintiff filed a representative action complaint based on the allegations in the PAGA Notice. Specifically, the representative action alleges a single cause of action for violation of the PAGA, Labor Code § 2698, *et seq.*, predicated on underlying violations of Labor Code §§ 201-203, 204, 226, 226.7, 510, 512, 558, 1194, 1197, and 1197.1 (the “PAGA Action”).

5. On or about December 1, 2021, Defendant filed a motion to compel Plaintiff's

1 class action claims to arbitration and motion to stay the PAGA Action.

2 6. On March 14, 2022, the Court ordered Plaintiff's class action claims to proceed in
3 arbitration and denied Defendant's motion to stay the PAGA Action. The representative action
4 complaint is the operative Complaint.

5 7. In about March 2022, the Parties agreed to participate in mediation with
6 Christopher M. Barnes, Esq. The Parties also agreed to conduct informal discovery to facilitate
7 an effective mediation. As part of informal discovery, Defendant provided Plaintiff with the
8 number of aggrieved employees, the number of pay periods at issue, sample of time and payroll
9 records, employee handbook, and relevant payroll policies. The data provided by Defendant
10 allowed my office to analyze liability and calculate Defendant's potential exposure.

11 8. The Parties participated in mediation with Mr. Barnes on June 17, 2022. During
12 the mediation, the Parties spoke at length about the strengths and weaknesses of each side's
13 claims and defenses and the scope of Defendant's liability.

14 9. From the inception of the case, Plaintiff's counsel have zealously represented the
15 interests of the aggrieved employees. The settlement was obtained for the benefit of the
16 aggrieved employees, as opposed to the individual Plaintiff.

17 **SUMMARY OF THE PROPOSED SETTLEMENT**

18 10. The Parties memorialized the terms of their settlement in the Joint PAGA
19 Settlement Agreement and Release of Claims ("Settlement Agreement"). A true and correct copy
20 of the Settlement Agreement is attached hereto as **Exhibit B**.

21 11. As set forth in the Settlement Agreement, the Aggrieved Employees affected by
22 this Settlement are defined as "all non-exempt employees employed by FS Palo Alto
23 Employment, Inc. who worked for FS Palo Alto Employment, Inc. during the PAGA Period."
24 Settlement Agreement ¶ 1.4. The PAGA Period is defined as "the period from August 30, 2020,
25 to September 30, 2022." *Id.* ¶ 1.19.

26 12. Based upon Defendant's records, Defendant represents that there are
27 approximately 104 Aggrieved Employees and approximately 1,074 pay periods at issue during
28 the PAGA Period. *Id.* ¶ 4.1.

1 13. As set forth in the Settlement Agreement, the Parties have agreed that a total of
2 Ninety-Five Thousand Dollars (\$95,000.00) (the “Gross Settlement Amount”) shall be paid by
3 Defendant in settlement of the action. *Id.* ¶ 3.1. This amount encompasses a settlement of PAGA
4 claims asserted in this lawsuit, a service award to Plaintiff in the amount of \$7,500.00, attorneys’
5 fees to Plaintiff’s counsel in the amount of \$31,666.00, Plaintiff’s counsel’s litigation costs in an
6 amount of up to \$15,000.00, and settlement administration costs in an amount not to exceed
7 \$7,500.00.

8 14. The balance of the Gross Settlement Amount remaining after deduction of the
9 approved PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment,
10 Plaintiff’s Service Award, and Administration Expenses Payment (the “Net Settlement Amount”
11 or “PAGA Penalties”) will be available for distribution to the LWDA and Aggrieved Employees
12 pursuant to the PAGA. *Id.* ¶ 1.15. Assuming the Court grants the foregoing amounts requested in
13 full, the Net Settlement Amount totals approximately \$33,334.00.

14 15. Pursuant to the PAGA, seventy-five percent (75%) of the Net Settlement Amount,
15 or approximately \$25,000.50, will be paid to the LWDA for PAGA penalties. *Id.* ¶ 3.2.3. The
16 remaining twenty-five percent (25%), or approximately \$8,333.50, will be distributed to
17 Aggrieved Employees on a pro rata basis. *Id.* ¶¶ 1.11, 3.2.3. The amount of each Individual
18 PAGA Payment will be based on the number of PAGA Period Pay periods each Aggrieved
19 Employee worked during the PAGA Period. *Id.* ¶ 3.2.3(i).

20 16. Based on the number of Aggrieved Employees, employees will be entitled to
21 recover, *on average*, approximately **\$103.22** each. The amount any particular Aggrieved
22 Employee will be entitled to recover may be greater or lower than this average depending on the
23 number of PAGA Period Pay periods he or she worked during the PAGA Period. This is fair, as
24 it directly allocates greater penalties to individual Aggrieved Employees who were employed
25 longer and thus allegedly suffered greater harm.

26 17. The Aggrieved Employees will be subject to only a limited release strictly
27 confined to the civil penalties available under PAGA based on the facts stated in the operative
28 Complaint and the PAGA Notice.

1 18. The Parties have agreed to retain Phoenix Settlement Administrators to administer
2 the Settlement, with the administration costs estimated not to exceed \$7,500.00.

3 **POTENTIAL CIVIL PENALTIES**

4 19. Based on the data provided by Defendant, Plaintiff's counsel calculated the
5 maximum exposure for all PAGA claims to be \$537,000.00. The breakdown for the calculation
6 of PAGA penalties per claim is as follows:

- 7 • Estimated \$107,400 for PAGA penalties with respect to minimum wage
8 and violations (based on approximately 1,074 pay periods during the
9 PAGA period x \$100 initial violation per pay period);
- 10 • Estimated \$107,400 for PAGA penalties with respect to overtime
11 violations (based on approximately 1,074 pay periods during the PAGA
12 period x \$100 initial violation per pay period);
- 13 • Estimated \$107,400 for PAGA penalties with respect to rest period
14 violations (based on approximately 1,074 pay periods during the PAGA
15 period x \$100 initial violation per pay period);
- 16 • Estimated \$107,400 for PAGA penalties with respect to meal period
17 violations (based on approximately 1,074 pay periods during the PAGA
18 period x \$100 initial violation per pay period);and
- 19 • Estimated \$1,074 for PAGA penalties with respect to wage statement
20 violations (calculated based on approximately 1,074 pay periods during
21 the PAGA period x \$250 violation penalty under Labor Code § 226.3
22 pursuant to *Raines v. Coastal Pac. Food Dist.* (2018) 23 Cal. App. 5th
23 667).

24 20. The maximum penalty calculation assumes that Plaintiff will prevail on the
25 merits. Here, Plaintiff asserts that his representative PAGA claims are based on the allegations
26 that Defendant failed to pay all minimum and/or overtime wages owed, failed to provide off-duty
27 meal and rest breaks, failed to provide accurate itemized wage statements, and failed to pay all
28 wages owed upon separation of employment.

1 21. While Plaintiff maintains that there does not exist any reason for reducing PAGA
2 penalties, Plaintiff is aware that Defendant could make a compelling argument to the contrary.
3 Defendant has denied violations of any applicable laws and denied liability for any claims
4 asserted in the Action. In this regard, Defendant argued that the policy was for COVID checks to
5 be performed on the clock and any instances where this occurred were the exception and that all
6 employees were completely relieved of duty during meal and rest breaks. Moreover, Defendant
7 argued that even if the Court ultimately found its employment practices violative of the Labor
8 Code, the Court has discretion under PAGA to reduce the maximum allowable PAGA penalties
9 at its discretion. Defendant may have sought summary judgment on this issue or proceeded to
10 trial. Should Defendant have prevailed, the State of California and Aggrieved Employees would
11 have been left with zero recovery. Even if Plaintiff prevailed at trial, Defendant could have
12 appealed, which would have continued litigation in this action for several years thus depriving
13 the State and Aggrieved Employees of any recovery for the foreseeable future.

14 22. The proposed settlement amounts to approximately **17.7%** of the total possible
15 liability in this matter, which significantly exceeds other PAGA settlements approved by courts.

16 23. I strongly believe that Plaintiff can prevail at trial. However, after taking into
17 account sharply disputed factual and legal issues involved in this litigation, the risks attending
18 further prosecution, including the still-developing law under PAGA, and the substantial benefits
19 to be received pursuant to the compromise and settlement of the litigation, I have concluded that
20 settlement on the terms set forth in the Settlement Agreement is appropriate and in the best
21 interests of Plaintiff, the State of California, and the Aggrieved Employees.

22 **ATTORNEY EXPERIENCE**

23 24. I am one of the primary attorneys on this matter. My qualifications are as
24 follows: I received my JD from University of Southern California Gould School of Law in
25 2009. Upon graduation, I practiced law as an associate at Seyfarth Shaw LLP, representing
26 corporate clients in both single-plaintiff and wage hour class actions. In 2014, I began as an
27 associate at Diversity Law Group.

28 25. I have handled a number of wage and hour matters including class actions and

multiple-plaintiff actions. I have been named as Class Counsel in a number of class actions that have been granted certification or preliminary or final approval by the Superior Courts of Los Angeles County, Orange County, Alameda County, and Monterey County, the United States District Court for the Central District of California, and the United States District Court for the Northern District of California. These cases include, but are not limited to: *Diller v. Under Armour Retail, Inc.*, Santa Clara County Superior Court Case No. 114-CV-265729, *Lopez v. Imperial Body Shop, Inc.*, Orange County Superior Court Case No. Case No. 30-2015-00816193-CU-OE-CXC, *Hughes v. Lincare, Inc., et al.*, Monterey County Superior Court Case No. M124764, *Pittman v. Martinez Steel Corporation*, San Bernardino County Superior Court Case No. CIVDS1823132, *Della Maggiora v. Watsonville Community Hospital*, Santa Cruz County Superior Court Case No. 18CV00191, *Randolph v. Pacific Racing Association*, Alameda County Superior Court Case No. RG18908139, *Morones v. Bimbo Bakeries USA, Inc.*, Sacramento County Superior Court Case No. 34-2018-00245481-CU-OE-GDS *Foaad Hanna v. Equinix, LLC*, Santa Clara County Superior Court Case No. 18CV339365; *Alicia Harris v. 24 Seven LLC*, Los Angeles County Superior Court Case No. BC720144; *Markham v. Quik Stop Markets, Inc.*, Santa Clara Superior Court Case No.19CV341582; *Siron v. Raypak, Inc.*, Ventura Superior Court Case No. 56-2019-005279959-CU-OE-VTA; *Carter v. Kline Services, Inc.*, San Bernardino Superior Court Case No. CIVDS1828867, *Pascual v. Satellite Healthcare, Inc.*, Santa Clara County Superior Court Case No. 19CV345211; *Carrillo v. New Balance Athletics, Inc.*, Santa Clara County Superior Court Case No. 19CV352469; *Vogel v. Veolia North America, LLC*, Monterey County Superior Court Case No. 19CV001443; *Holman v. American Sugar Refining, Inc.*, Contra Costa County Superior Court Case No. MSC18-00415; *Chavez v. Converse, Inc.*, United States District Court – Northern District of California Case No. 15-cv-03746-NC, and *Rodriguez v. Nike Retail Services, Inc.*, United States District Court – Northern District of California Case No. 5:14-CV-1508 BLF.

26. To date, I have incurred approximately 42.00 hours in connection with the litigation of this lawsuit. Attached hereto as **Exhibit C** is a chart summarizing the amount of work I have incurred to date on this matter.

27. The total lodestar for my hours will be approximately \$29,400.00 based on 70 total hours, at an hourly rate of \$700.00 per hour. I have been approved at an hourly rate of \$650.00 per hour by various courts, including: *Pittman v. Martinez Steel Corporation*, San Bernardino County Superior Court Case No. CIVDS1823132, *Della Maggiora v. Watsonville Community Hospital*, Santa Cruz County Superior Court Case No. 18CV00191, *Randolph v. Pacific Racing Association*, Alameda County Superior Court Case No. RG18908139, *Morones v. Bimbo Bakeries USA, Inc.*, Sacramento County Superior Court Case No. 34-2018-00245481-CU-OE-GDS *Foaad Hanna v. Equinix, LLC*, Santa Clara County Superior Court Case No. 18CV339365; *Alicia Harris v. 24 Seven LLC*, Los Angeles County Superior Court Case No. BC720144; *Markham v. Quik Stop Markets, Inc.*, Santa Clara Superior Court Case No. 19CV341582; *Siron v. Raypak, Inc.*, Ventura Superior Court Case No. 56-2019-005279959-CU-OE-VTA; *Carter v. Kline Services, Inc.*, San Bernardino Superior Court Case No. CIVDS1828867, *Pascual v. Satellite Healthcare, Inc.*, Santa Clara County Superior Court Case No. 19CV345211; *Carrillo v. New Balance Athletics, Inc.*, Santa Clara County Superior Court Case No. 19CV352469; *Vogel v. Veolia North America, LLC*, Monterey County Superior Court Case No. 19CV001443; *Holman v. American Sugar Refining, Inc.*, Contra Costa County Superior Court Case No. MSC18-00415; and *Chavez v. Converse, Inc.*, United States District Court, Northern District of California Case No. 15-cv-03746-NC. As of January 1, 2022, I increased my hourly rate to \$700.00 per hour. I have been approved at the \$700.00 rate in *Gutierrez v. Spa Havens, LP*, San Diego Superior Court Case No. 37-2019-00057065-CU-OE-NC and *Cruzado v. Ontario T, Inc.*, San Bernardino Superior Court Case No. CIVSB2027249.

LITIGATION COSTS

28. To date, my office has incurred \$10,216.65 in costs. The costs are all litigation-related costs, including filing fees, service of process fees, CourtCall fees, mediation fees, and postage. Attached hereto as **Exhibit D** is a copy of costs my firm has incurred in connection with the prosecution of this lawsuit.

NOTICE TO THE LWDA

29. Concurrent with the filing of the Motion to Approve Settlement Agreement, my

1 office uploaded the Motion, Settlement Agreement, and proposed order to the LWDA's website.
2 Attached hereto as **Exhibit E** is a true and correct copy of the confirmation of submission to the
3 LWDA on February 6, 2023.

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

6 Executed on this 6th day of February 2023, at Los Angeles, California.

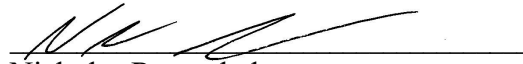
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8 
Nicholas Rosenthal

EXHIBIT A

ALLEN JOHNSON

c/o DIVERSITY LAW GROUP, P.C.
515 S. FIGUEROA STREET, SUITE 1250
LOS ANGELES, CALIFORNIA 90071
TELEPHONE (213) 488-6555
FACSIMILE (213) 488-6554

August 30, 2021

VIA ONLINE FILING

California Labor & Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

Re: Johnson v. FS Palo Alto Employment, Inc.

To Whom It May Concern:

This correspondence shall constitute as my written notice under Labor Code § 2699.3 of claims against my former employer FS Palo Alto Employment, Inc. (“Defendant” or “the Company”). Specifically, I allege as follows:

1. The Company violated Labor Code § 226 by failing to provide accurate and complete wage statements to myself and other similarly situated aggrieved employees. Specifically, the Company failed to list the accurate total hours worked for wage statements furnished to me and/or other similarly aggrieved non-exempt employees whenever shift premium wages and/or double time wages were paid. In particular, whenever shift differential wages and/or double time wages were paid, the wage statements issued by the Company did not identify the accurate total hours worked. For example, for the pay period of August 24, 2020 through September 6, 2020, the wage statement identified my total hours worked at 81.44 hours, even though if the hours added up on the wage statement shows 89.69 hours.
2. The Company violated Labor Code §§ 226.7 and 512 by not authorizing and permitting duty-free meal and rest periods to me and other similarly situated aggrieved employees. The Company violated these provisions by requiring me and other aggrieved employees to remain on work premises and/or keep our radios on during our breaks and to respond to any radio calls if called upon during our meal and rest breaks.
3. Violated Labor Code §§ 201-204, 510, 558, 1194, 1197, 1197.1 by not paying wages, including minimum, regular, and overtime wages, to me and other similarly situated aggrieved employees for all time spent undergoing check in/out procedures, including, but not limited to COVID temperature checks and screenings. The Company violated these provisions by requiring me and other non-exempt employees to undergo daily COVID check in procedures before being allowed to clock in without the payment of any wages for such time. Further as a result of such violations, the Company violated Labor Code §§ 201-203 by not paying employees all of their wages upon separation of employment due to the underpaid wages and Labor Code § 226(a) as the net/gross wages earned and hours worked shown on the wage statements were inaccurate due to the wage violations set forth above.

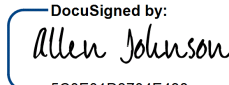
August 30, 2021
Page 2

The address for Defendant is as follows:

FS Palo Alto Employment, Inc.
2050 University Ave.
East Palo Alto, CA 94303

Please contact my attorney Larry W. Lee at the above address/phone number if you have any questions regarding this matter.

Sincerely,

DocuSigned by:

5C0E01D3704E438...
Allen Johnson

Cc: FS Palo Alto Employment, Inc. (via certified mail)

EXHIBIT B

Larry W. Lee (State Bar No. 228175)
Kristen M. Agnew (State Bar No. 247656)
Nicholas Rosenthal (State Bar No. 268297)
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Attorneys for Defendant FS Palo Alto Employment, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

ALLEN JOHNSON, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

FS PALO ALTO EMPLOYMENT, INC.,
a Delaware corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: 21CV389927

[Assigned for all purposes to the Hon. Sunil R.
Kulkarni, Department 1]

**JOINT PAGA SETTLEMENT AGREEMENT
AND RELEASE OF CLAIMS**

Complaint Filed: November 4, 2021
Trial Date: None

PAGA SETTLEMENT AND RELEASE OF CLAIMS

This PAGA Settlement Agreement and Release of Claims (“Agreement”) is made by and between Plaintiff Allen Johnson (“Plaintiff”) and Defendant FS Palo Alto Employment, Inc. (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS

1.1. “Action” means the Plaintiff’s PAGA lawsuit alleging wage and hour violations against FS Palo Alto Employment, Inc. captioned *Allen Johnson v. FS Palo Alto Employment, Inc.*, initiated on November 4, 2021, and pending in Superior Court of the State of California, County of Santa Clara (Case No. 21CV389927).

1.2. “Administrator” means Phoenix Settlement Administrators, the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.

1.4. “Aggrieved Employees” means all non-exempt employees employed by FS Palo Alto Employment, Inc. who worked for FS Palo Alto Employment, Inc. during the PAGA Period.

1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in FS Palo Alto Employment, Inc.’s possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.

1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.

1.7. “Court” means the Superior Court of California, County of Santa Clara.

1.8. “Defense Counsel” means Diana Lerma, Christina Tantoy and all other employees of Stokes Wagner, ALC.

1 **1.9.** “Effective Date” means the date by when both of the following have occurred: (a)
2 the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment
3 is final. The Judgment is final as of the day the Court enters Judgment.

4 **1.10.** “Gross Settlement Amount” means \$95,000 which is the total amount FS Palo Alto
5 Employment, Inc. agrees to pay under the Settlement except as provided in Paragraph 9 below.
6 The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA
7 Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, Plaintiff’s
8 Service Award, and the Administrator’s Expenses Payment.

9 **1.11.** “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of
10 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved
11 Employee worked during the PAGA Period.

12 **1.12.** “Judgment” means the judgment entered by the Court based upon the Final
13 Approval.

14 **1.13.** “LWDA” means the California Labor and Workforce Development Agency, the
15 agency entitled, under Labor Code section 2699, subd. (i).

16 **1.14.** “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the
17 LWDA under Labor Code section 2699, subd. (i).

18 **1.15.** “Net Settlement Amount” means the Gross Settlement Amount, less the following
19 payments in the amounts approved by the Court: Plaintiff’s Service Award (\$7,500.00), PAGA
20 Counsel Fees Payment (\$31,666.00), PAGA Counsel Litigation Expenses Payment (\$15,000), and
21 the Administration Expenses Payment (\$7,500). The remainder is to be paid as the LWDA PAGA
22 Payment and Individual PAGA payments.

23 **1.16.** “PAGA Counsel” means Larry W. Lee, Kristen M. Agnew, Nicholas Rosenthal of
24 Diversity Law Group, P.C.

25 **1.17.** “PAGA Counsel Fees Payment” and “PAGA Counsel Litigation Expenses
26 Payment” mean the amounts allocated to PAGA counsel for reimbursement of reasonable
27 attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

28 **1.18.** “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee

1 worked for FS Palo Alto Employment, Inc. for at least one day during the PAGA Period.

2 **1.19.** “PAGA Period” means the period from August 30, 2020, to September 30, 2022.

3 **1.20.** “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

4 **1.21.** “PAGA Notice” means Plaintiff’s August 30, 2021, letter to S Palo Alto
5 Employment, Inc. and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.
6 (a).

7 **1.22.** “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from
8 the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$8,333.50) and the
9 75% to LWDA (\$25,000.50) in settlement of PAGA claims.

10 **1.23.** “Plaintiff” means Allen Johnson, the named plaintiff in the Action.

11 **1.24.** “Plaintiff’s Service Award” means an amount from the Gross Settlement Amount
12 not to exceed \$7,500.00 to be paid to Plaintiff in recognition of his effort in prosecuting the Action
13 for the benefit of the State of California and Aggrieved Employees. Plaintiff’s Service Award is
14 subject to Court Approval. The Service Award shall be in addition to any Individual PAGA
15 Payment to which Plaintiff is entitled. The Administrator will issue Plaintiff an IRS Form 1099 in
16 connection with this payment. Any portion of Plaintiff’s Service Award not approved by the Court
17 shall be added to the Net Settlement Amount to be distributed to the Aggrieved Employees.

18 **1.25.** “Approval Order” means the proposed Court Order Granting Approval of PAGA
19 Settlement.

20 **1.26.** “Released PAGA Claims” means the claims being released by the Plaintiff and
21 PAGA Counsel and as described in Paragraph 5 below.

22 **1.27.** “Released Parties” means: FS Palo Alto Employment, Inc., DTRS Palo Alto, LLC,
23 their affiliates, and their respective affiliates’ former and present directors, officers, shareholders,
24 owners, members, attorneys, insurers, predecessors, successors, assigns or subsidiaries.

25 **1.28.** “Settlement” means the disposition of the Action effected by this Agreement and
26 Judgment.

27 **1.29.** “FS Palo Alto” means named Defendant FS Palo Alto Employment, Inc.
28

1 **2. RECITALS**

2 **2.1.** On September 23, 2021, Plaintiff commenced this Action by filing a representative
3 action complaint on behalf of himself, the State of California, and other Aggrieved Employees,
4 alleging causes of action against FS Palo Alto for violation of Labor Code sections 201-204, 226,
5 226.7, 510, 512, 558, 1194, 1197, and 1197.1. FS Palo Alto denies the allegations in the Operative
6 Complaint, denies any failure to comply with the laws identified in in the Operative Complaint
7 and denies any and all liability for the causes of action alleged. Shortly after Plaintiff filed the
8 Complaint, Defense Counsel notified Plaintiff's Counsel regarding the existence of a signed
9 arbitration agreement between the parties containing a class/collective action waiver. The Court
10 granted Defendant's Motion to Compel Arbitration, ordering Plaintiff to arbitrate his individual
11 claims, and denied Defendant's Motion to Stay the remaining PAGA claim.

12 **2.2.** Pursuant to Labor Code section 2699.3, subd. (a), Plaintiff gave timely written
13 notice to FS Palo Alto and the LWDA by sending the PAGA Notice.

14 **2.3.** On June 17, 2022, the Parties participated in an all-day mediation presided over by
15 Christopher Barnes, an experienced wage-and-hour mediator, which led to this Agreement to settle
16 the Action. FS Palo Alto continues to deny the allegations in the Operative Complaint, any failure
17 to comply with the laws identified in in the Operative Complaint and any and all liability for the
18 causes of action alleged. The Settlement was negotiated in light of all known facts and
19 circumstances and the uncertainty associated with litigation, including the risks of proving
20 Plaintiff's claims at trial, the merits of Defendant's potential defenses, and the significant delay
21 and potential appellate issues inherent therein.

22 **2.4.** Based on PAGA Counsel's investigation and evaluation over the course of
23 litigation (after conducting informal discovery in connection with mediation and analyzing the
24 data produced by Defendant and evaluating potential damages), PAGA Counsel is of the opinion
25 that the terms set forth in this agreement are fair, reasonable, adequate, and in the best interests of
26 the Aggrieved Employees and the State of California.

1 **2.5.** The Parties, PAGA Counsel and Defense Counsel represent that they are not aware
2 of any other pending matter or action asserting claims that will be extinguished or affected by the
3 Settlement.

4 **3. MONETARY TERMS**

5 **3.1.** Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, FS
6 Palo Alto promises to pay \$95,000.00 and no more as the Gross Settlement Amount. FS Palo Alto
7 has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1
8 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without
9 asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of
10 the Gross Settlement Amount will revert to FS Palo Alto.

11 **3.2.** Payments from the Gross Settlement Amount. The Administrator will make and
12 deduct the following payments from the Gross Settlement Amount, in the amounts specified by
13 the Court in the Final Approval:

14 **3.2.1.** To PAGA Counsel: A PAGA Counsel Fees Payment of not more than One-
15 Third of the Gross Settlement Amount, or \$31,666.00, and PAGA Counsel Litigation Expenses
16 Payment of not more than \$15,000. FS Palo Alto will not oppose requests for Court approval of
17 these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel
18 will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses
19 Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation
20 Expenses Payment less than the amounts requested, the Administrator will allocate the remainder
21 to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any
22 other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment
23 and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA
24 Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms.
25 PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees
26 Payment and the PAGA Counsel Litigation Expenses Payment and holds FS Palo Alto harmless,
27
28

1 and indemnifies FS Palo Alto, from any dispute or controversy regarding any division or sharing
2 of any of these Payments.

3 **3.2.2. To the Administrator:** An Administrator Expenses Payment not to exceed
4 \$7,500 except for a showing of good cause and as approved by the Court. To the extent the
5 Administration Expenses are less or the Court approves payment less than \$7,500, the
6 Administrator will retain the remainder in the Net Settlement Amount.

7 **3.2.3. To the LWDA and Aggrieved Employees:** PAGA Penalties in the amount
8 of \$33,334 to be paid from the Gross Settlement Amount, with 75% (\$25,000.50) allocated to the
9 LWDA PAGA Payment and 25% (\$8,333.50) allocated to the Individual PAGA Payments.

10 (i) The Administrator will calculate each Individual PAGA Payment by
11 (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$8,333.50)
12 by the total number of PAGA Period Pay periods worked by all Aggrieved Employees during the
13 PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay
14 Periods. Aggrieved Employees assume full responsibility for any taxes owed on their Individual
15 PAGA Payment.
16

17 (ii) If the Court approves PAGA Penalties of less than the amount
18 requested, the Administrator will allocate the remainder to the Net Settlement Amount. The
19 Administrator will report the Individual PAGA Payments on IRD 1099 Firms.
20

21 **3.2.4. To Plaintiff:** Subject to the Court's approval, Defendant agrees to pay
22 Plaintiff a Service Award of up to Seven Thousand Five Hundred Dollars (\$7,500.00) from the
23 Gross Settlement Amount as compensation for his efforts to prosecute the Action and service as a
24 representative on behalf of aggrieved employees and the State of California.
25
26
27
28

1 **4. SETTLEMENT FUNDING AND PAYMENTS**

2 **4.1. Aggrieved Employee Pay Periods.** Based on a review of its records to date, FS Palo
3 Alto estimated there are 104 Aggrieved Employees who worked a total 1,074 of PAGA Pay
4 Periods.

5 **4.2. Aggrieved Employee Data.** Within 30 days, FS Palo Alto will simultaneously
6 deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel
7 spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the
8 Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of
9 this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to
10 Administrator employees who need access to the Aggrieved Employee Data to effect and perform
11 under this Agreement. FS Palo Alto has a continuing duty to immediately notify PAGA Counsel
12 if it discovers that the Aggrieved Employee Data omitted employee identifying information and to
13 provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without
14 any extension of the deadline by which FS Palo Alto must send the Aggrieved Employee Data to
15 the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith,
16 to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee
17 Data.

18 **4.3. Funding of Gross Settlement Amount.** FS Palo Alto shall fully fund the Gross
19 Settlement Amount by transmitting the funds to the Administrator no later than 30 days after the
20 Effective Date.

21 **4.4. Payments from the Gross Settlement Amount.** Within 15 days after FS Palo Alto
22 funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA
23 Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel
24 Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not
25 precede disbursement of Individual PAGA Payments.

26 **4.4.1.** The Administrator will issue checks for the Individual PAGA Payments and
27 send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of
28 each check shall prominently state the date (not less than 180 days after the date of mailing) when

1 the check will be voided. The Administrator will cancel all checks not cashed by the void date.
2 Before mailing any checks, the Settlement Administrator must update the recipients' mailing
3 addresses using the National Change of Address Database.

4 **4.4.2.** The Administrator must conduct an Aggrieved Employee Address Search
5 for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding
6 address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the
7 USPS forwarding address provided or to an address ascertained through the Aggrieved Employee
8 Address Search. The Administrator need not take further steps to deliver checks to Aggrieved
9 Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly
10 send a replacement check to any Aggrieved Employee whose original check was lost or misplaced,
11 requested by the Aggrieved Employee prior to the void date.

12 **4.4.3.** For any Aggrieved Employee whose Individual PAGA Payment check is
13 uncashed and cancelled after the void date, the Administrator shall transmit the funds represented
14 by such checks to the California Controller's Unclaimed Property Fund in the name of the
15 Aggrieved Employee.

16 **4.4.4.** The payment of Individual PAGA Payments shall not obligate FS Palo Alto
17 to confer any additional benefits or make any additional payments to the Aggrieved Employees
18 (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

19 **5. RELEASES OF CLAIMS**

20 Effective on the date when FS Palo Alto fully funds the entire Gross Settlement Amount
21 Plaintiff and PAGA Counsel will release claims against all Released Parties as follows

22 **5.1. Plaintiff's Release:** Plaintiff and his respective former and present spouses,
23 representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors,
24 and assigns generally, forever release and discharge Released Parties from all claims, transactions,
25 or occurrences [that occurred during the PAGA Period], including, but not limited to: (a) all claims
26 that were, or reasonably could have been, alleged, based on the facts contained in the Operative
27 Complaint and the PAGA Notice ("Plaintiff's Release"). Plaintiff's Release does not extend to any
28

1 claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment
2 benefits, disability benefits, social security benefits, workers' compensation benefits that arose at
3 any time, or based on occurrences outside the PAGA Period. Plaintiff acknowledges that Plaintiff
4 may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows
5 or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective
6 in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.
7

8 **5.1.1. Plaintiff's Waiver of Rights Under California Civil Code Section 1542.** For
9 purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights,
10 and benefits, if any, of section 1542 of the California Civil Code, which reads:

11 A general release does not extend to claims that the creditor or releasing
12 party does not know or suspect to exist in his or her favor at the time of
13 executing the release, and that if known by him or her would have materially
14 affected his or her settlement with the debtor or Released Party.

15 **5.2. Release by Aggrieved Employees:** All Aggrieved Employees are deemed to
16 release, on behalf of themselves and their respective former and present representatives, spouses,
17 agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all
18 claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the
19 PAGA Period facts stated in the Operative Complaint and the PAGA Notice

20 **5.3. Release by PAGA Counsel:** PAGA Counsel release on behalf of their present and
21 former attorneys, employees, agents, successors and assigns the Released Parties from all claims
22 for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts
23 stated in the Operative Complaint and the PAGA Notice.

24 **6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT.**

25 The Parties agree to jointly prepare and file an application or motion for approval of this
26 Settlement.

27 **6.1. Plaintiff's Responsibilities.** Plaintiff will prepare and deliver to Defense Counsel
28 all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699,

1 subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a
2 signed declaration from the Administrator attaching its “not to exceed” bid for administering the
3 Settlement and attesting to its willingness to serve; competency; operative procedures for
4 protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data
5 breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential
6 conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any
7 financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration
8 from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA
9 documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative
10 Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699,
11 subd. (l)(2)); (iv) a redlined version of the parties’ Agreement showing all modifications made to
12 the Model Agreement ready for filing with the Court; and (v) all facts relevant to any actual or
13 potential conflict of interest with Aggrieved Employees and/or the Administrator. In their
14 Declarations, Plaintiff and PAGA shall aver that they are not aware of any other pending matter
15 or action asserting claims that will be extinguished or adversely affected by the Settlement.

17 **6.2. Responsibilities of PAGA Counsel.** PAGA Counsel and Defense Counsel are
18 jointly responsible for expeditiously finalizing and filing the application or motion for approval of
19 this Settlement no later than 30 days after the full execution of this Agreement and, if necessary,
20 obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the
21 motion. PAGA Counsel is responsible for delivering the Court’s Preliminary Approval to the
22 Administrator.

23 **6.3. Duty to Cooperate.** If the Parties disagree on any aspect of the proposed application
24 or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA
25 Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting
26 in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not
27 grant the motion for approval of this Settlement or conditions its approval on any material change
28 to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on

1 behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the
2 Agreement and otherwise satisfy the Court's concerns.

3 **7. SETTLEMENT ADMINISTRATION.**

4 **7.1. Selection of Administrator.** The Parties have jointly selected Phoenix Settlement
5 Administrators to serve as the Administrator and verified that, as a condition of appointment,
6 Phoenix Settlement Administrators agrees to be bound by this Agreement and to perform, as a
7 fiduciary, all duties specified in this Agreement in exchange for payment of Administration
8 Expenses. The Parties and their Counsel represent that they have no interest or relationship,
9 financial or otherwise, with the Administrator other than a professional relationship arising out of
10 prior experiences administering settlements.

11 **7.2. Employer Identification Number.** The Administrator shall have and use its own
12 Employer Identification Number for purposes of calculating payroll tax withholdings and
13 providing reports state and federal tax authorities.

14 **7.3. Qualified Settlement Fund.** The Administrator shall establish a settlement fund that
15 meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation
16 section 468B-1.

17 **7.4. Administrator Duties.** The Administrator has a duty to perform or observe all tasks
18 to be performed or observed by the Administrator contained in this Agreement or otherwise.

19 **8. AGGRIEVED EMPLOYEE SIZE ESTIMATES AND ESCALATOR CLAUSE**

20 The Gross Settlement Amount is premised on their being 104 Aggrieved Employees who
21 worked a total of 1,074 Pay Periods between August 30, 2020, and June 17, 2022. Should the
22 actual number of Pay Periods worked by the Aggrieved Employees exceed 1,182 (i.e., 10% over
23 1,074), the Gross Settlement Amount will increase in proportion to the overage. For instance, a
24 12% increase in the Pay Periods will result in a 2% increase in the Gross Settlement Amount.

25 **9. CONTINUING JURISDICTION OF THE COURT**

26 The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the
27 Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or
28

Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

9.1. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties, their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10. ADDITIONAL PROVISIONS

10.1. No Admission of Liability or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by FS Palo Alto that any of the allegations in the Operative Complaint have merit or that FS Palo Alto has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that FS Palo Alto's defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, FS Palo Alto reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest FS Palo Alto's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

10.2. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

1 **10.3. Attorney Authorization.** PAGA Counsel and Defense Counsel separately warrant
2 and represent that they are authorized by Plaintiff and FS Palo Alto, respectively, to take all
3 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to
4 effectuate its terms, and to execute any other documents reasonably required to effectuate the terms
5 of this Agreement including any amendments to this Agreement.
6

7 **10.4. Cooperation.** The Parties and their counsel will cooperate with each other and use
8 their best efforts, in good faith, to implement the Settlement by, among other things, modifying
9 the Settlement Agreement, submitting supplemental evidence and supplementing points and
10 authorities as requested by the Court. In the event the Parties are unable to agree upon the form or
11 contact of any document necessary to implement the Settlement, or on any modification of the
12 Agreement that may become necessary to implement the Settlement, the Parties will seek the
13 assistance of a mediator and/or the Court for resolution.

14 **10.5. No Prior Assignments.** The Parties separately represent and warrant that they have
15 not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
16 encumber to any person or entity and portion of any liability, claim, demand, action, cause of
17 action, or right released and discharged by the Party in this Settlement.

18 **10.6. No Tax Advice.** Neither Plaintiff, PAGA Counsel, FS Palo Alto nor Defense
19 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
20 Settlement be relied upon as such within the meaning of United States Treasury Department
21 Circular 230 (31 CFR Part 10, as amended) or otherwise.

22 **10.7. Modification of Agreement.** This Agreement, and all parts of it, may be amended,
23 modified, changed, or waived only by an express written instrument signed by all Parties or their
24 representatives, and approved by the Court.

25 **10.8. Agreement Binding on Successors.** This Agreement will be binding upon, and inure
26 to the benefit of, the successors of each of the Parties.
27
28

1 **10.9. Applicable Law.** All terms and conditions of this Agreement and its exhibits will
2 be governed by and interpreted according to the internal laws of the state of California, without
3 regard to conflict of law principles.

4 **10.10. Cooperation in Drafting.** The Parties have cooperated in the drafting and
5 preparation of this Agreement. This Agreement will not be construed against any Party on the basis
6 that the Party was the drafter or participated in the drafting.

7 **10.11. Confidentiality.** To the extent permitted by law, all agreements made, and orders
8 entered during Action and in this Agreement relating to the confidentiality of information shall
9 survive the execution of this Agreement.

10 **10.12. Use and Return of Aggrieved Employee Data.** Information provided to PAGA
11 Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data
12 provided to PAGA Counsel by FS Palo Alto in connection with the mediation, other settlement
13 negotiations, or in connection with the Settlement, may be used only with respect to this
14 Settlement, and no other purpose, and may not be used in any way that violates any existing
15 contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator
16 discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and
17 electronic versions of Aggrieved Employee Data received from FS Palo Alto unless, prior to the
18 Administrator's payment of all Settlement Funds, FS Palo Alto makes a written request to PAGA
19 Counsel for the return, rather than the destructions, of Aggrieved Employee Data.

20 **10.13. Headings.** The descriptive heading of any section or paragraph of this Agreement
21 is inserted for convenience of reference only and does not constitute a part of this Agreement.

22 **10.14. Calendar Days.** Unless otherwise noted, all reference to "days" in this Agreement
23 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
24 weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

25 **10.15. Notice.** All notices, demands or other communications between the Parties in
26 connection with this Agreement will be in writing and deemed to have been duly given as of the
27
28

third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Diversity Law Group, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071

To FS Palo Alto:

Stokes Wagner, ALC
15250 Ventura Blvd., Suite 710
Sherman Oaks, CA 91403

10.16. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

10.17. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Dated: November ⁰⁴__, 2022

PLAINTIFF ALLEN JOHNSON

Allen Johnson

Allen Johnson

Dated: November __, 2022

DEFENDANT FS PALO ALTO
EMPLOYMENT, INC.

[name]

third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Diversity Law Group, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071

To FS Palo Alto:

Stokes Wagner, ALC
15250 Ventura Blvd., Suite 710
Sherman Oaks, CA 91403

10.16. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

10.17. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Dated: November __, 2022

PLAINTIFF ALLEN JOHNSON

Allen Johnson

Dated: November __, 2022

11/10/2022 | 8:09 AM PST

DEFENDANT FS PALO ALTO
EMPLOYMENT, INC.

DocuSigned by:
Adora Jessica Manalo

Adora Jessica Manalo [name]

_____[title], on behalf of FS Palo
Alto Employment, Inc.

APPROVED AS TO FORM

Dated: November 7, 2022

DIVERSITY LAW GROUP, P.C.



Larry W. Lee
Kristen M. Agnew
Nicholas Rosenthal
Attorneys for Plaintiff Allen Johnson

Dated: November __, 2022

STOKES WAGNER, ALC

Diana Lerma
Christina J. Tantoy
Attorneys for Defendant FS Palo Alto
Employment, Inc.

General Manager [title], on behalf of FS Palo
Alto Employment, Inc.

APPROVED AS TO FORM

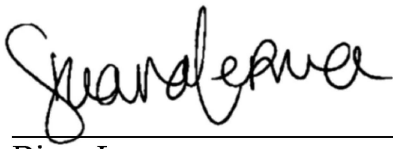
Dated: November __, 2022

DIVERSITY LAW GROUP, P.C.

Larry W. Lee
Kristen M. Agnew
Nicholas Rosenthal
Attorneys for Plaintiff Allen Johnson

Dated: November 14, 2022

STOKES WAGNER, ALC



Diana Lerma
Christina J. Tantoy
Attorneys for Defendant FS Palo Alto
Employment, Inc.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

ALLEN JOHNSON, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

FS PALO ALTO EMPLOYMENT, INC., a
Delaware corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 21CV389927

**NOTICE OF PRIVATE ATTORNEYS GENERAL
ACT (CALIFORNIA LABOR CODE § 2698 ET SEQ.)
SETTLEMENT AND RELATED PAYMENT**

Notice is hereby given that FS Palo Alto Employment, Inc., (“FS”) reached a settlement in *Allen Johnson v. FS Palo Alto Employment, Inc., et al.* (Santa Clara Superior Court Case No. 21CV389927) (“the Lawsuit.”) The settlement covers claims under the Private Attorneys General Act (“PAGA”), California Labor Code § 2698 *et seq.*, predicated on alleged violations of California Labor Code §§ 201-204, 226, 226.7, 510, 512, 558, 1194, 1197, or 1197.1. FS denies all liability and all of the claims, contentions, and each allegation made in the Lawsuit. Nevertheless, to avoid costly litigation, FS agreed to settle the Lawsuit. The settlement is not an admission by FS that any violations occurred or that any penalties are or were ever owed. The settlement was approved by the Santa Clara Superior Court of California (“the Court.”). The Court has made no ruling and will make no ruling, on the merits of the Lawsuit and its allegations and claims.

A. PURPOSE OF THIS NOTICE

This Notice is being sent to you because you have been identified as an individual who is entitled to a portion of this PAGA settlement award. Individuals entitled to a portion of the PAGA settlement award include any current and/or former non-exempt employees who worked for Plaintiff’s employer, FS, in the State of California and were provided wage statements at any time from August 30, 2020, through September 30, 2022.

Receipt of this Notice means that you are entitled to your share of the settlement, which is being provided by the enclosed check for \$****.

Your share of the settlement is based on the number of pay periods you are shown by FS’s records to have worked as a non-exempt employee from August 30, 2020, to September 30, 2022.

As part of the settlement, as agreed to by Plaintiff and FS and as approved by the Court, any claim, right, demand, or liability for civil penalties under PAGA that you may have had against FS as it relates to any alleged violation of California Labor Code §§ 01-204, 226, 226.7, 510, 512, 558, 1194, 1197, or 1197, 12698 *et seq.* has been forever compromised, released, resolved, relinquished, and discharged.

This notice does not contain any tax advice. You should seek tax advice from your own tax advisor with respect to the funds you are receiving herewith.

A Claims Administrator has been retained by the Parties as a neutral third party to distribute this payment. The Claims Administrator can be contacted via phone or mail. The contact information for the Claims Administrator is: ***** [address and phone number].

To obtain a copy of the Complaint or other documents filed in the Lawsuit, you may contact the Office of the Clerk of the Court during normal business hours.

If you have any questions regarding this payment, please contact the Claims Administrator identified above.

PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE

EXHIBIT C

Johnson v. FS Palo Alto Employment
Time and Task Chart for Nicholas Rosenthal

Hours	Description of Work
5.8	Factual investigation and review of client file.
1.0	Draft LWDA letter.
3.4	Draft complaint.
8.8	Prepare opposition to Defendant's Motion to Compel Arbitration.
.7	Attend oral argument on Defendant's Motion to Compel Arbitration.
7.2	Draft mediation brief.
9.0	Attend mediation.
6.1	Draft Approval Motion and accompanying documents.
Total: 42.0	

EXHIBIT D

2/6/2023
12:12 PM

DIVERSITY LAW GROUP
Slip Listing

Page 1

Selection Criteria

Slip.Classification Open
Client (hand select) Include: Johnson, Allen v. FS Palo CA
Slip.Transaction Ty 2 - 2

Rate Info - identifies rate source and level

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
68669	EXP	Mariana Becerra	1	75.00	75.00
8/31/2021		Court fees			
WIP		Johnson, Allen v. FS Palo CA			
LWDA					
68789	EXP	Olympia	2	0.25	0.50
8/31/2021		Photocopies			
WIP		Johnson, Allen v. FS Palo CA			
Photocopies					
68790	EXP	Olympia	1	6.96	6.96
8/31/2021		Postage			
WIP		Johnson, Allen v. FS Palo CA			
Postage					
69015	EXP	Christine Choo	1	1483.77	1483.77
9/23/2021		Court fees			
WIP		Johnson, Allen v. FS Palo CA			
Odyssey - Complaint					
69771	EXP	Christine Choo	1	5.72	5.72
10/7/2021		Court fees			
WIP		Johnson, Allen v. FS Palo CA			
Odyssey - 170.6					
69530	EXP	Christine Choo	1	15.76	15.76
11/1/2021		Court fees			
WIP		Johnson, Allen v. FS Palo CA			
Odyssey - POS of Summons					
69551	EXP	Christine Choo	1	1483.77	1483.77
11/4/2021		Court fees			
WIP		Johnson, Allen v. FS Palo CA			
Odyssey - Complaint					
70156	EXP	Christine Choo	1	5.72	5.72
12/23/2021		Court fees			
WIP		Johnson, Allen v. FS Palo CA			
Odyssey - POS of Summons					

2/6/2023
12:12 PM

DIVERSITY LAW GROUP
Slip Listing

Page 2

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
70761	EXP	Olympia	1	5.72	5.72
2/17/2022		Court fees			
WIP		Johnson, Allen v. FS Palo CA			
Odyssey - Oppo to MTC Arb & Mtn to Stay					
70912	EXP	Olympia	1	5.72	5.72
2/28/2022		Court fees			
WIP		Johnson, Allen v. FS Palo CA			
Odyssey - Joint CMS					
70911	EXP	Olympia	1	5.72	5.72
2/28/2022		Court fees			
WIP		Johnson, Allen v. FS Palo CA			
Odyssey - Joint CMS					
70917	EXP	Nick Rosenthal	2	94.00	188.00
3/3/2022		Court fees			
WIP		Johnson, Allen v. FS Palo CA			
Courtcall					
70937	EXP	Olympia	1	5.72	5.72
3/3/2022		Court fees			
WIP		Johnson, Allen v. FS Palo CA			
Odyssey - Request Pro Tempore					
70964	EXP	Olympia	1	475.00	475.00
3/3/2022		Transcript/DEP			
WIP		Johnson, Allen v. FS Palo CA			
Steno - MTC Arbitration Hearing Court Reporter [DELAY PAY - NOT YET PAID]					
70996	EXP	Nick Rosenthal	1	94.00	94.00
3/3/2022		Court fees			
WIP		Johnson, Allen v. FS Palo CA			
Courtcall					
71275	EXP	Olympia	1	183.50	183.50
3/29/2022		Transcript/DEP			
WIP		Johnson, Allen v. FS Palo CA			
Steno - MTC Hearing Transcript (3/3/22) [DELAY PAY - NOT YET PAID]					
71778	EXP	Erika Mejia	1	5.72	5.72
5/13/2022		Court fees			
WIP		Johnson, Allen v. FS Palo CA			
Odyssey - Joint CMS					

2/6/2023
12:12 PM

DIVERSITY LAW GROUP
Slip Listing

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Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
71779	EXP	Erika Mejia	1	5.72	5.72
5/13/2022		Court fees			
WIP		Johnson, Allen v. FS Palo CA			
Odyssey - Joint CMS					
71909	EXP	Nick Rosenthal	1	94.00	94.00
5/19/2022		Court fees			
WIP		Johnson, Allen v. FS Palo CA			
Courtcall					
71888	EXP	Olympia	1	6000.00	6000.00
6/1/2022		Arbitrators			
WIP		Johnson, Allen v. FS Palo CA			
Barnes Dispute Resolution Mediation					
72951	EXP	Kristen Agnew	1	64.91	64.91
6/17/2022		Meals			
WIP		Johnson, Allen v. FS Palo CA			
Meal					
72461	EXP	Erika Mejia	1	5.72	5.72
7/15/2022		Court fees			
WIP		Johnson, Allen v. FS Palo CA			
Odyssey - Joint CMS					
Grand Total					
			Billable	0.00	10216.65
			Unbillable	0.00	0.00
			Total	0.00	10216.65

EXHIBIT E