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Attorneys for Plaintiff and the Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF YUBA**

AMY CETNAROWSKI, as an individual
and on behalf of all others similarly
situated,

Plaintiff,

vs.

MELON HOLDINGS, LLC, a Delaware
limited liability company; and DOES 1
through 50, inclusive,

Defendants.

Case No.: CVCV21-01007

[Assigned for all purposes to the Hon. Debra L.
Givens, Department 1]

**DECLARATION OF MAX W. GAVRON IN
SUPPORT OF PLAINTIFF'S MOTION TO
APPROVE THE PARTIES' SETTLEMENT
AGREEMENT PURSUANT TO THE LABOR
CODE PRIVATE ATTORNEYS GENERAL
ACT OF 2004**

Date: September 19, 2022
Time: 10:00 a.m.
Dept.: 4

1 I, Max W. Gavron, hereby declare and state as follows:

2 1. I am an attorney at law duly admitted to practice before all courts in the State of
3 California and am a member of the law firm of the Diversity Law Group, P.C., one of the
4 attorneys of record for Plaintiff Amy Cetnarowski ("Plaintiff") in the above-entitled action. I have
5 personal knowledge of the matters set forth herein, and if called upon as a witness to testify
6 thereto, I could and would competently do so.

7 2. I am one of the primary attorneys on this matter. From the inception of the case,
8 Plaintiff's Counsel have zealously represented the interests of Plaintiff and the aggrieved
9 employees. The Settlement was obtained for the benefit of the aggrieved employees.

10 3. On September 30, 2021, Plaintiff sent notice to the Labor and Workforce
11 Development Agency ("LWDA") giving notice of her intent to pursue a representative PAGA
12 action, on behalf of herself and the State of California as well as on behalf of other aggrieved
13 employees (the "PAGA Notice").

14 4. On October 19, 2021, Plaintiff filed a Class Action Complaint for: (1) violation of
15 Labor Code §§ 226.7 and 512; (2) violation of Labor Code § 226.7; (3) violation of Labor Code
16 §§ 510, 558, and 1194; (4) violation of Labor Code § 2802; (5) violation of Labor Code § 226;
17 and (6) violation of Business and Professions Code § 17200, *et seq.*

18 5. On December 7, 2021, Plaintiff filed her First Amended Class and Representative
19 Action Complaint ("FAC") adding an additional violation of Labor Code §2698, *et seq.*, the
20 Private Attorney Attorneys General Act ("PAGA").

21 6. On January 6, 2022, Defendant filed an Answer to the Plaintiff's FAC.

22 7. On February 9, 2022, the Parties agreed to the dismissal of her individual claims
23 and putative class action claims without prejudice and the filing of a Second Amended
24 Representative PAGA Action Complaint ("SAC") to allege a single cause of action for violation
25 of Labor Code §2698, *et seq.*, the PAGA.

26 8. On March 11, 2022, Defendant filed its answer to Plaintiff's SAC.

27 9. Thereafter, the Parties engaged in informal discovery and engaged in several meet
28 and confer efforts. Defendant provided information regarding the number of potentially

1 aggrieved employees, the number of pay periods at issue and other information to evaluate the
2 potential exposure. While the Parties had scheduled a mediation, they began direct settlement
3 negotiations and were ultimately successful in coming to a proposed resolution.

4 10. The Parties agreed to terms for complete settlement of the Action, which was
5 negotiated at arm's-length with each Party having had the opportunity to consider all known facts
6 and circumstances.

7 11. The Parties have agreed to settle the Action pursuant to the terms and conditions
8 of the Private Attorneys General Act (Labor Code § 2698, *et seq.*) Settlement and Release
9 Agreement ("Settlement Agreement"), a true and correct copy of which is attached to this
10 declaration as **Exhibit A**.

11 12. As detailed in the Settlement Agreement, § II.12, there were approximately 4,199
12 pay periods at issue during the time encompassed by this settlement. PAGA's penalty structure is
13 based on the number of violations of the Labor Code committed during a given pay period. *See*
14 Cal. Lab. Code § 2699(f). Defendant's potential exposure could be as high as \$419,900.00 if the
15 Court were to award a \$100 penalty for each pay period encompassed by the proposed settlement.
16 Thus, the proposed settlement amount is approximately 16.7% of the total exposure amount.
17 However, Defendant argued that its exposure was significantly less because it maintained legally
18 compliant policies, complied with the law at all times, the sampling of time and pay records
19 produced for evaluation demonstrated an extremely low facial violation rate regarding Plaintiff's
20 claims, and that it maintained arbitration agreements applicable to its employees, which it
21 contended precluded Plaintiff's PAGA claims. On June 15, 2022, the United States Supreme
22 Court issued its decision in *Viking River Cruises, Inc. v. Moriana*, No. 20-1573, 2022 WL
23 2135491, at *10 (U.S. June 15, 2022), which Defendant would have argued precludes Plaintiff's
24 PAGA claim. *Id.* (holding that Federal Arbitration Act ("FAA") preempted portion of California
25 Supreme Court's holding in *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal. 4th 348 (2014)
26 and that PAGA claims may be arbitrable under the FAA).

27 13. While the PAGA does provide for a potentially heightened penalty of \$200 for
28 "subsequent" violations, many courts do not award that penalty unless there has been a prior

1 citation by the LWDA or court ruling demonstrating that the employer previously violated the
2 Labor Code. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209; *accord*
3 *Amalgamated Transit Union Local 1309 v. Laidlaw Transit Service, Inc.* (S.D. Cal. Aug. 10,
4 2009) 2009 WL 2448430, at *9 (“[u]nder California law, courts have held that employers are
5 not subject to heightened penalties for subsequent violations unless and until a court or
6 commissioner notifies the employer that it is in violation of the Labor Code”); *see also*
7 *Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021) (holding no subsequent
8 penalty unless prior citation or court ruling). Thus, Defendant argued that even if Plaintiff was
9 able to establish any violation of the Labor Code, the PAGA penalties assessed for these
10 violations will be computed at the \$100 rate, as opposed to the \$200 per pay period rate at
11 maximum, and there is a likelihood that a further reduction of the penalty would be appropriate
12 given its good faith efforts to comply with the Labor Code and its contentions that it complied
13 with the Labor Code at all times.

14 14. Defendant also argued that even if Plaintiff prevailed, the recoverable penalties
15 under PAGA are minimal. Indeed, courts to consider the issue have refused to “stack” PAGA
16 penalties and often significantly reduce the penalties awarded. *See Carrington v. Starbucks*
17 *Corporation* (Cal. Ct. App. Nov. 27, 2018) No. D072392 (published Dec. 19, 2018) (approving
18 PAGA penalty reduction to \$5 per pay period); *accord Atempa v. Pedrazzani* (2018) 27
19 Cal.App.5th 809. If the Court in this case were to reduce penalties to \$5 a pay period, as was
20 approved in *Carrington*, the potential exposure amounts to approximately \$20,995.00 (4,199
21 pay periods x \$5.00).

22 15. Given Defendant’s financial condition, the Parties have agreed that Defendant will
23 fund the first payment of the Gross Settlement Amount in the amount of \$35,0000.00 within
24 thirty calendar days of the Effective Date, and the second payment in the amount of \$35,000.00
25 on or before January 31, 2023. (Settlement Agreement at § V.2). The Settlement Agreement
26 allocates one-third of the Gross Settlement Amount for attorneys’ fees, or \$23,333.33, up to
27 \$10,500.00 in litigation costs incurred by Plaintiffs’ counsel, \$10,000.00 to Plaintiff for a service
28 award, and up to \$3,000.00 for settlement administration costs. (*Id.* at §§ III.2(a)-(d), V.3(a)-(d)).

1 The remainder, or the “PAGA Penalty Fund,” is allocated to the payment of civil penalties under
2 PAGA, 75 percent of the civil penalties for distribution to the Labor and Workforce Development
3 Agency (the “LWDA”) and 25 percent of the civil penalties for distribution to the “aggrieved
4 employees” on whose behalf Plaintiffs filed this action as required by PAGA. (*Id.* at § III.2(e),
5 V.3(e)).

6 16. The Settlement Agreement provides the following release:

- 7 a. Upon the approval by the Court of this Agreement and funding of
8 the GSA by Defendant, each of the PAGA Members, including
9 Plaintiff, shall, for the Covered Period, fully release and forever
10 discharge the Released Parties, subject to the terms and conditions
11 hereof and the approval of the Court, from the Covered Claims and
12 any other form of relief or remedy in law, equity, or whatever kind
13 or nature that were asserted or could have been asserted based on
14 the facts alleged in the Action. (*Id.* at § IV.1).

15 17. The Settlement Agreement defines “Covered Claims” as: [A]ny and all claims,
16 demands, rights, liabilities, and/or causes of action under the PAGA for civil penalties, which are
17 premised on alleged violation of Labor Code §§ 201, 202, 203, 226, 226.7, 510, 512, 558, 1194,
18 and 2802, as well as any other claims which could have been brought based on the facts alleged in
19 the Action within the Covered Period. (*Id.* at § II.9).

20 18. Plaintiff also executed a general release as part of the Settlement Agreement,
21 including a waiver of Civil Code § 1542. (*Id.* at § IV.2). Each PAGA Member will receive an
22 individual payment proportionate to the number of Eligible Pay Periods worked. (*See id.* § III.3).
23 Each Individual Settlement Payments will be considered the payment of a civil penalty and
24 treated as IRS Form 1099 income. (*See id.*) Any checks not cashed by Settlement Group
25 Members must be voided so that the unclaimed amount can be forwarded to the State of
26 California Controller’s Office Unclaimed Property Fund in the name of the PAGA Members who
27 did not cash their respective PAGA Member Shares. (*See Settlement Agreement* § V.6.)

28 19. My qualifications are as follows: I received a full-tuition scholarship, and
graduated from Southwestern Law School in 2013, magna cum laude. I was in the top 5% of my
class. During my time at Southwestern, I was a Notes and Comments Editor on the Southwestern
Law Review. I also received awards for achieving the highest grade in my class in several

1 courses. In 2012, I was a full-time extern, at the United States District Court for the Central
2 District. Immediately after law school, I taught several courses at Southwestern, including
3 Principles of Legal Analysis and Legal Methods. I taught those courses for approximately four
4 years.

5 20. I practiced civil litigation at Haight Brown & Bonesteel LLP from approximately
6 September 2013, through January 2016. I was third-chair in a federal court jury trial that resulted
7 in a defense verdict in our client's favor on a \$21 million commercial breach of contract dispute. I
8 also regularly litigated cases across the civil litigation spectrum, including employment matters.

9 21. From February 2016, through Fall 2017, I practiced at the international law firm of
10 Arnold & Porter, which had recently merged with Kaye Scholer, LLP. I defended Fortune 50
11 companies in Multi-District Litigation primarily in the product liability sphere. I also successfully
12 drafted an appellate brief in the Ninth Circuit resulting in the reversal of a summary judgment
13 decision regarding trade secret issues, in addition to working in several other practice groups. *See*
14 *Experian Info. Solutions v. Nationwide Marketing Servs. Inc.*, 893 F.3d 1176 (9th Cir. 2018).

15 22. From September 2017, through September 2018, I served as a law clerk to a Judge
16 sitting on the United States District Court, Central District of California. I regularly prepared
17 bench memoranda, on cases involving all types of civil litigation, including regularly working on
18 wage and hour class actions.

19 23. I am currently an attorney at the law firm Diversity Law Group, P.C., an
20 employment law firm that has handled numerous wage and hour class and individual actions, on
21 both plaintiff and defense sides. My current practice focuses on employment matters involving
22 both class actions, and single plaintiffs. The firm currently has cases in the Los Angeles Superior
23 Courts, the Orange County Superior Courts, the San Diego County Superior Courts, and the
24 United States District Courts for the Central, Northern, and Eastern Districts of California. I am
25 currently handling, or have handled, numerous wage and hour class action lawsuits with the firm,
26 including, but not limited to: *Agar v. Sensient Natural Ingredients, LLC* (Case No. CV-19-
27 001906, Stanislaus County Superior Court); *Heredia v. Eddie Bauer LLC* (Case No.
28 16CV300475, United States District Court, Northern District of California); *Parsons v. Estenson*

1 *Logistics, LLC* (Case No. 34-2019-00252929, Sacramento County Superior Court); *Wood v.*
2 *Reeve Trucking Co., Inc.* (Case No. STK-CV-UOE-2018-0004414, San Joaquin County Superior
3 Court); *Coronel v. Pinnacle Agriculture* (Case No. 18CV004287, Monterey County Superior
4 Court), and *Tice v. Trader Joe's Company* (Case No. 20CV00892, Santa Barbara County
5 Superior Court), among others.

6 24. I have been certified as class counsel in a number of cases, including *Smith v. Gold*
7 *Country Health Center, Inc.* (Case No. PC20180491, El Dorado County Superior Court) and
8 *Pantoja v. RAMCO Enterprises, L.P.* (Case No. M126835, Monterey County Superior Court). I
9 have also assisted in numerous wage and hour class action mediations.

10 25. On June 14, 2019, I argued two related cases in front of the Ninth Circuit Court of
11 Appeals. One of them was *Rodriguez v Nike Retail Service Inc.*, Case No. 17-16866. On June 28,
12 2019, the Ninth Circuit issued a published decision, reversing and remanding in favor of our
13 clients. *Rodriguez v. Nike Retail Servs., Inc.*, 928 F.3d 810 (9th Cir. 2019). The related case
14 decision was *Chavez v. Converse, Inc.*, 772 Fed. Appx. 571 (June 28, 2019).

15 26. From the inception of the case, Plaintiff's counsel has zealously represented the
16 interests of Plaintiff and the aggrieved employees. The settlement was obtained for the benefit of
17 the aggrieved employees and the LWDA. Based on my review of all the information, and based
18 on my experience in wage and hour litigation, I believe this settlement to be fair, adequate, and
19 reasonable.

20 27. Concurrently with filing this Motion, my office uploaded the instant motion,
21 Settlement Agreement, and proposed order to the LWDA's website. Attached hereto as **Exhibit**
22 **B** is a true and correct copy of the LWDA confirmation.

23 28. Attached hereto as **Exhibit C** is a true and correct copy of proposed notice to
24 accompany the settlement checks to aggrieved employees.

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

27 Executed on August 25, 2022, at Los Angeles, California.

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Max W. Gavron

EXHIBIT A

PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698, ET SEQ.)
SETTLEMENT AND RELEASE AGREEMENT

Amy Cetnarowski v. Melon Holdings, LLC,
Yuba County Superior Court Case No. CVCV2101007
(the “Action”)

This Settlement and Release Agreement (“Agreement”) is made and entered into by and between plaintiff AMY CETNAROWSKI (“Plaintiff”), individually and on behalf of the State of California pursuant to Labor Code § 2699, *et seq.* (the Private Attorneys General Act [“PAGA”]) on the one hand, and defendant MELON HOLDINGS, LLC (“Defendant”), on the other hand. Plaintiff and Defendant are collectively referred to herein as “the Parties.”

This Agreement shall be binding on Plaintiff and all PAGA Members (as defined below) she seeks to represent and on Defendant, its affiliated entities, parents, subsidiaries, owners, officers, executives, directors, and managers, subject to the terms and conditions hereof and the approval of the Court.

I. NATURE OF ACTION

1. On September 30, 2021, Plaintiff sent notice to the Labor and Workforce Development Agency (“LWDA”) giving notice of her intent to pursue a representative PAGA action, on behalf of herself and the State of California as well as on behalf of other aggrieved employees (the “PAGA Notice”).

2. On October 19, 2021, Plaintiff filed a Class Action Complaint for: (1) violation of Labor Code §§ 226.7 and 512; (2) violation of Labor Code § 226.7; (3) violation of Labor Code §§ 510, 558, and 1194; (4) violation of Labor Code § 2802; (5) violation of Labor Code § 226; and (6) violation of Business and Professions Code § 17200, *et seq.*

3. On December 7, 2021, Plaintiff filed her First Amended Class and Representative Action Complaint (“FAC”) adding an additional violation of Labor Code §2698, *et seq.*, the Private Attorney Attorneys General Act (“PAGA”).

4. On January 6, 2022, Defendant filed its answer to Plaintiff’s FAC.

5. On February 9, 2022, the Parties agreed to the dismissal of her individual claims and putative class action claims without prejudice and the filing of a Second Amended Representative PAGA Action Complaint (“SAC”) to allege a single cause of action for violation of Labor Code §2698, *et seq.*, the PAGA.

6. On March 11, 2022, Defendant filed its answer to Plaintiff’s SAC.

7. The Parties engaged in informal discovery. Defendant provided Plaintiff and PAGA Counsel (as defined below) with information about the number of potentially aggrieved employees, the number of pay periods at issue and other information to evaluate the potential exposure. Based on this information, the Parties conducted direct settlement negotiations.

8. The Parties agreed to terms for complete settlement of the Action, which was negotiated at arm’s-length with each Party having had the opportunity to consider all known facts and circumstances.

II. REPRESENTATIONS AND ADDITIONAL DEFINITIONS

1. “Released Parties” shall mean and refer to Defendant MELON HOLDINGS, LLC, its past, present and/or future, direct and/or indirect officers, directors, members, shareholder, employees, agents principals, heirs, representatives, accountants, auditors, attorneys, consultants, insurers, reinsurers, and each of their respective successors; and predecessors in interest, assigns, subsidiaries, affiliates, and parents, if any.

2. “PAGA Counsel” shall refer to Larry W. Lee and Max W. Gavron of Diversity Law Group.

3. “Counsel for Defendant” and “Defense Counsel” shall refer to as Grace Y. Horoupian, Andrew C. Crane, and Sunny H. Huynh of Fisher & Phillips, LLP (“F&P”).

4. “Covered Period” shall mean the period from September 30, 2020, to the date that the Court enters an order granting approval of this Agreement, or July 14, 2022, whichever is sooner.

5. “PAGA Members” shall mean and refer to all current and former non-exempt employees of Defendant, including Plaintiff, who are or have been employed by Defendant in the

State of California who worked one or more pay periods during the Covered Period.

6. “Court” refers to the Yuba County Superior Court.

7. “PAGA Member Share” shall mean and refer to each of the PAGA Members’ 25% of PAGA penalties allocated to the PAGA Members in accordance with Labor Code § 2699(i). Cumulatively, it shall be referred to as “PAGA Member Shares.”

8. “Settlement Administrator” shall refer to Phoenix Settlement Administrators.

9. “Covered Claims” means any and all claims, demands, rights, liabilities, and/or causes of action under the PAGA for civil penalties, which are premised on alleged violation of Labor Code §§ 201, 202, 203, 226, 226.7, 510, 512, 558, 1194, and 2802, as well as any other claims which could have been brought based on the facts alleged in the Action within the Covered Period.

10. “Eligible Pay Periods” means any pay period during the Covered Period that one or more of the PAGA Members received wages.

11. “Effective Date” and “Final” shall mean the date that the Court grants approval to the settlement embodied herein.

12. “Gross Settlement Amount” or “GSA” shall mean and refer to the Seventy Thousand Dollars (\$70,000.00) that Defendant is obligated to pay under the terms of this Agreement. The GSA is non-reversionary, such that the entire amount will be disbursed under the stipulated terms and none of it will revert to Defendant. Defendant represented that PAGA Members worked no more than 4,199 Eligible Pay Periods during the Covered Period in conjunction with settlement negotiations. If the number of Eligible Pay Periods worked by PAGA Members during the Covered Period increases more than 10%, above 4,199, then Defendant shall have the option of either: (a) increasing the GSA proportionate to the percentage of workweeks over the ten percent threshold (for example, if the number of Eligible Pay Periods worked by PAGA Members during the Covered Period increases eleven percent (11%), above 4,619 (4,661), the GSA shall increase by one percent (1%)); or (b) the Covered Period shall be shortened to end on the date that the ten percent threshold was met.

13. Plaintiff alleges that Defendant: (a) failed to provide off-duty meal periods to employees who worked 5 hours or longer in one shift and/or pay meal period premiums in lieu thereof in violation of Labor Code §§ 201-203, 226.7, and 512; (b) failed to provide off-duty rest periods to employees who worked 3.5 hours or longer in one shift and/or pay rest period premiums in lieu thereof in violation of Labor Code §§ 201-203 and 226.7; (c) failed to pay employees overtime wages for all hours worked in violation of Labor Code §§ 201-203, 510, 558, and 1194; (d) failed to reimburse business expenses in violation of Labor Code § 2802; and (e) failed to provide accurate, itemized wage statements in violation of Labor Code § 226, and that this underlying conduct gives rise to a claim pursuant to PAGA.

14. Defendant vehemently denies Plaintiff's claim and all allegations asserted in the Action and PAGA Notice. Defendant contends, among other things, that it has at all times complied with the Labor Code, the related Wage Orders, and all other state and federal wage laws, and further contends that the Action is without merit. Defendant has denied and continues to deny each and every factual allegation and alleged claim asserted as part of the Action and the PAGA Notice. Defendant further contends that the imposition of the asserted penalties would be unjust, arbitrary, oppressive, and confiscatory.

15. The Parties recognize that the issues presented in the Action are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate to the potential benefits of litigation. The Parties have considered the risk and uncertainty of the outcome inherent in any litigation. This risk also includes Defendant's financial condition and the collectability of any judgment that may be issued against it.

16. Plaintiff and PAGA Counsel contend that they have diligently pursued an investigation of the PAGA Members' allegations against Defendant.

17. Based on their own independent investigations and evaluations, Plaintiff and PAGA counsel are of the opinion that the stipulated settlement terms as set forth in this Agreement are fair, reasonable, adequate, and in the best interests of the Plaintiff, the State of California, and

the PAGA Members in light of all known facts and circumstances and the risks inherent in litigation, including potential appeals. Further, PAGA Counsel believes that the agreed-upon settlement terms are in the best interests of the PAGA Members and that settlement is fair, reasonable, and adequate for the State of California and each of the PAGA Members, particularly given the inherent risk of litigation and Defendant's present financial condition.

18. The purpose of this Agreement is to settle and compromise the Action and all Covered Claims that Plaintiff and the PAGA Members may have against the Released Parties. Neither the existence of this Agreement nor anything contained in this Agreement shall be construed or deemed as an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant. Nothing herein shall constitute an admission by Defendant that the Action was properly brought as a representative action other than for settlement purposes and should this settlement not be completed for any reason, Defendant does not waive any right to attack or challenge the appropriateness of these or similar claims for representative treatment. Settlement of the Action, the negotiation and execution of this Agreement, and all acts performed or documents executed pursuant to or in furtherance of this Agreement or the settlement of the Action: (a) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of either Defendant or of the truth of any of the factual allegations in the operative complaint in the Action; (b) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omissions on the part of Defendant in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal; and (c) are not, shall not be deemed to be, and may not be used as, an admission or evidence of the appropriateness of these or similar claims for representative treatment, class certification, or administration other than for purposes of administering this Agreement.

19. The Parties agree that upon full execution of this Agreement, discovery and any other proceeding unrelated to the Agreement, is informally stayed while the parties undertake the work necessary to obtain court approval of the Agreement. To facilitate such approval from the Court, PAGA Counsel shall prepare and file a Motion for Approval of PAGA Settlement

(“Motion for Approval”), which shall be submitted for review and approval to Counsel for Defendant prior to filing. In the event the Court does not grant this Motion for Approval, the Parties will reconvene in good faith and attempt to rectify the shortcomings to the extent possible before PAGA Counsel is to resubmit the Motion for Approval or other supplemental briefing with all appropriate possible changes and/or additions. In the event the Court does not approve the Settlement, the Parties will be restored to their positions prior to the Agreement and the Agreement shall be deemed null and void. The informal stay on discovery and any other proceedings unrelated to the Agreement will be lifted five (5) court days after the Court’s rejection of the revised Motion for Approval. The Parties understand and agree that all of the time that this matter has been informally stayed shall be excluded from calculation of the 5-year rule to bring this matter to trial as required pursuant to Code of Civil Procedure § 583.010.

III. TERMS OF SETTLEMENT

1. In consideration of the mutual covenants, promises, and representations set forth in this Agreement, Plaintiff, on behalf of the PAGA Members and the State of California as a Private Attorney General, on the one hand, and Defendant, on the other, agree to settle and compromise the Action and the Covered Claims, subject to the settlement and release terms and conditions set forth in this Agreement.

2. The Amount of Settlement. As consideration for the settlement and release and other terms described in this Agreement, Defendant agrees to pay the GSA, in a total amount of **\$70,000.00**. This GSA payment is inclusive of the following:

- a. PAGA Counsel’s fees request of one-third (1/3) of the GSA, or \$23,333.33, to which Defendant will not object;
- b. PAGA Counsel’s request for actual costs up to the amount of \$10,500.00, to which Defendant will not object;
- c. Service Award and General Release Payment to Plaintiff in the amount of \$10,000.00, to which Defendant will not object, in exchange for a general release of all claims;

- d. Administration costs of not to exceed \$3,000.00 to be paid to the Settlement Administrator; and
- e. the remainder of the GSA after deducting the items (a), (b), (c), and (d) above, which shall be designated as the "PAGA Penalty Fund."

3. Allocation and Calculation of the PAGA Penalty Fund. Each of the PAGA Members shall receive a portion of the PAGA Penalty Fund on a pro-rata basis determined by the number of Eligible Pay Periods each of the respective PAGA Members worked during the Covered Period. The anticipated total PAGA Penalty Fund will be approximately \$23,166.67. Seventy-five percent (75%) of the PAGA Penalty Fund, or \$17,375.00, will be paid to the LWDA as required by Labor Code § 2699(i) (the "LWDA Payment"). The remaining twenty-five percent (25%) of the PAGA Penalty Fund, or \$5,791.67, will be distributed to PAGA Members on a pro-rata basis based on the formula set forth below. Each PAGA Member's pro-rata share of the PAGA Penalty Fund represents his or her PAGA Member Share.

- a. PAGA Member Shares. Plaintiff and each of the PAGA Members shall receive a pro rata share of the twenty-five percent (25%) of the PAGA Penalty Fund allocated to PAGA Members. Plaintiff and each of the PAGA Members shall receive a pro-rata value equal to PAGA Members' 25% of the Penalty Fund multiplied by the ratio of (a) the number of Eligible Pay Periods worked by him or her to (b) the total number of Eligible Pay Periods worked by all PAGA Members during the Covered Period. All payments made to PAGA Members ("Individual Settlement Payments") will be reported on an IRS Form 1099.

4. PAGA Counsel's Fees and Costs. As part of the Motion for Approval of this Agreement, PAGA Counsel will request court approval of 1/3 of the GSA, which is \$23,333.33, in attorneys' fees. PAGA Counsel will request actual cost reimbursement up to the amount of \$10,500.00 for costs incurred by PAGA Counsel. Should PAGA Counsel request a lesser amount for attorneys' fees and costs and/or the Court approve a lesser amount, the difference shall be

allocated to the PAGA Penalty Fund and distributed accordingly. Any attorneys' fees and costs awarded to PAGA Counsel, hereinafter referred to as "PAGA Counsel Fees & Costs," shall fully compensate and reimburse PAGA Counsel for any and all of the work already performed in connection with the Action and all work remaining to be performed in fully and finally resolving the Action, including but not limited to securing Final Court approval of the Agreement, and all costs that PAGA Counsel has incurred or will incur.

5. Plaintiff Service Award & General Release Payment. As part of the Motion for Approval of this Agreement, Plaintiff will request a Service Award for serving as the PAGA representative in the amount of \$10,000.00. This Service Award is in exchange for a general release of all claims and waiver of the protections of Civil Code § 1542, as described further below. Should the Court approve a lesser amount, the difference shall be allocated to the PAGA Penalty Fund and distributed accordingly. Plaintiff's Service Award shall be referred herein as the "Service Award," or "Service Award and General Release Payment."

6. Tax Treatment of Settlement Amounts. With regard to settlement payments to PAGA Members and Plaintiff, IRS Forms 1099 will be issued. Nothing in this Agreement is intended to constitute legal advice regarding federal, state, and/or local tax obligations. Plaintiff acknowledges that she has obtained no tax advice from Defendant and that neither Defendant nor its attorneys have made any representation concerning the tax consequences, if any, of the GSA in this Agreement or any payment to be made pursuant to this Agreement. To the extent that this Agreement or any of its attachments is interpreted to contain or constitute advice regarding any state or federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code. Defendant, Defendant's counsel, and Plaintiff's counsel are not responsible for any of the PAGA Members' and Plaintiff's tax obligations regarding the allocation of the settlement payments. Payment of PAGA Counsel Fees & Costs will be reflected in a Form 1099 to PAGA Counsel who shall assume full responsibility and liability for the payment of taxes due on such payments. Plaintiff's Service Award shall also be reported on a Form 1099 and Plaintiff shall assume full responsibility

and liability for the payment of taxes due on such payments.

IV. RELEASE

1. Release by All PAGA Members. Upon the approval by the Court of this Agreement and funding of the GSA by Defendant, each of the PAGA Members, including Plaintiff, shall, for the Covered Period, fully release and forever discharge the Released Parties, subject to the terms and conditions hereof and the approval of the Court, from the Covered Claims and any other form of relief or remedy in law, equity, or whatever kind or nature that were asserted or could have been asserted based on the facts alleged in the Action.

2. Release by Plaintiff. Upon approval by the Court of this Agreement, Plaintiff for herself, her heirs, successors and assigns, does waive, release, acquit and forever discharge the Released Parties, from any and all claims, actions, charges, complaints, grievances and causes of action, of whatever nature, whether known or unknown, which exist or may exist on Plaintiff's behalf as of the date of this Agreement, including but not limited to any and all tort claims, contract claims, wage claims, wrongful termination claims, disability claims, benefit claims, public policy claims, retaliation claims, statutory claims, personal injury claims, emotional distress claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit claims, and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance, including any claims arising under the California Fair Employment and Housing Act (FEHA), the California Labor Code, the Wage Orders of California's Industrial Welfare Commission, other state wage and hour laws, the Americans with Disabilities Act, the Age Discrimination in Employment Act (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, the California Family Rights Act, the Family Medical Leave Act, California's Whistleblower Protection Act, California Business & Professions Code Section 17200 et seq., and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance.

- a. Plaintiff specifically waives the benefit of the provisions of California Civil Code § 1542, which provides as follows:

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

- b. Notwithstanding the provisions of section 1542, Plaintiff expressly acknowledges that this Agreement is also intended to include in its effect, without limitation, all claims which Plaintiff does not know or suspect to exist in her favor at the time of the execution hereof, and that this Agreement contemplates the extinguishment of any such claim.
- c. The Parties acknowledge, understand and agree that the releases, representations and commitments contained in this section IV is essential to the Agreement and that this Agreement would not have been entered into were it not for these releases, representations and commitments.

V. ADMINISTERING THE SETTLEMENT AND PAYMENT PLAN

1. Within thirty (30) calendar days after the Effective Date, Defendant will compile a list of the PAGA Members (“PAGA Member List”) containing: (1) name; (2) last known home address and telephone number; (3) number of Eligible Pay Periods employed during the Covered Period; and (4) Social Security Number, to the extent available.

2. Within thirty (30) calendar days of the Effective Date, Defendant shall deposit the first payment of the Gross Settlement Amount (\$35,000.00) with the Settlement Administrator. Defendant shall deposit the second payment of the Gross Settlement Amount (\$35,000.00) with the Settlement Administrator on or before January 31, 2023.

3. Within thirty (30) calendar days of receiving the second payment of the Gross Settlement Amount from Defendant, the Settlement Administrator shall distribute:

- a. PAGA Member Shares in the total estimated amount of \$5,791.67;
- b. Service Award to Plaintiff in the amount of \$10,000.00;
- c. Attorneys’ Fees of \$23,333.33 and actual Costs up to \$10,500.00 to PAGA

Counsel;

d. Settlement Administration Costs of not to exceed \$3,000.00 to Phoenix Settlement Administrators; and

e. The LWDA Payment in the amount of \$17,375.00 to the LWDA.

4. Within thirty (30) calendar days of receiving the second payment of the Gross Settlement Amount from Defendant, the Settlement Administrator shall search for the address of each of the PAGA Members through the United States Postal Service NCOA database (which provides updated addresses for any individual who has moved in the previous four years who has notified the U.S. Postal Service of a forwarding address) to obtain current address information, and shall mail the payment checks representing each PAGA Member Share to the respective addresses. The payment checks for each PAGA Member Share shall be sent to each of the PAGA Members by U.S. First Class mail to the subject individual's address with directions to the Postmaster to forward the payment checks and return all undeliverable payment checks to the Settlement Administrator. A written letter approved by the Parties, in advance of Plaintiff filing the Motion for Approval, explaining this Agreement and the PAGA Members' release of Covered Claims will be included in the mailing of each of the PAGA Members' checks and submitted to the Court for its review and approval. It will be conclusively presumed that each of the checks reflecting the PAGA Members' Individual Settlement Payments was received if the payment check has not been returned within thirty (30) days of the original mailing of the payment check. The date of the initial mailing of the payment check shall be conclusively determined according to the records of the Settlement Administrator.

5. The Settlement Administrator shall ensure that seventy-five percent (75%) of the PAGA Penalty Fund is paid to the LWDA.

6. Settlement checks shall remain valid and negotiable for one hundred eighty (180) calendar days from the date of their issuance. If there are uncashed checks following this period, the Settlement Administer will ensure that uncashed funds shall be forwarded the State of California Controller's Office Unclaimed Property Fund in the names of the PAGA Members

who did not cash their respective PAGA Member Shares. Any unclaimed funds shall not affect the binding nature of this Agreement as to any of the PAGA Members.

VI. DUTIES OF THE PARTIES PRIOR TO APPROVAL

1. Upon execution of this Agreement by the Parties, PAGA Counsel shall prepare the Motion for Approval for review and approval by Counsel for Defendant, before ultimately filing with the Court for approval of the Agreement and corresponding proposed settlement and release terms. PAGA Counsel shall apply to the Court for the entry of an order and final judgment approving this Agreement as required by Labor Code § 2699(l). The Motion for Approval will request the Court's approval of the following:

- a. All terms contained in this Agreement;
- b. Amount of Plaintiff's Service Award;
- c. Amounts of PAGA Counsel's Fees & Costs; and
- d. Approval of the settlement in this Agreement.

2. As part of the Motion for Approval, PAGA Counsel will include a proposed Order requesting approval of this Agreement and its terms, which shall be binding upon all PAGA Members.

VII. PARTIES' AUTHORITY

1. The signatories hereto hereby represent that they are fully authorized to enter into this Agreement and bind the Parties hereto to the terms and conditions hereof.

VIII. MUTUAL FULL COOPERATION

1. The Parties agree to fully cooperate with each other to accomplish the terms of this Agreement, including, but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Agreement and the settlement and release terms set forth herein. As soon as practicable after execution of this Agreement, PAGA Counsel shall, with the assistance and cooperation of

Defendant and its counsel, take all necessary steps to secure the approval of this Agreement from the Court.

IX. CONFIDENTIALITY

1. Other than information necessary to secure Court approval of this Agreement and the settlement contained herein, the Parties agree to keep confidential all matters relative to this Agreement, including the claims asserted by Plaintiff in the Action and PAGA Notice, and the settlement terms, including the facts and circumstances leading up to it. None of the Parties will issue any press release or other disclosure regarding the Agreement and/or settlement other than as necessary to obtain Court approval or effectuate the settlement and release terms. The Parties further agree that neither party, nor their respective counsel, will discuss the existence of this Agreement except as necessary to effectuate its terms or as otherwise required by law, including any and all obligations towards the LWDA and warranted responses to inquiries and/or concerns from PAGA Members. The Parties may, however, discuss the terms of this Agreement with their spouses, attorneys, financial advisors, tax advisors, and accountants as necessary for tax related purposes, or upon a valid court order, at which time the individual receiving information about the terms of this Agreement shall be informed that the terms of this Agreement are confidential, and the individual may not reveal or disclose to any third party the terms of the Agreement.

X. NO PRIOR ASSIGNMENTS

1. The Parties represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, or purported to assign, or transfer to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein settled, released, and discharged except as set forth in this Agreement. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement and shall not be construed to confer any right or to avail any remedy to any other person.

XI. NO ADMISSION

1. Nothing contained herein nor is the consummation of this Agreement to be

construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the Released Parties. Each of the Parties has entered into this Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience and expense. Defendant denies that it has engaged in any unlawful activity, that it has failed to comply with the law in any material respect, or that it has any liability to anyone under the claims asserted in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims.

XII. ATTORNEYS' FEES, COSTS, AND EXPENSES

1. Except as specifically set forth herein, each party shall bear its/her own attorneys' fees, costs, and expenses, taxable or otherwise, incurred from litigation relating to this Action and this Agreement, and shall not seek reimbursement thereof from any other party to this Agreement. However, if an action is brought to enforce this Agreement and any of its terms contained therein, the prevailing party shall be entitled to its/her reasonable attorneys' fees and costs.

XIII. CONSTRUCTION

1. The Parties hereto agree that the terms and conditions of this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that this Agreement constitutes the entire contract between Plaintiff (on behalf of herself and all other PAGA Members) and Defendant regarding actual or potential claims asserted by Plaintiff against the Released Parties. Excluding any arbitration or confidentiality agreement executed by Plaintiff or any of the other PAGA Members, on the one hand, and Defendant, on the other hand, all of which will remain in full force and effect, this Agreement supersedes all prior agreements, written or oral, between or among the Parties regarding those claims or potential claims and the resolution of those claims. Consequently, no other agreement, statement, or promise made by any of the Parties to another as to any matter addressed in this Agreement shall be binding or valid.

XIV. CAPTIONS AND INTERPRETATIONS

1. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this

Agreement or any provision hereof. Each term of this Agreement is contractual and not merely a recital.

XV. MODIFICATION

1. This Agreement may not be amended, changed, altered, or modified, except in writing and signed by the Parties or their successors-in-interest. This Agreement may not be discharged except by performance in accordance with its terms or by a subsequent written contract signed by the Parties.

XVI. MISCELLANEOUS

1. This Agreement contains the entire agreement between the Parties relating to the settlement, release, and discharge of the Covered Claims, and all prior or contemporaneous agreements (except any arbitration agreements), understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel, are merged herein. No rights hereunder may be waived except in writing. The Parties have made such investigation of the facts and the law pertaining to the matters described herein and to this Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of making and executing this Agreement, or with respect to any such matters that would alter or change the terms of this Agreement. No representations, warranties, or inducements have been made to any party concerning this Agreement other than those expressly set forth or referred to herein.

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

3. Concurrently with sending the appropriate PAGA Member Shares, the Settlement Administrator will notify all PAGA Members of the binding nature of the release through an accompanying written letter that will be approved by the Parties in advance of Plaintiff filing the

Motion for Approval, and the Parties agree that such shall have the same force and effect as if this Agreement were executed by each of the PAGA Members.

4. Neither Plaintiff nor PAGA Counsel shall seek, encourage, or otherwise solicit any other current and/or former employees of Defendant for the purpose of instituting or pursuing any claims against Defendant that are related to, arising from, or otherwise associated with this Agreement.

5. This Agreement may be executed in counterparts, electronically, *e.g.*, DocuSign, and when each of the Parties has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all Parties. The counterparts may be transmitted electronically (.PDF) or by facsimile.

6. This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California, irrespective of the State of California's choice-of-law principles.

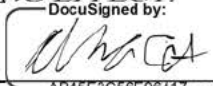
7. The Parties have cooperated in the negotiation and preparation of this Agreement. This Agreement shall not be construed against any of the Parties on the basis that it, or its counsel, was the drafter or participated in the drafting of this Agreement.

8. The Yuba County Superior Court shall retain jurisdiction to enforce this Agreement pursuant to Code of Civil Procedure § 664.6. The Court shall retain continuing jurisdiction over this Action and over all Parties and PAGA Members, to the fullest extent to enforce and effectuate the terms and intent of this Agreement. The Parties intend this Settlement to be enforceable to the fullest extent of the law regardless of future occurrences or changes in the law.

THE PARTIES HAVE READ THE FOREGOING AGREEMENT. THEY HAVE CONSULTED WITH LEGAL COUNSEL REGARDING THE FOREGOING AGREEMENT AND KNOW THE CONTENTS THEREOF AND SIGN THE SAME AS THEIR FREE,

KNOWING, AND VOLUNTARY ACT AND DEED, BEING FULLY AWARE OF ITS
CONSEQUENCES AND ITS FINAL AND BINDING EFFECT.

DATED: July 8
____, 2022

DocuSigned by:


AMY CETNAROWSKI,
as PAGA Representative

DATED: June ___, 2022

MELON HOLDINGS, LLC
By: _____
Its: _____

APPROVED AS TO FORM AND CONTENT:

DATED: June ___, 2022

FISHER & PHILLIPS, LLP

By: _____
Grace Y. Horoupian
Andrew C. Crane
Sunny H. Huynh
Attorneys for Defendant MELON HOLDINGS,
LLC

DATED: July 8
____, 2022

DIVERSITY LAW GROUP

By: 

Larry W. Lee
Max W. Gavron
Attorneys for Plaintiff AMY CETNAROWSKI
and PAGA Members

KNOWING, AND VOLUNTARY ACT AND DEED, BEING FULLY AWARE OF ITS CONSEQUENCES AND ITS FINAL AND BINDING EFFECT.

DATED: June __, 2022

AMY CETNAROWSKI,
as PAGA Representative

DATED: June __, 2022

MELON HOLDINGS, LLC

By: Sean Van Wagenen

Its: Administrator

APPROVED AS TO FORM AND CONTENT:

DATED: July 12, 2022

FISHER & PHILLIPS, LLP

By: _____

Grace Y. Horoupian

Andrew C. Crane

Sunny H. Huynh

Attorneys for Defendant MELON HOLDINGS,
LLC

DATED: June __, 2022

DIVERSITY LAW GROUP

By: _____

Larry W. Lee

Max W. Gavron

Attorneys for Plaintiff AMY CETNAROWSKI
and PAGA Members

EXHIBIT B

EXHIBIT C

[SETTLEMENT ADMINISTRATOR LETTERHEAD]

Notice of PAGA Settlement and Release Agreement

[Mailing Date]

[Address]

RE: Settlement Payment

Enclosed is your settlement payment from the settlement of the lawsuit entitled *Amy Cetnarowski v. Melon Holdings, LLC*, Case No. CVCV21-01007, Superior Court of the State of California for the County of Yuba (“Action”). This Action was filed by Plaintiff Amy Cetnarowski (“Plaintiff”) against Defendant Melon Holdings, LLC (“Defendant” or “Company”) pursuant to the California Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code § 2698, *et seq.* (the “PAGA”).

The Action was brought on behalf of the State of California and all similarly situated “aggrieved employees” of the Defendant for civil penalties for the Company’s alleged failure violation of Labor Code §§ 201, 202, 203, 226, 226.7, 510, 512, 558, 1194, and 2802. Defendant denies Plaintiff’s allegations and asserts that it did not violate any wage and hour law, and further denies that the allegations alleged by Plaintiff are appropriate for class, collective, and/or representative treatment for any purpose other than settlement. Defendant contends that at all times it properly compensated all employees and fully complied with all applicable laws. The Court has ***not*** made a determination about Plaintiff’s claims. The parties agreed to resolve the case, and as part of that settlement, Defendant agreed to pay a gross settlement amount of \$70,000.00, which shall be distributed as follows: (1) \$23,333.33 in attorneys’ fees and \$6,736.45 in costs; (2) \$10,000.00 for Plaintiff’s service award; (3) \$3,000.00 to the settlement administrator for its costs; and (4) 75% of the remaining PAGA penalty fund, or \$17,375.00, to the California Labor and Workforce Development Agency for its share of penalties. Under the PAGA, certain penalties get divided between the State and the employees. As a result of this settlement, the State’s and your ability to seek penalties recoverable under the PAGA for the claims described above have been settled.

The settlement group includes all current and former non-exempt employees of Defendant, including Plaintiff, who are or have been employed by Defendant in the State of California who worked one or more pay periods during the period between September 30, 2020, and July 14, 2022 (“Covered Period”). You are releasing Defendant, its affiliated entities, parents, subsidiaries, owners, officers, executives, directors, and managers from any and all claims, demands, rights, liabilities, and/or causes of action under the PAGA for civil penalties, which are premised on alleged violation of Labor Code §§ 201, 202, 203, 226, 226.7, 510, 512, 558, 1194, and 2802, as well as any other claims which could have been brought based on the facts alleged in the Action within the Covered Period.

You have been identified as having worked ☒ eligible pay periods in California as a non-exempt employee of Defendant between September 30, 2020, and July 14, 2022. Enclosed is a check made out to you in the amount of \$(**amount**). The check represents your share of the settlement for PAGA civil penalties. The check will expire 180 calendar days from the date it was issued. After the 180-day period, the administrator will send any unclaimed funds to the State of California Unclaimed Property Fund. If you were unable to cash your check for any reason during the 180-day check cashing period, you can contact the State of California Controller’s Office to see if you can obtain your funds. Even if you fail to cash the enclosed check, you will still be deemed to have waived all claims based on or arising from the Action, including all claims set forth in the release of claims described above.

If you have any questions, you can contact the settlement administrator at [**add contact information**], or the Plaintiff’s attorneys at: Larry W. Lee/Max W. Gavron, Diversity Law Group, P.C., 515 S. Figueroa, Suite 1250, Los Angeles, CA 90071, Telephone: 213-488-6555.

Sincerely,

[Administrator]