

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made by and between Plaintiff MEGHAN MALONEY (“Maloney”) and NORMAN R. LEAL, CAROL R. LEAL, SHIN TAKESHIMA and NORMAN R. LEAL and CAROL R. LEAL, TRUSTEES OF THE LEAL FAMILY TRUST DATED MARCH 30, 2021 (collectively, “Defendants”), who may be referred to herein individually as a “Party” and collectively as the “Parties.” This Agreement shall be effective on the date that all Parties have executed it (“Effective Date”).

RECITALS

A. Maloney provided services at an apartment complex owned by Defendants from approximately Summer of 2020 through Summer of 2022. In exchange for her services, Defendants reduced Maloney’s rent.

B. On or about November 3, 2021, Maloney filed a Complaint alleging various wage and hour claims against Defendants in the Superior Court of the State of California for the County of Sacramento, designated as *Maloney v. Leal, et. al.* Case No. 34-2021-00310533 (the “Action”).

C. On or about October 28, 2021, Maloney sent a letter to the California Labor and Workforce Development Agency (“LWDA”) alleging violations of the Private Attorneys General Act (“PAGA”). On or about January 12, 2022, Maloney filed an Amended Complaint in the Action asserting an additional claim under PAGA.

D. Maloney filed her PAGA claim on behalf of the same allegedly “aggrieved employees” who Plaintiff Deborah Jensen represents in the related action of *Jensen v. Leal, et. al.* Case No. 34-2020-00285215 (the “Jensen Action”).

E. Defendants deny Maloney’s allegations, deny that Defendants have any legal or equitable responsibility for the damages and injuries claimed by Maloney in the Action, and deny that they engaged in any wrongdoing whatsoever.

F. The Parties enter into this Agreement to fully and finally resolve all of Maloney’s claims in the Action, known or unknown, that are or could have been asserted in the Action or which are in any way, related to and/or connected with the services provided by Maloney, subject to the terms and conditions referenced below.

AGREEMENT

NOW THEREFORE, in consideration of the above Recitals, and the promises contained herein, and for other good and valuable consideration, the adequacy of which is hereby acknowledged, the Parties agree as follows:

1. No Admission of Liability. This Agreement represents a compromise of all disputed claims. The payment of any sum of money in consideration for the execution of this

Agreement or the performance of obligations herein shall neither constitute nor be construed as an admission of liability for any purpose whatsoever.

2. Intent of the Parties. By entering into this Agreement, it is the intent of the Parties to resolve all past, present, and future disputes between them arising out of or relating to the Action or Maloney's services to Defendants, by way of the payments, releases, and dismissals set forth herein. The Parties believe it is in their mutual interests to reach an amicable resolution by way of compromise and accord without admission, or further adjudication of any issues of fact or law. The Parties believe that the settlement reflected by this Agreement is fair, reasonable, equitable, and in their respective best interests. It is further the intent of the Parties that the Court's PAGA Settlement Approval in the Jensen Action is a condition precedent to this entire Agreement. If the Court does not approve the PAGA Settlement in the Jensen Action, this Agreement shall be deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and the negotiation and terms of the Agreement shall remain subject to the provisions of California Evidence Code sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable. It is also the intent of the Parties that the Court's dismissal with prejudice of this Action, including Maloney's PAGA claim, is a condition precedent to this entire Agreement. If the Court does not approve dismissal with prejudice of this Action, including dismissal with prejudice of Maloney's PAGA claim, this Agreement shall be deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and the negotiation and terms of the Agreement shall remain subject to the provisions of California Evidence Code sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable.

3. Conditions Precedent to Settlement Payment. Defendants shall pay the total sum of the Settlement Payment in one installment (the "Payment"), pursuant to the following terms and conditions precedent:

(a) Jensen and Defendants shall execute and file the "Stipulation of Settlement Under Private Attorneys General Act of 2004; [PROPOSED] Order" ("PAGA Settlement") in the Jensen Action attached hereto as **Exhibit A**. The Court's Order approving the PAGA Settlement in the Jensen Action is a condition precedent to payment under this Agreement.

(b) Within 10 court days of the Court's Order approving the PAGA Settlement in the Jensen Action, Maloney and Defendants shall execute and file the "Stipulated Request for Dismissal With Prejudice; [PROPOSED] Order" in this Action attached hereto as **Exhibit B**. The Court's Order approving dismissal of this Action with prejudice, including dismissal of Maloney's PAGA claim with prejudice, is a condition precedent to payment under this Agreement.

(c) Maloney's counsel shall provide Defendants' counsel with a W-9 for Maloney.

4. Payment. Defendants shall pay the total amount of Thirty Thousand Dollars and Zero Cents (\$30,000.00) to Maloney under this Agreement. This payment shall be delivered to the Law Office of Kenneth F. Moss at 20335 Ventura Blvd., Suite 430, Woodland Hills, CA

91364 within fifteen (15) days after the conditions specified in Sections 3(a)-(c) of this Agreement have all been satisfied. The amount being paid under this Agreement is separate and in addition to the payment provided for in the PAGA Settlement of the Jensen Action.

5. Release of Defendants. Maloney hereby releases and forever discharges Defendants, as well as each of Defendants' predecessors, successors, beneficiaries, representatives, partners, shareholders, officers, directors, employees, independent contractors, assigns, parents, affiliates, subsidiaries, companies, insurers, members, agents, brokers, spouses, children, relatives, trustees, and attorneys (hereinafter, "Released Parties") from any and all claims, causes of action, debts, liabilities, demands, penalties, obligations, guarantees or damages, in law or equity, tort, contract, by statute, or otherwise which have been or could have reasonably been asserted in the Action, whether known or unknown, relating to Maloney's services. These claims include, but are not limited to, any individual wage and hour claims, failure to pay overtime compensation and minimum wages under the Fair Labor Standards Act, the California Labor Code or any other state or federal wage and hour laws, any other violation of the Fair Labor Standards Act, the California Labor Code or any other state or federal wage and hour laws, violation of the California Business and Professions Code, including, but not limited to section 17200, et. seq., breach of contract, fraud, discrimination, harassment, retaliation, whistleblowing, violation of the California Fair Employment and Housing Act (Government Code section 12940. et. seq.), wrongful termination and/or constructive discharge. Maloney hereby releases and forever discharges Defendants and the Released Parties from any and all liabilities, claims, demands, damages, costs, actions or causes of action of any kind or nature, whether absolute or contingent, whether known or unknown, from the beginning of time, to and including the date hereof, whether based on contract, tort, statute, breach of the implied covenant of good faith and fair dealing, or any other legal or equitable theory of recovery insofar as any of the same relate to or arise in any way out of the Action or Maloney's services to Defendants. It is agreed that this is a general release and is to be broadly construed as a release of all of Maloney's claims against Defendants and the Released Parties that relate to or arise in any way out of the Action or Maloney's services to Defendants.

6. Release of Maloney. Defendants hereby release and forever discharge Maloney, as well as each of Maloney's predecessors, successors, beneficiaries, representatives, partners, shareholders, officers, directors, employees, independent contractors, assigns, parents, affiliates, subsidiaries, companies, insurers, members, agents, brokers, spouses, children, relatives, trustees, and attorneys (hereinafter, "Maloney's Representatives") from any and all claims, causes of action, debts, liabilities, demands, penalties, obligations, guarantees or damages, in law or equity, tort, contract, by statute, or otherwise which have been or could have reasonably been asserted in the Action, whether known or unknown, relating to Maloney's services. These claims include, but are not limited to, any individual wage and hour claims, failure to pay overtime compensation and minimum wages under the Fair Labor Standards Act, the California Labor Code or any other state or federal wage and hour laws, any other violation of the Fair Labor Standards Act, the California Labor Code or any other state or federal wage and hour laws, violation of the California Business and Professions Code, including, but not limited to section 17200, et. seq., breach of contract, fraud, discrimination, harassment, retaliation, whistleblowing, violation of the California Fair Employment and Housing Act (Government Code section 12940. et. seq.), wrongful termination and/or constructive discharge. Defendants hereby release and forever discharge Maloney and Maloney's Representatives from any and all liabilities, claims,

demands, damages, costs, actions or causes of action of any kind or nature, whether absolute or contingent, whether known or unknown, from the beginning of time, to and including the date hereof, whether based on contract, tort, statute, breach of the implied covenant of good faith and fair dealing, or any other legal or equitable theory of recovery insofar as any of the same relate to or arise in any way out of the Action or Maloney's services to Defendants. It is agreed that this is a general release and is to be broadly construed as a release of all of Defendants' claims against Maloney and Maloney's Representatives that relate to or arise in any way out of the Action or Maloney's services to Defendants.

7. Waiver of Civil Code § 1542. The Parties each acknowledge and agree that they have been informed by their respective attorneys and advisors of, and are familiar with and hereby expressly waive the provisions of Section 1542 of the California Civil Code to the fullest extent that they may waive such rights and benefits. Section 1542 provides:

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.

The Parties acknowledge that they are aware that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true, as to the matters released herein relating to the Action or Maloney's services to Defendants. Nevertheless, it is the express intention of the Parties, by entering into this Agreement, to fully, finally, and forever release all such matters, and all claims related thereto, which now exist, or have heretofore existed. In furtherance of such intention, the releases herein given shall be and remain in effect as a full and complete release of such matters, notwithstanding the discovery or existence of any such additional or different claims or facts related thereto by Maloney or Defendants. In entering into this Agreement, the Parties do not rely upon any statement, representation or promise of any other Party, except as otherwise expressly stated in this Agreement. The Parties understand and agree that their mutual releases in this Agreement relate to the claims asserted by Maloney in the Action and the services she provided to Defendants from 2020 through 2022.

8. Administrative Actions. Maloney represents that except for the October 28, 2021, letter she sent to the LWDA she has not filed and will refrain from filing, individually or collectively, any charges, action, complaint or proceeding against Defendants or the Released Parties with any administrative agency, board, or court that relate to her services to Defendants or the termination of these services.

9. Enforcement of Agreement. The Sacramento County Superior Court shall retain jurisdiction over the Parties to enforce the provisions of this Agreement. This Agreement may be enforced by any Party by a motion under Section 664.6 of the California Code of Civil Procedure or through the filing of a separate action for breach of contract. Each Party agrees not to bring a motion under Section 664.6 or an action to enforce this Agreement pursuant to this provision unless such Party gives written notice to the other Party's counsel of record in the

Action, and the non-performing Party receiving the written notice fails to perform within ten (10) days of receipt of such notice.

10. Miscellaneous.

(a) Authority. The Parties represent and warrant that they have not assigned or otherwise transferred any interest in any of the claims in the Action. The Parties further agree to indemnify and hold each other harmless from any liability, claims, demands, damages, costs, expenses, and attorney's fees incurred by either Party as a result of any third party asserting any such assignment or transfer.

(b) Parties' Agents and Representatives. The terms of the Agreement shall be binding upon and inure to the benefit of the Parties' respective principals, officers, employees, agents, heirs, successors, executors, assigns, representatives, attorneys, and insurers.

(c) Representation by Attorney. The Parties acknowledge that they have carefully read the Agreement, understand its final and binding effect, have consulted with an attorney, and understand the provisions of the Agreement and knowingly and voluntarily agree to be bound by them. The Parties hereby represent and acknowledge that in executing the Agreement, they have not relied upon any representation or statement made by one another or their past or present employees, agents, employees, representatives or attorneys with regard to the subject matter, basis, or effect of the Agreement.

(d) Tax Consequences. Maloney understands and agrees that Defendants and their attorneys are not providing tax or legal advice, and make no representations regarding tax obligations or consequences, if any, related to this Agreement.

(e) Construction. The language in all parts of the Agreement will in all cases be construed as a whole according to its fair meaning and not strictly for or against any Party.

(f) Severability. In the event that any provision of this Agreement should be held to be void, voidable, or unenforceable, the remaining portions hereof shall remain in full force and effect.

(g) Governing Law and Venue. This Agreement, the transactions contemplated hereby, and any claim or dispute arising out of or in connection with the same, shall be interpreted, construed, and enforced according to the laws of the State of California. The sole venue for any lawsuit, action, or proceeding arising out of or related to this Agreement, shall be the Superior Court of California, County of Sacramento.

(h) Attorney's Fees and Costs. The Parties agree that each Party shall bear their own attorney's fees and costs incurred in connection with the Action and the preparation of this Agreement.

(i) No Oral Modifications. This Agreement may not be changed, modified, interlineated, or supplemented, nor may any covenant, representation, warranty, or other provision be waived, except by agreement in writing signed by the Party against whom

enforcement of the change, modification, alteration, interlineation, supplementation, or waiver is charged.

(j) Further Assurances. The Parties agree they shall cooperate to the best of their abilities with the other in such ways, and execute such additional documents, as may be requested by the other Parties in order to more fully carry out the mutual intent and terms of this Agreement and the full and final settlement of the Action.

(k) Counterparts. This Agreement may be executed in one or more counterparts but all of the counterparts shall constitute one agreement. Signatures delivered via facsimile transmission or email shall have the same force and effect as originals of the signatures.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives as of the day set forth below.

Plaintiff MEGHAN MALONEY

Dated: _____

Defendant NORMAN LEAL

Dated: _____

Defendant CAROL LEAL

Dated: _____

Defendant SHIN TAKESHIMA

Dated: _____

NORMAN R. LEAL and CAROL R. LEAL,
TRUSTEES OF THE LEAL FAMILY
TRUST DATED MARCH 30, 2021
(the "Leal Family Trust")

Trustee CAROL LEAL
on behalf of Defendant THE LEAL
FAMILY TRUST

Dated: _____

EXHIBIT A
PAGA SETTLEMENT IN JENSEN ACTION

1 DOWNEY BRAND LLP
2 CASSANDRA M. FERRANNINI (Bar No. 204277)
3 cferrannini@downeybrand.com
4 ALEXANDRA K. LAFOUNTAIN (Bar No. 301003)
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7 Sacramento, California 95814
8 Telephone: 916.444.1000
9 Facsimile: 916.444.2100
10 Attorneys for Defendants/Cross-Complainants
11 NORMAN R. LEAL, CAROL R. LEAL, and
12 SHIN TAKESHIMA; and Defendants NORMAN
13 R. LEAL AND CAROL R. LEAL, TRUSTEES
14 OF THE LEAL FAMILY TRUST DATED
15 MARCH 30, 2021

16 LAW OFFICE OF KENNETH F. MOSS
17 KENNETH F. MOSS (Bar No. 94185)
18 mossmgrlaw@aol.com
19 20335 Ventura Boulevard, Suite 430
20 Woodland Hills, California 91364
21 Telephone: 818.340.1414
22 Attorney for Plaintiff
23 DEBORAH JENSEN

24 SUPERIOR COURT OF THE STATE OF CALIFORNIA
25 COUNTY OF SACRAMENTO

26 DEBORAH JENSEN, an individual,

27 Plaintiff,

28 v.

29 NORMAN R. LEAL, an individual; CAROL
30 R. LEAL, an individual; SHIN TAKESHIMA,
31 an individual; and DOES 1 through 50,
32 inclusive,

33 Defendants.

34 AND RELATED CROSS-ACTIONS

Case No. 34-2020-00285215

**STIPULATION OF SETTLEMENT
UNDER PRIVATE ATTORNEYS
GENERAL ACT OF 2004; [PROPOSED]
ORDER**

Action Filed:

September 11, 2020

Trial Date:

July 17, 2023

1 The Parties hereto, Plaintiff DEBORAH JENSEN (“Jensen”) as a proxy for the Labor and
2 Workforce Development Agency (“LWDA”), and Defendants NORMAN R. LEAL, CAROL R.
3 LEAL, SHIN TAKESHIMA and NORMAN R. LEAL and CAROL R. LEAL, TRUSTEES OF
4 THE LEAL FAMILY TRUST DATED MARCH 30, 2021 (collectively, “Defendants”), by and
5 through their respective counsel of record, hereby stipulate and agree as follows:

6 1. Defendants own a small apartment complex on Sutterville Road in Sacramento,
7 California. Defendant Norman Leal is 81-years old and a retired quality assurance manager. His
8 wife, Defendant Carol Leal, is 79 years-old and a retired office clerk, and his friend, Defendant
9 Shin Takeshima, is 59 years-old and a retired engineer. Although Defendants co-own a small
10 apartment complex on Sutterville Road and six other properties in the Greater Sacramento area,
11 none of them own or run any property management companies or other businesses.

12 2. Defendants retained Jensen’s property management services in 2015. Defendants
13 expected Jensen to show their Sutterville property’s vacant apartments to prospective tenants and
14 collect rent from its current tenants. In exchange, Jensen received reduced rent for an apartment
15 on the property. In prior years, Defendants had entered similar services agreements with residents
16 at their other properties without any issues, problems, or complaints. All of these residents were
17 paid for their services through a reduction in their rent, and Defendants classified all of these
18 residents as independent contractors.

19 3. In or about June of 2020, Jensen’s services were terminated. On or about
20 September 8, 2020, Jensen filed her Complaint in this action alleging she was misclassified as an
21 independent contractor and owed unpaid wages.

22 4. On or about September 30, 2020, Jensen’s attorney sent a letter to the LWDA
23 alleging violations of the Private Attorneys General Act (“PAGA”). On or about December 9,
24 2020, Jensen filed an Amended Complaint asserting an additional claim under PAGA to represent
25 other allegedly “aggrieved employees.” Her PAGA claim alleges Defendants misclassified other
26 residents as independent contractors and therefore owes them unpaid wages also. Jensen refers to
27 these allegedly “aggrieved employees” as “resident managers” (hereinafter, the “Managers”).
28

1 5. Defendants timely denied all of Jensen’s allegations, legally and factually. Since
 2 this action was filed in 2020, the Parties have conducted significant discovery and engaged in
 3 extensive law and motion practice. As of the date of this Stipulation, there are 10 Managers who
 4 Jensen represents under PAGA, including herself. These Managers provided services to
 5 Defendants during the PAGA period of September 8, 2019 to the present (the “PAGA Period”).
 6 While Jensen asserts all of the Managers are “aggrieved employees,” Defendants assert all of the
 7 Managers were properly classified as independent contractors and therefore are not owed any
 8 unpaid wages. Further, Defendants assert that all 10 Managers were compensated for their
 9 services through significant reductions in their monthly rent.

10 6. In April 2021, Jensen filed a motion for summary adjudication asking the Court to
 11 declare she was Defendants’ employee rather than an independent contractor. The Court denied
 12 her motion. The Court held several “factual disputes preclude summary adjudication.”

13 7. On August 25, 2022, the Parties participated in an all-day mediation with the
 14 Honorable Richard Kramer, who is presently a full-time neutral with Judicial Arbitration and
 15 Mediation Services, and who previously presided over the Complex Litigation Department of the
 16 San Francisco Superior Court for thirteen years.

17 8. At the mediation, the Parties were represented by their counsel of record, who
 18 combined have over thirty years of experience litigating wage-and-hour and PAGA lawsuits.

19 9. At the mediation, the Parties reached an agreement on settlement terms regarding
 20 Jensen’s PAGA claim with substantial assistance from the Honorable Richard Kramer. Jensen’s
 21 individual claims shall be resolved by way of a separate settlement agreement. However, approval
 22 by the Sacramento Superior Court of this Stipulation is a condition precedent to the Parties’
 23 agreement to settle Jensen’s individual claims against Defendants.

24 10. Labor Code section 2699(l) requires that the Court review and approve any
 25 proposed settlement agreement pursuant to PAGA.

26 11. During the Parties’ all-day mediation, Jensen and her counsel carefully
 27 concluded—after taking into account the sharply disputed factual and legal issues involved in the
 28 action, the risks attending further prosecution, and the discovery and investigation conducted to

1 date—that settling on the terms set forth herein is in the best interest of all interested parties,
 2 including the LWDA, and that the settlement adequately serves the purposes of PAGA. Although
 3 Jensen initially sought over \$400,000.00 in PAGA penalties on behalf of the 10 Managers, Jensen
 4 and her counsel recognized the Court has significant discretion to reduce the assessed amount of
 5 PAGA penalties if to do otherwise would result in an award that is unjust, arbitrary and
 6 oppressive, or confiscatory. (See Lab. Code § 2699(e)(2).) Jensen and her counsel further
 7 recognize it remains unresolved whether Jensen was Defendants’ employee because the Court
 8 denied her motion for summary adjudication on this issue. If Jensen was found to be an
 9 independent contractor at trial, there would be no recovery of PAGA penalties whatsoever in this
 10 case.

11 12. During the Parties’ all-day mediation, Defendants and their counsel also carefully
 12 concluded there were benefits associated with settling. Although Defendants deny and dispute all
 13 of Jensen’s factual allegations and legal assertions, Defendants took into account the sharply
 14 disputed factual and legal issues involved in the action, the risk attending further defense, the
 15 expense, time, and burden of protracted litigation and potential appeal following judgment, and the
 16 desire to put the controversy to rest. Avoiding protracted litigation was exceptionally important to
 17 Defendants due to Defendant Norman Leal’s ongoing recovery from a severe stroke he suffered in
 18 2021. Based on these factors, Defendants and their counsel agreed to this settlement without any
 19 admission of fault or liability.

20 13. “PAGA does not require the trial court to act as a fiduciary for aggrieved
 21 employees.” (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.) However, a PAGA
 22 settlement must still be “fair and reasonable.” (*Id.* at 76.) The requirement of court approval
 23 serves to “prevent fraud, collusion [and] unfairness” and to protect the interests of the public and
 24 the LWDA. (*Ibid.*) The court therefore assesses the adequacy of the settlement terms based on
 25 the record before it, including the amount in controversy and the realistic range of outcomes.
 26 (*Ibid.*) When determining the fairness and reasonability of a PAGA settlement, the following
 27 factors are “useful” to consider: “the strength of the plaintiff’s case, the risk, the stage of the
 28 proceeding, the complexity and likely duration of further litigation, and the settlement amount.”

1 (*Id.* at 77.) As further detailed below, all of these factors show the parties' settlement is fair,
2 reasonable, and adequate.

3 14. Although Jensen initially believed she had a strong case and that her employment
4 status could be resolved through summary adjudication, the Court disagreed, and Defendants
5 assert that Jensen faced a substantial risk at trial that she would be held an independent contractor
6 rather than an employee. During discovery, Defendants obtained detailed deposition testimony
7 and documentary evidence supporting their position that Jensen was an independent contractor.
8 At her deposition, Jensen testified she used her own "discretion" and "judgment" to perform her
9 services at Defendants' property. Jensen further testified "they left the property in [her] hands"
10 because Defendants lived in the Bay Area. Additionally, Defendants never owned or operated any
11 property management companies or other businesses. Because Jensen repeatedly informed
12 Defendants she had extensive property management experience, they relied on Jensen to
13 autonomously and independently manage their property. Defendants assert this evidence strongly
14 supported their claim that Jensen was an independent contractor under Labor Code § 2775(b)(1)'s
15 ABC test and under *S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48
16 Cal.3d 341's totality-of-circumstances test. Although Jensen vigorously asserted she was
17 Defendants' employee, this key issue would not be resolved until trial given the denial of her
18 motion for summary adjudication.

19 15. This case settled after nearly two years of litigation. Both Jensen and Defendants
20 conducted substantial discovery, and both sides engaged in extensive law and motion practice.
21 Because the Parties had nearly two years to evaluate the strengths and weaknesses of their case,
22 they were able to make informed decisions regarding settlement at mediation.

23 16. Settling this case now greatly benefits the Parties and the Managers that Jensen
24 represents because this case involves several factual and legal complexities and uncertainties,
25 including which independent contractor test applies to Jensen and each of the Managers. When
26 Jensen filed her motion for summary adjudication, the Court declined to decide whether Labor
27 Code § 2775(b)(1) or the *S.G. Borello & Sons, Inc.* independent contractor test governed her
28 claims. If this case did not settle at mediation, both Parties recognized there would be further

1 litigation for nearly a year, including the depositions of several third party witnesses, as well as a
2 lengthy trial in July 2023. After trial, several novel legal issues would be appealable, further
3 delaying full and final resolution of the case.

4 17. The Parties submit that the total PAGA settlement of \$15,000.00 (detailed below)
5 is reasonable, fair, and adequate, especially since Jensen alleges she is owed only \$21,125.00 in
6 unpaid wages and there are only 10 Managers who she represents under PAGA. As discussed
7 above, Jensen faced a significant risk that she would be found an independent contractor at trial
8 and therefore no PAGA penalties would be awarded in this case. An award of PAGA penalties
9 cannot be unjust, arbitrary and oppressive, or confiscatory. (See Lab. Code § 2699(e)(2).) The
10 PAGA settlement of \$15,000.00 is consistent with this requirement. This settlement amount is
11 also fair, reasonable, and adequate because it will be allocated equally among all 10 Managers as
12 further detailed in Section 27 below.

13 18. Nothing in this Stipulation, nor any action taken in implementation thereof, nor any
14 statements, discussions or communications, nor any materials prepared, exchanged, issued, or
15 used during the course of the negotiations leading to this Stipulation, is intended by the Parties to
16 constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible in any
17 way in this case or any judicial, arbitral, administrative, investigative, or other forum or
18 proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance,
19 regulation, rule, or executive order, or any obligation or duty at law or in equity, against
20 Defendants and the Released Parties (defined in Section 20 below).

21 19. The Parties hereby agree to settle Jensen's PAGA claim on behalf of all Managers
22 ("the PAGA Settlement") for a total payment of \$15,000.00 in exchange for dismissal of Jensen's
23 PAGA claim with prejudice. All 10 Managers during the PAGA Period are covered by this
24 PAGA Settlement.

25 20. The Released Parties pursuant to this Stipulation are Defendants and all of their
26 predecessors, successors, beneficiaries, representatives, partners, shareholders, officers, directors,
27 employees, independent contractors, assigns, parents, affiliates, subsidiaries, companies, insurers,
28 members, agents, brokers, spouses, children, relatives, trustees, and attorneys (collectively, the

1 “Released Parties”).

2 21. Upon the Court’s Approval of this Stipulation, the LWDA and each of the
3 Managers, including Jensen, hereby voluntarily and knowingly release and forever discharge any
4 and all PAGA claims against the Released Parties that could have been premised or predicated on
5 any claims, causes of action, or legal theories of relief described or pleaded in the operative
6 complaint filed in this action and the written notice of any such claims submitted to the LWDA by
7 Jensen, arising from September 8, 2019 through the date of the Court’s order.

8 22. The distribution of individual settlement payment checks pursuant to this
9 Stipulation shall not constitute consideration offered or exchanged for the release of any private
10 rights of action.

11 23. This Stipulation shall not operate as a waiver of any of Jensen’s individual (i.e.,
12 non-PAGA) claims, which are to be resolved by a separate agreement. However, approval by the
13 Sacramento Superior Court of this Stipulation is a condition precedent to the Parties’ agreement to
14 settle Plaintiff’s individual claims against Defendants.

15 24. The PAGA Settlement shall be administered by Simpluris (“Administrator”).

16 25. Administrator has verified that, as a condition of appointment, it agrees to be bound
17 by this Stipulation and to perform, as a fiduciary, all duties specified in this Stipulation in
18 exchange for payment of the Administration Expenses Payment, as defined below. The Parties
19 and their counsel represent that they have no interest or relationship, financial or otherwise, with
20 the Administrator other than a professional relationship arising out of prior experiences
21 administering settlements.

22 26. “Administration Expenses Payment” means the total amount of \$4,000.00 that the
23 Administrator will be paid by Defendants for Administrator’s reasonable fees and expenses.

24 27. The PAGA Settlement sum of \$15,000.00 (the “Gross Settlement Amount”) shall
25 be allocated as follows:

- 26 a. \$3,750.00 or 25 percent (25%) of the Gross Settlement Amount will be distributed
- 27 by Administrator to Jensen and the other nine Managers who provided services to
- 28 Defendants during the PAGA Period. Each Manager will receive one tenth (1/10th)

- 1 of the \$3,750.00 amount. Administrator will send all of the Managers their portion
- 2 of the settlement by mail to their last known address. Settlement checks issued
- 3 pursuant to this Stipulation shall expire 180 days from the date they are issued.
- 4 Any unclaimed funds after the 180 days shall be remitted to the LWDA.
- 5 b. \$11,250.00 or 75 percent (75%) of the Gross Settlement Amount shall be paid to
- 6 the LWDA in accordance with Section 2699(i) of the Labor Code.
- 7 28. In no event shall Defendants pay more than \$15,000.00 pursuant to this Stipulation
- 8 for full and final dismissal of Jensen's PAGA claim.
- 9 29. On the condition that the Court approves this Stipulation and enters the
- 10 attached Order, the Gross Settlement Amount will be paid as follows:
- 11 a. Defendants shall fully fund the Gross Settlement Amount by transmitting the
- 12 funds to the Administrator no later than fifteen (15) days after entry of the
- 13 Court's Order.
- 14 b. Within ten (10) calendar days after receipt of the Gross Settlement Amount,
- 15 Administrator shall issue all payments of the Gross Settlement Amount
- 16 consistent with the terms specified in Section 27 above.
- 17 c. All individual settlement payments shall be sent by U.S. First Class mail. It
- 18 will be conclusively presumed that a check was received if the payment check
- 19 has not been returned within thirty (30) days of the original mailing of the
- 20 payment check.
- 21 d. Settlement checks shall remain valid for one hundred eighty (180) calendar
- 22 days from the date of their issuance. If there are uncashed checks following
- 23 this period, Administrator will ensure that uncashed funds shall be forwarded to
- 24 the LWDA in the name of the Manager who did not cash his or her individual
- 25 settlement payment, if practicable.
- 26 e. The settlement payments set forth above will be reported on IRS Form 1099s.
- 27 The Parties acknowledge and agree that all settlement payments set forth under
- 28 this Stipulation are attributable as penalties. None are attributable as wages.

1 Accordingly, the Parties acknowledge and agree that Defendants are not
2 responsible for any employer-side taxes in connection with any PAGA
3 settlement payments under this Stipulation, and Jensen and all other Managers
4 shall be solely responsible for the reporting and payment of their share of any
5 federal, state, and/or municipal taxes on payments made pursuant to this
6 Stipulation. No party has made any representation to any of the other Parties as
7 to the taxability of any payments pursuant to this Stipulation or otherwise as to
8 the tax implications of any provision of this Stipulation.

9 30. The Parties jointly request that the Court approve the penalties sought as part of
10 this Stipulation and PAGA Settlement and approve the dismissal of Jensen's PAGA claim with
11 prejudice.

12 31. This Stipulation is made for the sole purpose of settling this action. This
13 Stipulation and the settlement it evidences are made in compromise of disputed claims. Because
14 this case was pleaded as a PAGA action, this Stipulation must receive approval by the Court.
15 Accordingly, the Parties enter into this Stipulation and associated settlement on a conditional
16 basis.

17 32. If the Court does not enter an order granting approval of this Stipulation, this
18 Stipulation shall be deemed null and void; it shall be of no force or effect whatsoever; it shall not
19 be referred to or utilized for any purpose whatsoever; and the negotiation, terms and entry of the
20 Stipulation shall remain subject to the provisions of California Evidence Code sections 1119 and
21 1152, Federal Rule of Evidence 408, and any other analogous rules of evidence that may be
22 applicable.

23 33. All Parties shall bear their own costs and attorneys' fees relating to the filing,
24 prosecution, defense, litigation, settlement, and dismissal of Jensen's PAGA claim.

25 34. The Parties jointly agree and request that the Court maintain jurisdiction over the
26 Parties to enforce this Stipulation and PAGA Settlement pursuant to Code of Civil Procedure
27 section 664.6. The Parties further agree and request that to the extent the Court enters an order
28 granting approval of this Stipulation, the Court shall also maintain jurisdiction over the Parties to

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enforce the separate settlement agreement of Jensen’s individual claims against Defendants.

IT IS SO STIPULATED.

DATED: _____ DOWNEY BRAND LLP

By: _____
 CASSANDRA M. FERRANNINI
 ALEXANDRA K. LAFOUNTAIN
 Attorneys for Defendants/Cross-Complainants
 NORMAN R. LEAL, CAROL R. LEAL, and
 SHIN TAKESHIMA; and Defendants NORMAN
 R. LEAL AND CAROL R. LEAL, TRUSTEES
 OF THE LEAL FAMILY TRUST DATED
 MARCH 30, 2021

DATED: _____ LAW OFFICE OF KENNETH F. MOSS

By: _____
 KENNETH F. MOSS
 Attorney for Plaintiff
 DEBORAH JENSEN

PROPOSED ORDER

Upon review of the foregoing Stipulation of Settlement Under Private Attorneys General Act of 2004 (the "PAGA Settlement"), the Court finds that the PAGA Settlement is fair, reasonable, and adequate.

IT IS HEREBY ORDERED that the Parties' PAGA Settlement is approved in its entirety pursuant to Labor Code section 2699(1)(2). The Parties shall effectuate the PAGA Settlement according to the terms set forth therein.

IT IS FURTHER ORDERED that the PAGA Settlement is not an admission of any fault, wrongdoing, or liability by Defendants or by any other Released Parties, nor is this Order a finding of the validity of any allegations or of any wrongdoing by Defendants or any of the other Released Parties. Neither this Order nor the PAGA Settlement, nor any action taken to carry out the PAGA Settlement, may be construed as, or may be used as, an admission of any fault, wrongdoing, omission, concession, or liability whatsoever by or against Defendants or any of the Released Parties.

IT IS FURTHER ORDERED that the PAGA claim in this action is hereby dismissed with prejudice. All Parties shall bear their own costs and attorneys' fees relating to the filing, prosecution, defense, litigation, settlement, and dismissal of the PAGA claim in this action.

IT IS FURTHER ORDERED that the Court shall maintain jurisdiction over the Parties pursuant to Code of Civil Procedure section 664.6 to enforce the terms of this PAGA Settlement and the separate settlement agreement of Jensen's individual claims against Defendants.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

DATED:

JUDGE OF THE SUPERIOR COURT

EXHIBIT B
STIPULATED REQUEST FOR DISMISSAL IN MALONEY ACTION

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11 NORMAN R. LEAL, CAROL R. LEAL, and
12 SHIN TAKESHIMA; and Defendants NORMAN
13 R. LEAL AND CAROL R. LEAL, TRUSTEES
14 OF THE LEAL FAMILY TRUST DATED
15 MARCH 30, 2021

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15 Attorney for Plaintiff
16 MEGHAN MALONEY

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SACRAMENTO
16

17 MEGHAN MALONEY, an individual,
18 Plaintiff,
19 v.

20 NORMAN R. LEAL, an individual; CAROL
21 R. LEAL, an individual; SHIN TAKESHIMA,
22 an individual; and DOES 1 through 50,
23 inclusive,
24 Defendants.
25
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27
28

Case No. 34-2021-00310533

**STIPULATED REQUEST FOR
DISMISSAL WITH PREJUDICE AND
[PROPOSED] ORDER**

Action Filed: September 11, 2020
Trial Date: July 17, 2023

STIPULATED REQUEST FOR DISMISSAL WITH PREJUDICE

IT IS HEREBY STIPULATED by and between Plaintiff MEGHAN MALONEY (“Maloney”) and Defendants NORMAN R. LEAL, CAROL R. LEAL, and SHIN TAKESHIMA; and Defendants NORMAN R. LEAL AND CAROL R. LEAL, TRUSTEES OF THE LEAL FAMILY TRUST DATED MARCH 30, 2021 (“Defendants”) (collectively, the “Parties”) as follows:

1. On or about January 12, 2022, Maloney filed her operative complaint in the above-entitled action alleging individual wage-and-hour claims and a representative claim pursuant to the Private Attorneys General Act of 2004 (“PAGA”).

2. Maloney filed her PAGA claim on behalf of the same allegedly “aggrieved employees” who Plaintiff Deborah Jensen represents in the related action of *Jensen v. Leal, et. al.* Case No. 34-2020-00285215 (the “Jensen Action”) in the Sacramento County Superior Court.

3. Defendants vigorously deny all of Maloney’s allegations on both factual and legal bases. Defendants also vigorously deny all of the allegations in the Jensen Action on both factual and legal bases.

4. On August 25, 2022, Maloney, Jensen, and Defendants participated in an all-day mediation with the Honorable Richard Kramer, who is presently a full-time neutral with Judicial Arbitration and Mediation Services, and who previously presided over the Complex Litigation Department of the San Francisco Superior Court for thirteen years.

5. At the mediation, the Parties reached an agreement on settlement terms regarding Jensen’s PAGA claim with substantial assistance from the Honorable Richard Kramer. The settlement of Jensen’s PAGA claim bars Maloney from pursuing her PAGA claim in this action on behalf of the same allegedly “aggrieved employees.” (See, e.g., *Robinson v. Southern Counties Oil Company* (2020) 53 Cal.App.5th 476.)

6. At the mediation, Maloney and Defendants agreed to resolve Maloney’s individual (i.e., non-PAGA) claims by way of an individual settlement between her and Defendants. However, approval by the Sacramento Superior Court of this Stipulation is a condition precedent to the Parties’ agreement to settle Maloney’s individual claims against Defendants.

1 7. In light of the foregoing, the Parties jointly, voluntarily, and knowingly seek
2 dismissal of this action in its entirety with prejudice, including dismissal of Maloney's PAGA
3 claim with prejudice.

4 8. All Parties are to bear their own attorneys' fees and costs upon dismissal.

5 9. The Parties jointly agree and request that the Court maintain jurisdiction over the
6 Parties to enforce this Stipulation pursuant to Code of Civil Procedure section 664.6. The Parties
7 further agree and request that to the extent the Court enters an order granting approval of this
8 Stipulation, the Court shall also maintain jurisdiction over the Parties to enforce the separate
9 settlement agreement of Maloney's individual claims against Defendants.

10 IT IS SO STIPULATED.

11
12 DATED: _____

DOWNEY BRAND LLP

13
14 By: _____

15 CASSANDRA M. FERRANNINI
16 ALEXANDRA K. LAFOUNTAIN
17 Attorneys for Defendants/Cross-Complainants
18 NORMAN R. LEAL, CAROL R. LEAL, and
19 SHIN TAKESHIMA; and Defendants NORMAN
20 R. LEAL AND CAROL R. LEAL, TRUSTEES
21 OF THE LEAL FAMILY TRUST DATED
22 MARCH 30, 2021

23
24 DATED: _____

LAW OFFICE OF KENNETH F. MOSS

25 By: _____

26 KENNETH F. MOSS
27 Attorney for Plaintiff
28 MEGHAN MALONEY

