

Memorandum of Understanding for PAGA and Wage Claim Settlement

Subject to approval by the Court before which this action is pending, and with the provision that this Memorandum of Understanding ("MOU"), which may be further memorialized in a Joint Stipulation of Settlement, the parties hereby agree to the following terms of settlement of the Private Attorneys General ("PAGA") claim and individual wage claims, including dismissal with prejudice of all claims identified in the action designated as Barnard v. Visionary Home Builders of California, Inc. et al., Case Number STK-CV-VOE-2022-340 (hereinafter the "PAGA and Wage Lawsuit"), currently pending in San Joaquin County Superior Court.

The parties agree that this MOU is not evidence that the Complaint filed by Plaintiff has any merit, nor does it constitute an admission of any wrongdoing by Defendants. Defendants do not admit to individual or joint liability or to the suitability of this case for a PAGA judgment other than for purposes of settlement. This MOU will not be deemed admissible in any other proceeding or in this proceeding other than to effectuate this settlement ("PAGA Settlement").

1. Plaintiff Teather Barnard ("Plaintiff") and Defendants Visionary Home Builders Of California, Inc., Carol Ornelas, and Anna Bello ("Defendants") shall be referred to as the "Parties."
2. The PAGA Members are defined as follows: All individuals who were employed as hourly, non-exempt, employees by Defendant in California from November 15, 2020, through January 25, 2023 ("PAGA Period") AND all individuals employed by Defendant who was paid an annual salary that was less than twice the applicable state minimum wage for a full-time employee ("PAGA Member" and "Aggrieved Employee"). Defendants estimate 87 Aggrieved Employees and approximately 2,623 pay periods.
3. A non-reversionary settlement fund of Two Hundred and Fifty Thousand (\$250,000) will be established for the PAGA Settlement (the "Gross Settlement Payment").
 - (a) The Gross Payment is inclusive of attorneys' fees, costs and expenses arising from the PAGA and Wage Lawsuit (which includes all such fees, costs and expenses incurred to date, as well as all such fees, costs and expenses incurred in documenting the settlement, securing approval of the settlement, administering and obtaining a judgment and dismissal of the PAGA and Wage Lawsuit before the Court, claims administration costs, the service payment to the PAGA representative, civil penalties paid to the State of California, and any taxes or portions of taxes, including the employer's share of payroll taxes. If there is any reduction in attorneys' fees, costs, enhancement, etc. by the Court then the funds be added to the Net Settlement Amount. The Court of jurisdiction and Claims Administrator shall have no power to increase the Gross Payment or to depart from the express terms of the MOU herein.



- (b) The Gross Payment shall comprise and include a Net Settlement Amount ("Net Settlement Amount"). The Net Settlement Amount shall be the Gross Payment, minus the following: (1) the maximum potential award of attorneys' fees and costs to counsel; (2) the maximum potential enhancement payment to the named plaintiff (hereinafter the "PAGA Representative"); (3) allotted funds to the Claims Administrator; and (4) any and all remaining costs or fees.
 - (c) The parties will negotiate and select a Claims Administrator, who shall follow the Parties instructions not in express contravention of this MOU.
- 4. The Net Settlement Amount is calculated based upon the following:
 - (a) Attorney fees. Plaintiff's counsel will request, and Defendant and its counsel will not oppose, an award of up to 1/3 of the Gross Payment, which at Two Hundred and Fifty Thousand Dollars (\$250,000.00) results in Eighty Three Thousand Three Hundred and Thirty Three Dollars and Thirty Three Cents (\$83,333.33) as an award of attorneys' fees.
 - (b) Plaintiff's counsel will request, and Defendants and their counsel will not oppose, costs of up to a maximum of Fifteen Thousand dollars (\$15,000).
 - (c) The Stipulation to Dismiss or Motion for Approval shall ask for up to Five Thousand dollars (\$5,000) for claims administration and handling.
 - (d) Plaintiff shall request and Defendants shall not oppose a request for a Service Fee or Enhancement Award of Two Thousand Five Hundred dollars \$2,500.
 - (e) The Net Settlement Amount is estimated to be \$250,000, less \$83,333.33 in attorney fees, less \$15,000 in litigation costs, less \$5,000 in settlement administration costs, less \$2,500 in Enhancement Award, equaling \$144,166.67, subject to the Court's approval of the amounts set forth in this Section.
- 5. Within 15 days of the approval of the settlement, Defendants shall provide the Claims Administrator with the name, most current mailing address and telephone number of each PAGA Member. The Claims Administrator shall keep this information confidential, in a password protected database.
- 6. Within 30 days of the approval of the settlement or by June 1, 2023, whichever is later, Defendant shall deposit the Gross Payment to the Settlement Administrator.
- 7. Within 5 days of receipt of the Gross Payment from Defendants, the Settlement Administrator shall disburse the funds as provided herein. 75% of the Net Settlement Amount shall be paid to the LWDA and 25% of the Net Settlement Amount shall be paid to Aggrieved Employees based upon the number of pay periods each worked during the PAGA Period, proportional to the number of all Pay Periods worked by all Aggrieved Employees during the PAGA Period.

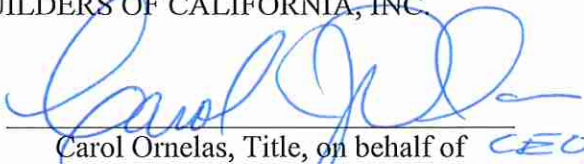
8. Upon the approval of the settlement by the court, the Plaintiff, State of California, and PAGA Members will release and discharge Defendants, and their former and present parents, subsidiaries, and affiliates, and their current and former officers, directors, employees, partners, shareholders and agents, and the predecessors and successors, assigns, and legal representatives of all such entities and individuals ("Released Parties"), from the PAGA claims arising during the period from November 15, 2020, through January 25, 2023 ("PAGA Release Period"). The PAGA claims released by the Plaintiff, the State of California, and PAGA Members are for all PAGA penalties and related attorneys' fees and litigation costs under the Private Attorneys General Act for violations of Labor Code Sections 201-204, 210, 226, 226.3, 226.7, 510, 512, 1102.5, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, and 2804 ("PAGA Released Claims"). By this MOU, Plaintiff also releases the Released Parties from her individual wage claims for (1) Failure to Pay All Minimum Wages, (2) Failure to Pay All Overtime Wages, (3) Failure to Provide Rest Periods and Pay Missed Rest Period Premiums, (4) Failure to Provide Meal Periods and Pay Missed Meal Period Premiums, (5) Failure to Maintain Accurate Employment Records, and (6) Failure to Furnish Accurate Itemized Wage Statements.
9. Uncashed Checks: Uncashed checks shall be void after 180 days and shall be revert to cy pres organization Justice Gap Fund. The Settlement Administrator shall be required to timely provide declarations in support of the disbursement of all settlement monies at the request of the Court and/or the Parties.
10. Defendant's payroll records will be presumptively determinative in any dispute over entitlement to payment or payment amount, subject to final adjudication and approval by the Court.
11. The Parties and their counsel will support each and every provision of this MOU and, if one is entered into, the Stipulation of Settlement before the Court. Defendants agree not to actively oppose the award of attorney's fees, costs, settlement administrator costs, and service fee contemplated in this Agreement.
12. The parties agree that the subsequent filing of the MOU and/or Stipulation for Settlement is for settlement purposes only and if, for any reason, the settlement is not approved, the Stipulation for Settlement and this MOU will be of no force or effect in a contested matter.
13. The parties agree that, upon approval of the settlement, the PAGA Claims will be dismissed with prejudice and Plaintiff's individual wage claims will be dismissed with prejudice.
14. This MOU may be signed in counterparts.
15. The parties intend that this MOU shall be fully enforceable and binding upon all parties, and that it shall be admissible and subject to disclosure in any proceeding to enforce its terms under Code of Civil Procedure section 664.6 and any other

applicable statute or law, notwithstanding the mediation confidentiality provisions that otherwise might apply under federal and state law.

DEFENDANT VISIONARY HOME
BUILDERS OF CALIFORNIA, INC.

DATED: _____

By



Carol Ornelas, Title, on behalf of
Visionary Home Builders of California,
Inc. **CEO**

PLAINTIFF TEATHER BARNARD

DATED: 2/2/2023

By



Teather Barnard