

JOINT STIPULATION AND SETTLEMENT AGREEMENT

Subject to approval by the Court, this Settlement Agreement is between Plaintiff Amanda Gilbert ("Plaintiff"), and Defendant Pirate Cove Management, LLC ("Defendant"). Plaintiff and Defendant collectively are referred to in this Agreement as the "Parties."

I. DEFINITIONS

In addition to the other terms defined in this Agreement, the terms below have the following meaning:

- A. **Action:** *Amanda Gilbert v. Pirate Cove Management, LLC*, (Los Angeles County Superior Court, Case No. CIVSB2212283).
- B. **Administration Costs:** The costs incurred by the Settlement Administrator to administer this Settlement, which shall not exceed \$5,000.00. All Administration Costs shall be paid from the Maximum Payment. Any amount not awarded by the Court, or if the actual administration costs are lower than the amount allocated by the Parties, the difference will become part of the Net Settlement Amount for distribution.
- C. **Aggrieved Employee:** All current and former non-exempt employees of Defendant employed in California during the PAGA Period.
- D. **Aggrieved Employees' Data:** The data that Defendant shall provide to the Settlement Administrator, which is to include, in a searchable electronic format the following for each Aggrieved Employee: (i) full name, (ii) last known address, (iii) last known telephone number, (iv) social security number, and (v) the start date and end date of employment for each Aggrieved Employee during the PAGA Period. The Aggrieved Employees' Data shall be based on Defendant's payroll, personnel, and other business records. The Aggrieved Employee Data shall be held as private and confidential information, and shall not be shared with any third party by the Settlement Administrator without the express written consent of Defendant's counsel of record and/or court order.
- E. **Agreement, Settlement Agreement, Joint Stipulation, or Settlement:** The settlement agreement reflected in this document, titled "Joint Stipulation and Settlement Agreement."
- F. **Attorney Fee Award:** The amount, not to one-third (1/3) of the Maximum Payment, or \$16,423.33, approved by the Court and awarded to Plaintiff's Counsel. The Attorney Fee Award shall be paid from the Maximum Payment and will not be opposed by Defendant. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount.

- G. **Cost Award:** The amount that the Court orders Defendant to pay Plaintiff's Counsel for payment of actual litigation costs, which shall not exceed \$5,000.00. The Cost Award will be paid from the Maximum Payment and will not be opposed by Defendant. The Cost Award is subject to Court approval. If the Court awards less than the amount requested, or if the actual litigation costs are lower than the amount allocated by the Parties, the difference will become part of the Net Settlement Amount.
- H. **Counsel for Defendant:** Skane Mills, LLP.
- I. **Cy Pres Beneficiary:** Justice Gap Fund, which is one of the three sources of funding for the State Bar's Legal Services Trust Fund Program, which provides grants to non profit organizations that provide free civil legal services to low income Californians, including protecting the rights of employees to avoid fraud and exploitation.
- J. **Defendant:** Pirate Cove Management, LLC.
- K. **Effective Final Settlement Date:** The date by which the final judgment becomes final. For purposes of this Settlement Agreement, the final judgment "becomes final" after the Court enters the PAGA Settlement Approval Order if there are no objectors to the approval of the Settlement. If there are objectors to the approval of the Settlement, the final judgment "becomes final" upon the latter of (i) the period for filing any appeal, writ, or other appellate proceeding challenging or opposing the Settlement (i.e., 60 days following entry of the PAGA Settlement Approval Order) elapsing without any appeal, writ, or other appellate proceeding having been filed; (ii) any appeal, writ or other appellate proceeding challenging or opposing the Settlement being dismissed finally and conclusively with no right to pursue further remedies or relief; or (iii) any appeal, writ or other appellate proceeding upheld the Court's final order with no right to pursue further remedies or relief.
- L. **Individual Settlement Share(s):** The amount payable to each Aggrieved Employee under the terms of this Agreement.
- M. **LWDA:** California Labor and Workforce Development Agency.
- N. **LWDA Payment:** The LWDA Payment consists of seventy-five percent (75%) of the Net Settlement Amount, and will be distributed to the LWDA in the time period described herein.
- O. **Maximum Payment:** The total value of the Settlement is a non-reversionary Forty Nine Thousand Two Hundred Seventy Dollars and Zero Cents (\$49,270.00). This is the total amount Defendant can be required to pay under this Settlement Agreement. The Maximum Payment includes: (1) the Payout Fund to be paid to Aggrieved Employees; (2) the Attorney Fee Award and Cost

Award to Plaintiff's Counsel for attorneys' fees and costs, as approved by the Court; (3) the PAGA Representative Payment paid to the PAGA Representative, as approved by the Court; (4) the Administration Costs, as approved by the Court; and (5) the Net Settlement Amount. No portion of the Maximum Payment will revert to Defendant for any reason.

- P. **Net Settlement Amount or NSA**: The total amount of money available for payout to Aggrieved Employees and to the LWDA, after the following deductions from the Maximum Payment: (1) the Attorney Fee Award, (2) Cost Award, (3) PAGA Representative Payment, and (4) Administration Costs. The NSA will be apportioned 75% payable to the LWDA (the "LWDA Payment") and 25% payable to the Aggrieved Employees (the "Payout Fund").
- Q. **Notice of PAGA Settlement**: The Notice of PAGA Settlement, substantially similar to the form attached hereto as **Exhibit A**, subject to Court approval, is a letter explaining the Settlement to the Aggrieved Employees, which will accompany each Individual Settlement Share check.
- R. **Operative Complaint**: The Complaint filed in the Action, on July 18, 2022.
- S. **PAGA**: The California Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698 *et seq.*).
- T. **PAGA Period**: March 21, 2021 through August 16, 2022, or the date the Court enters the PAGA Settlement Approval Order, whichever occurs earlier.
- U. **PAGA Representative or Plaintiff**: Amanda Gilbert.
- V. **PAGA Representative Payment**: The amount the Court awards to Plaintiff for conferring a benefit upon the State and Aggrieved Employees, which will not exceed \$5,000.00. This payment shall be paid from the Maximum Payment and will not be opposed by Defendant and is being offered in consideration for Plaintiff's efforts in litigating the Action, conferring a benefit upon the State of California and the Aggrieved Employees, risks of being blacklisted for future employment for having the courage to litigate against Plaintiff's employer, and risks of incurring financial obligations to Defendant in the event Plaintiff was not successful in the Action and held to pay for Defendant's costs and/or attorney's fees. If the Court awards less than the amount requested, any amount not awarded will become part of the NSA.
- W. **PAGA Settlement Approval Order**: The Court's order approving the proposed Settlement.
- X. **PAGA Settlement Approval Hearing**: The hearing at which the Court will determine whether to approve the Settlement.

- Y. **Parties:** Plaintiff Amanda Gilbert and Defendant Pirate Cove Management, LLC.
- Z. **PAGA Counsel or Plaintiff's Counsel:** Zachary Crosner, Michael Crosner, Blake Jones, and Michael Jones of Crosner Legal, P.C.
- AA. **Payout Fund:** The 25% of the NSA payable to Aggrieved Employees.
- BB. **Released Claims:** Each of the Aggrieved Employees, including Plaintiff, shall fully release and forever discharge the Released Parties of all claims for PAGA violations during the PAGA Period as asserted in Plaintiff's March 24, 2022 PAGA notice, or that could have been asserted based on the facts alleged therein, including claims under the Private Attorneys General Act for: (1) Failure to Keep Accurate Records; (2) Failure to Produce Records in Violation of Labor Code §§ 226(b)-(c), 1198.5, and 432; (3) Meal Period Violations; (4) Rest Period Violations; (5) Failure to Provide Suitable Resting Facilities; (6) Minimum and Overtime Wage Violations; (7) Statutory Wage Violations; (8) Refusal to Make Payment; (9) Business Expense Violations; (10) Wage Statement Violations; (11) Failure to Provide Suitable Seating; (12) Standard Conditions of Labor Violations; (13) Sick Leave Violations; (14) Failure to Provide Supplemental Paid Sick Leave; (15) Violation of Labor Code Section 201.3; (16) Untimely Payment of Final Wages; and (17) Unlawful Agreements/Unlawful Criminal History Inquiries. This release does include any claims for violation of the Fair Employment and Housing Act (FEHA) and any claim for wrongful termination in violation of public policy.
- CC. **Released Parties:** Defendant and its former and present parents, subsidiaries, and affiliates, and their current and former officers, directors, employees, partners, shareholders, members, owners and agents, and the predecessors and successors, assigns, and legal representatives of all such entities and individuals.
- DD. **Settlement Administration:** The Settlement Administrator will conduct a skip trace for the address of all formerly employed Aggrieved Employees. The Settlement Administrator will receive the Aggrieved Employee Data from the Defendant, calculate the settlement shares, receive the Maximum Payment from Defendant, and distribute the Maximum Payment as instructed herein.
- EE. **Settlement Administrator:** The third party administrator agreed upon by Parties to administer this Settlement is Phoenix Settlement Administrators.
- FF. **Superior Court of the State of California:** Superior Court for the State of California for the County of Los Angeles.

II. RECITALS

- A. The Action was filed by Plaintiff Amanda Gilbert in the Superior Court of the State of California, County of Los Angeles on July 18, 2022. The complaint alleged a cause of action under the PAGA on behalf of Plaintiff and all similarly aggrieved employees employed by Defendant as non-exempt employees in California during the PAGA Period.
- B. Defendant Answered the Complaint. In its answer Defendant affirmatively denied generally and specifically all claims raised in the complaint.
- C. Prior to mediation, Plaintiff reviewed a substantial amount of data and documents relating to the number and scope of the Aggrieved Employees that permitted an analysis and evaluation of the state-wide claims. In addition, Plaintiff hired Berger Consulting to analyze a sampling of data for 25 of the Aggrieved Employees.
- D. The parties attended mediation with Linda Klibanow on May 16, 2022. After a full day of arms-length mediation, the Parties were able to reach a settlement, the terms of which are reflected herein.
- E. **Benefits of Settlement to Aggrieved Employees.** Plaintiff and Plaintiff's Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. Plaintiff and Plaintiff's Counsel also have taken into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. Plaintiff and Plaintiff's Counsel have conducted extensive settlement negotiations. Based on the foregoing, Plaintiff and Plaintiff's Counsel believe the settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the State of California and the Aggrieved Employees.
- F. **Defendant's Reasons for Settlement.** Defendant recognizes that the defense of the Action will be protracted and expensive. Substantial amounts of time, energy, and resources of Defendant has been and, unless this settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff. Defendant, therefore, has agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Released Claims.
- G. **Defendant's Denial of Wrongdoing.** Defendant generally and specifically denies any and all liability or wrongdoing of any sort with regard to any of the claims alleged, makes no concessions or admissions of liability of any sort. Defendant asserts a number of defenses to the claims, and has denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Action. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is or may be construed

as, or may be used as an admission, concession, or indication by or against Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. There has been no final determination by any court as to the merits of the claims asserted by Plaintiff against Defendant.

- H. Plaintiff's Claims.** Plaintiff asserts that Defendant's defenses are without merit. Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this Agreement is, may be construed as, or may be used as an admission, concession or indication by or against Plaintiff, Aggrieved Employees, or Plaintiff's Counsel as to the merits of any claims or defenses asserted, or lack thereof, in the Action. However, in the event that this Settlement is approved by the Court, the Plaintiff, Aggrieved Employees, and Plaintiff's Counsel will not oppose Defendant's efforts to use this Agreement to prove that Plaintiff and Aggrieved Employees have resolved and are forever barred from re-litigating the Released Claims.

III. SETTLEMENT TERMS AND CONDITIONS

- A. Maximum Payment.** Subject to the terms and conditions of this Agreement, the maximum Maximum Payment, that Defendant is obligated to pay under this Settlement Agreement is Forty Nine Thousand Two Hundred Seventy Dollars and Zero Cents (\$49,270.00). The Maximum Payment includes: (1) the PAGA Representative Payment to Plaintiff; (2) the Attorney Fee and Cost Awards to Plaintiff's Counsel; (3) the settlement administration costs to the Settlement Administrator; (4) the LWDA Payment to the LWDA; and (5) the Payout Fund to the Aggrieved Employees

- 1. Deductions.** Subject to the terms and conditions of this Agreement, the Settlement Administrator shall disburse the Maximum Payment to the following:

- a. To the Plaintiff:** In addition to Plaintiff's Individual Settlement Share, and subject to the Court's approval, Plaintiff will receive up to Five Thousand Dollars and Zero Cents (\$5,000.00). The Settlement Administrator will pay the PAGA Representative Payment out of the Maximum Payment. Payroll tax withholdings and deductions will not be taken from the PAGA Representative Payment. An IRS Form 1099 will be issued to Plaintiff with respect to the PAGA Representative Payment.
- b. To Plaintiff's Counsel.** Plaintiff's Counsel will apply to the Court for, and Defendant agrees not to oppose, a total Attorney Fee Award not to exceed one-third (1/3) or \$16,423.33 of the Maximum Payment (\$49,270.00) and a Cost Award not to exceed Five Thousand Dollars and Zero Cents (\$5,000.00). The Settlement Administrator will pay the court-approved amounts for

the Attorney Fee Award and Cost Award out of the Maximum Payment. Payroll tax withholding and deductions will not be taken from the Attorney Fee Award or the Cost Award. An IRS Form 1099 will be issued to Plaintiff's Counsel with respect to the Attorney Fee Award. In the event the Court does not approve the entirety of the application for the Attorney Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Plaintiff's Counsel for the Attorney Fee Award and/or Cost Award, the difference shall become part of the NSA.

- c. **To the Settlement Administrator.** The Settlement Administrator will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court not to exceed Five Thousand Dollars and Zero Cents (\$5,000.00). This will be paid out of the Maximum Payment. If the actual amount of Administration Costs is less than the amount allotted, the difference shall become part of the NSA.

B. Net Settlement Amount. The Net Settlement Amount shall consist of the Maximum Payment minus the PAGA Representative Award, Attorneys' Fees and Costs Awards, and Administration Costs, as described herein. Pursuant to the PAGA, seventy-five percent (75%) of the Net Settlement Amount will be paid to the LWDA and the remaining twenty-five (25%) of the Net Settlement Amount will be paid to the Aggrieved Employees pursuant to the calculation method set forth below.

- 1. **To the LWDA.** The Settlement Administrator will pay to the LWDA Payment, which represents Seventy-Five Percent (75%) of the NSA, for its share of the PAGA penalties.
 - a. **To Aggrieved Employees.** The Settlement Administrator will pay to Aggrieved Employees the Payout Fund, which represents Twenty-Five Percent (25%) of the NSA, according to the Individual Settlement Share calculations set forth above.
 - b. **Individual Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual Settlement Share from the Payout Fund to each Aggrieved Employee.

i. Calculation.

A. Individual Settlement Share Calculation. Each Aggrieved Employee will receive a proportionate share of the Payout Fund that is equal to (i) the number of pay periods he or she worked for Defendant in California based on the Aggrieved Employee Data provided by Defendant, divided by (ii) the total number of pay periods worked by all Aggrieved Employees based on the same Database, which is then multiplied by the Payout Fund. One day worked in a given pay period will be credited as a pay period for purposes of this calculation. Therefore, the value of each Aggrieved Employee's Individual Settlement Share ties directly to the amount of pay periods that he or she worked.

B. No Tax Withholdings. Each Aggrieved Employee's gross Individual Settlement Share will be apportioned as 100% penalties and shall be reported on an IRS Form 1099. Payroll tax withholdings and deductions will not be withheld from these Individual Settlement Shares. Plaintiff and each Aggrieved Employee bear the full responsibility for payment of any taxes or withholding that are found to be owed from the Individual Settlement Share. Neither Plaintiff's Counsel nor Defendant's Counsel intend anything contained herein to constitute legal advice regarding the taxability of any amount paid hereunder, nor shall it be relied on as such. The tax issues for Plaintiff and each Aggrieved Employee are unique, and Plaintiff and each Aggrieved Employee is advised to obtain tax advice from his or her own tax advisor with respect to any payments resulting from this Settlement.

IV. SETTLEMENT APPROVAL

A. Motion for Settlement Approval. As soon as is practicable after the execution of this Agreement, Plaintiff will move for an order granting approval of the Settlement. The Parties acknowledge that, under applicable law, the Action is not a class action governed by the procedures of approval of Class Action settlements under California law and thereon agree that the Individual Settlement Shares shall be distributed without a claims process, notice, or an opportunity to object or opt-out.

1. The Settlement Agreement shall be submitted by Plaintiff to the LWDA within the time limits prescribed by law.
2. At the Settlement Approval hearing, the Plaintiff will appear, support the granting of the motion, and submit a proposed order granting approval of the Settlement.
3. **Cooperation in Obtaining Court Approval.** The Parties agree that the Settlement is fair and reasonable, and will so represent to the Court. The Parties shall timely cooperate and present to the Court, for its consideration in connection with the approval of the Settlement, any and all evidence as may be reasonably necessary under the appropriate standards for approving the Settlement, and do all things reasonably necessary to consummate the Settlement, including continuing good faith efforts to effectuate this Settlement should the Court deny approval. The Parties shall use their best efforts to comply with all terms contemplated by this Settlement and any other efforts that may become necessary by order of the Court to effectuate this Settlement and the terms set forth herein.
4. **Proposed Order and Judgment.** Upon Approval of the Settlement, the Parties shall present to the Court a proposed PAGA Settlement Approval Order, approving of the Settlement and entering Judgment in accordance therewith. After entry of Judgment, the Court shall have continuing jurisdiction over the Action for purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration matters; and (3) addressing such post-Judgment matters as may be appropriate under Court rules and applicable law.

B. Effect of Denial of Settlement Approval. Should the Court decline to approve the Settlement, the Settlement will be null and void, and the Parties will have no further obligations under it. Provided, however, that the amounts of the Attorney Fee Award, Cost Award, Administration Costs, and PAGA Representative Payment shall be determined by the Court, and the Court's determination on these amounts shall be final and binding, and that the Court's approval or denial of any amount requested for these items are not conditions of this Settlement Agreement, and are to be considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement. Any order or proceeding relating to an application for the Attorney Fee Award, Cost Award, Administration Costs, and PAGA Representative Payment shall not operate to terminate or cancel this Settlement Agreement. Nothing in this Agreement shall limit Plaintiff's or Plaintiff's Counsel's ability to appeal any decision by the Court to award less than the requested Attorney Fee Award, Cost Award, Administration Costs, and PAGA Representative Payment.

C. Appeals.

- a. **Vacating, Reversing, or Modifying Judgment on Appeal.** If, after a notice of appeal, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then this Settlement will become null and void and the Parties will have no further obligations under it. A material modification would include, but not necessarily be limited to, any alteration of the Maximum Payment, an alteration in the calculation of the NSA, and any change to the calculation of the Individual Settlement Shares.

V. SETTLEMENT ADMINISTRATION

- A. **Settlement Administrator.** The Parties agree to use Phoenix Settlement Administrators as the Settlement Administrator to administer the Settlement. Settlement Administration duties shall include performing a single address follow up on any returned mail, and the calculation, processing, and mailing of all Individual Settlement Shares and tax forms, if required, to the Aggrieved Employees and tax authorities. All of the Settlement Administrator's costs and fees shall be paid from the Maximum Payment, not to exceed Five Thousand Dollars and Zero Cents (\$5,000.00) as set forth above.
- B. **Aggrieved Employee Data.** Within ten (10) business days after entry of the PAGA Settlement Approval Order, Defendant shall deliver to the Settlement Administrator the Aggrieved Employees' Data. If any or all of this information is unavailable to Defendant, Defendant will so inform Plaintiff's Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the unavailable information.
- C. **Funding the Settlement:** Defendant shall fund the settlement pursuant to the terms of this Agreement and the Court's PAGA Settlement Approval Order.
 - 1. **Timing.** Defendant shall wire to the Settlement Administrator the Maximum Payment within thirty (30) calendar days of the Effective Final Settlement Date.
- D. **Disbursement of the Settlement:** The Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Court's PAGA Settlement Approval Order. The Settlement Administrator shall keep Defendant's Counsel and Plaintiff's Counsel apprised of all distributions from the Maximum Payment. The Settlement Administrator shall respond to questions from Defendant's Counsel and Plaintiff's Counsel. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiff, Plaintiff's Counsel, or the Settlement Administrator based on the distributions and payments made in accordance with this Agreement.

1. **Timing.** Pursuant to the terms of this Agreement, within fourteen (14) calendar days after receipt of the Maximum Payment from Defendant, the Settlement Administrator shall disburse: (1) the Payout Fund to be paid to Aggrieved Employees; (2) the Attorney Fee Award and Cost Award to Plaintiff's Counsel for attorneys' fees and costs, as approved by the Court; (3) the PAGA Representative Payment paid to Plaintiff, as approved by the Court; (4) the Administration Costs, as approved by the Court; and (5) the LWDA Payment to the LWDA, as approved by the Court.
2. **Notice of PAGA Settlement.** The distribution of Individual Settlement Shares shall be accompanied by the Notice of PAGA Settlement.

E. Uncashed Checks.

1. **Check Expiration.** Checks will remain negotiable for one hundred and eighty (180) days.
2. **Undeliverable Checks.** Any Individual Settlement Share check returned to the Settlement Administrator as undelivered shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within five (5) business days of receiving the returned Individual Settlement Share. If an updated mailing address is identified, the Settlement Administrator shall resend the Individual Settlement Share to the Aggrieved Employee promptly, and in any event within three (3) business days of obtaining the updated address.
3. **Reminder Postcard.** If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced.
4. **Cancelled Checks.** If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, cancel the checks.
5. **Uncashed Funds.** All funds associated with the Individual Settlement Share checks returned as undeliverable and funds associated with those Individual Settlement Share checks remaining un-cashed, shall be transmitted by the Settlement Administrator, in conformity with Code of Civil Procedure section 384 to the Cy Pres Beneficiary. In the event an Aggrieved Employee fails to cash/deposit his or her Individual Settlement

Share check, the Aggrieved Employee shall nevertheless remain bound by the Settlement and the Release contained herein.

- F. Post-Distribution Declaration.** Within two hundred (200) calendar days of distributing the Maximum Payment, the Settlement Administrator shall provide to the Parties, for filing with the Court, a declaration verifying, under oath, that the Settlement Administrator has made disbursement of the Maximum Payment pursuant to the terms of this Agreement and the Court's PAGA Settlement Approval Order. In this declaration, the Settlement Administrator shall also state how many and the total amount of settlement checks that went uncashed, how many and the amounts that were undeliverable, and when the uncashed settlement funds were sent to the State Controller.

VI. RELEASE OF CLAIMS

- A. Aggrieved Employees.** As of the date Defendant funds the Maximum Payment, Plaintiff and the Aggrieved Employees release the Released Parties for the Released Claims. The express purpose of this settlement is to forever bar Plaintiff, the LWDA, and any Aggrieved Employee from acting on behalf of or purporting to act on behalf of the LWDA from asserting any of the Released Claims against the Released Parties in any future litigation. It is the intent of the Parties that, to the greatest extent provided by law, including under the holding of *Arias v. Superior Court*, 46 Cal.4th 969, 986 (2009), the ability of Plaintiff, the State of California or any Aggrieved Employee to bring any of the Released Claims against the Released Parties is completely and forever foreclosed. Any Party to this Settlement Agreement may use the Settlement Agreement to assert that this settlement and the judgment entered by the Court following approval bars any later-filed action asserting the Released Claims against any of the Released Parties.
- B. Plaintiff's Release of Claims and General Release.** As of the date Defendant funds the Maximum Payment, Plaintiff shall generally release the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature whatsoever, from the beginning of time through the date of his signature on this Agreement, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or otherwise, for violation of any federal, state or local statute, rule, ordinance or regulation, except for claims asserted in Plaintiff's pending Arbitration against Defendant, which shall be subject to a separate settlement agreement. Plaintiff's Release of Claims also includes a waiver of California Civil Code section 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.

This release excludes any release of any claims not permitted to be released by law.

VII. MISCELLANEOUS TERMS

- A. Plaintiff's Reliance on Defendant's Representation.** Defendant represents that there are approximately 86 PAGA members who worked approximately 758 pay periods during the PAGA Period (March 24, 2021 to present Plaintiff has relied on this representation in resolving the underlying dispute.
- B. Defendant's Legal Fees.** Defendant is responsible for paying for all of Defendant's own legal fees, costs, and expenses incurred in this Action outside of the Maximum Payment.
- C. No Effect on Employee Benefits.** The PAGA Representative Payment and/or Individual Settlement Shares paid to Plaintiff and Aggrieved Employees shall not be deemed to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g., vacation, holiday pay, retirement plans, etc.) of Plaintiff or the Aggrieved Employees. The Parties agree that any PAGA Representative Payment and/or Individual Settlement Share paid to Plaintiff or the Aggrieved Employees under the terms of this Agreement do not represent any modification of Plaintiff's or Aggrieved Employees' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendant. Further, any PAGA Representative Payment shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by Defendant.
- D. Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
- E. Authorization to Enter Into Settlement Agreement.** Plaintiff's Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach

agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.

- F. Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibit, which are incorporated by this reference as though fully set forth herein. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.
- G. Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Action in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Settlement Approval hearing to be conducted by the Court.
- H. Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.
- I. Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.
- J. Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
- K. Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
- L. No Tax or Legal Advice.** It is understood and agreed that neither Defendant, Defendant's Counsel, nor Plaintiff's Counsel are providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that Aggrieved Employees will assume any such tax obligations or consequences that may arise from this Agreement, and that Aggrieved Employees shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any Aggrieved Employees, such Aggrieved Employees assumes all responsibility for the payment of such taxes. Plaintiff and the Aggrieved Employees should consult with their tax advisors concerning the tax consequences of the Individual Settlement Shares they receive pursuant to this Stipulation.

- M. Jurisdiction of the Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.
- N. Invalidity of Any Provision; Severability.** Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.
- O. Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- P. Execution in Counterpart.** This Stipulation may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile, PDF, DocuSign (or similar e-signature) signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

[Signatures on Next Page]

EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

AS TO CONTENT:

Dated: 09 / 30 / 2022

AMANDA GILBERT



Dated: 11/21/22

PIRATE COVE MANAGEMENT, LLC

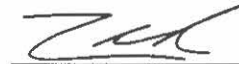


Name: MAUREEN M. TATE
Title: MANAGER

AS TO FORM:

Dated: 09/30/2022

CROSNER LEGAL, PC



Zachary M. Crosner, Esq.
Attorneys for Plaintiff and the Aggrieved Employees

Dated: 11/21/2022

SKANE MILLS, LLP



Joel P. Glaser, Esq.
Attorneys for Defendant

EXHIBIT “A”

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AND
RELEASE OF CLAIMS

Amanda Gilbert v. Pirate Cove Management, LLC, et al.
Superior Court of the State of California for the County of Los Angeles
Case No. [INSERT]

[INSERT DATE OF MAILING]

[INSERT FIRST & LAST NAME]
[INSERT ADDRESS – LINE 1]
[INSERT ADDRESS – LINE 2]

Questions? Call the Settlement Administrator toll free at [INSERT PHONE NUMBER].

Dear [INSERT FIRST & LAST NAME],

Pursuant to the Order of Honorable [INSERT] of the Superior Court of the State of California for the County of Los Angeles dated [INSERT DATE OF SETTLEMENT APPROVAL], enclosed is your payment from the settlement of the PAGA claims in the lawsuit entitled *Amanda Gilbert v. Pirate Cove Management, LLC, et al.*, Superior Court of the State of California for the County of Los Angeles, Case No. [INSERT] (the “Action”).

Plaintiff Amanda Gilbert (“Plaintiff”) filed the Action against Defendant Pirate Cove Management, LLC (“Defendant”)), alleging a claim for penalties under the California Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) for alleged violations of the California Labor Code. Plaintiff sought civil penalties on behalf of the California Labor and Workforce Development Agency (“LWDA”) and other aggrieved employees. The Action was brought on behalf of Plaintiff and all current and former non-exempt employees who worked for Defendant in the State of California at any time from March 24, 2021 through August 16, 2022 (the “Aggrieved Employees”). You have been identified as an eligible Aggrieved Employee in this time period.

Defendant denies Plaintiff’s claims in their entirety, and that any penalties are owed. In an effort to avoid the expense of protracted litigation, Defendant and Plaintiff reached a resolution of the claims alleged in the Action. The Court has not made a determination about Plaintiff’s allegations. This Notice is not to be understood as an expression of any opinion by the Court as to the merits of the claims.

Honorable [INSERT] of the Superior Court of the State of California for the County of Los Angeles approved the settlement on [INSERT DATE OF SETTLEMENT APPROVAL]. Pursuant to the PAGA, 75% of PAGA penalties are paid to the State of California, and the remaining 25% of the PAGA penalties are paid directly to the Aggrieved Employees who worked during the PAGA Period, from March 24, 2021 through August 16, 2022. Each Individual Settlement Share was calculated on a pro rata basis (i.e., proportional) based on the number of pay periods worked by each Aggrieved Employee according to the following

formula: Individual Settlement Share = The number of pay periods the individual Aggrieved Employee worked for Defendant in California during the PAGA Period ÷ The total number of pay periods worked by all Aggrieved Employees during the PAGA Period x The Payout Fund. One day worked in a given pay period will be credited as a pay period for purposes of this calculation. You worked [INSERT PAY PERIODS WORKED] pay periods from March 24, 2021 through August 16, 2022 ("PAGA Period"). The total amount of pay periods worked by all Aggrieved Employees during the PAGA Period is [INSERT TOTAL NUMBER OF PAY PERIODS].

The enclosed check is your portion of the PAGA settlement. Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall direct all unclaimed funds to the California State Bar's Justice Gap Fund. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

You will receive an IRS 1099 Form for the check for your Individual Settlement Share. You should seek the advice of a tax professional for any tax issues or questions related to this payment. Defendant will not retaliate against, or take any other negative action against, any employee who cashes the settlement check.

In exchange for the Individual Settlement Shares, the Settlement releases Defendant and its former and present parents, subsidiaries, and affiliates, and their current and former officers, directors, employees, partners, shareholders, members, owners and agents, and the predecessors and successors, assigns, and legal representatives of all such entities and individuals ("Released Parties") from all claims for PAGA violations during the PAGA Period as asserted in Plaintiff's March 24, 2022 PAGA notice, or that could have been asserted based on the facts alleged therein, including claims under the Private Attorneys General Act for: (1) Failure to Keep Accurate Records; (2) Failure to Produce Records in Violation of Labor Code §§ 226(b)-(c), 1198.5, and 432; (3) Meal Period Violations; (4) Rest Period Violations; (5) Failure to Provide Suitable Resting Facilities; (6) Minimum and Overtime Wage Violations; (7) Statutory Wage Violations; (8) Refusal to Make Payment; (9) Business Expense Violations; (10) Wage Statement Violations; (11) Failure to Provide Suitable Seating; (12) Standard Conditions of Labor Violations; (13) Sick Leave Violations; (14) Failure to Provide Supplemental Paid Sick Leave; (15) Violation of Labor Code Section 201.3; (16) Untimely Payment of Final Wages; and (17) Unlawful Agreements/Unlawful Criminal History Inquiries ("Released Claims"). This release does include any claims for violation of the Fair Employment and Housing Act (FEHA) and any claim for wrongful termination in violation of public policy.

The pleadings and other records in this litigation, including the Settlement Agreement, may be examined online for a fee through the Superior Court of the State of California for the County of Los Angeles Court Docket website, <https://www.lacourt.org/casesummary/ui/index.aspx?casetype=familylaw>. You may contact [INSERT SETTLEMENT ADMINISTRATOR] toll free at [INSERT ADMINISTRATOR PHONE NUMBER] or you may contact the attorneys listed below with any questions:

Counsel for Plaintiff:	Counsel for Defendants:
Michael Crosner, Esq. Zachary Crosner, Esq. Blake Jones, Esq. Michael Jones, Esq. CROSNER LEGAL, PC 9440 Santa Monica Blvd., Suite 301 Beverly Hills, CA 90210 Telephone: (310) 496-5818	Joel P. Glaser Melanie Popper Skane Mills, LLP 1055 W. 7th St., Suite 1700 Los Angeles, CA 90017 Telephone: (213) 452-1200

**PLEASE DO NOT CONTACT THE COURT OR THE JUDGE WITH ANY
QUESTIONS ABOUT THE ACTION OR THE SETTLEMENT.**