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15 Attorneys for Defendants
16 CROSSCOUNTRY MORTGAGE, LLC;
17 CROSSCOUNTRY MORTGAGE, INC.;
ROSS STASAK; SCOTT EVANS;
and RANDY FOJA

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

19 **COUNTY OF SAN DIEGO – CENTRAL**

20
21 MELANIE MYERS, an individual,

22 Plaintiff,

23 vs.

24 CROSSCOUNTRY MORTGAGE, LLC;
25 CROSSCOUNTRY MORTGAGE, INC.;
26 ROSS STABAK; SCOTT EVANS;
and RANDY FOJA, individuals; and DOES
1-100, inclusive,

27 Defendants.
28

Case No. 37-2021-00051499-CU-OE-CTL

*Assigned for all purposes to the
Honorable Joel R. Wohlfeil, Dept. C-73*

**STIPULATION OF PAGA
SETTLEMENT**

[IMAGED CASE]

Complaint Filed: December 8, 2021
Trial Date: None Set

1 **TO THE COURT, THE PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 Plaintiff Melanie Myers ("Plaintiff") and Defendants CrossCountry Mortgage, LLC;
3 CrossCountry Mortgage, Inc.; Ross Staback; Scott Evans; and Randy Foja (CrossCountry Mortgage
4 LLC and CrossCountry Mortgage, Inc. collectively referred to as "CCM"; all defendants collectively
5 referred to as "Defendants") (Plaintiff and Defendants collectively referred to as the "Parties"), by
6 and through their respective attorneys of record, stipulate and respectfully request the Court enter an
7 Order Granting Approval of the Settlement of Claims Brought Under the Private Attorneys General
8 Act ("PAGA").

9 WHEREAS, the Parties entered into a PAGA Settlement Agreement ("Settlement") to
10 resolve the claims brought or which could have been brought under PAGA in the above captioned
11 matter. Attached hereto as **Exhibit 1** is a true and correct copy of the executed Settlement.

12 WHEREAS, the Parties recognize that, in accordance with Labor Code section 2699(l),
13 Court approval is required in the event of settlement of a PAGA action on a representative basis.

14 WHEREAS, as explained in *Arias v. Superior Court (Angelo Diary et al.)* (2009) 46 Cal.4th
15 969, the Parties are not obligated to follow the class action procedural rules in PAGA cases and
16 therefore need not obtain approval of a settlement through a motion for preliminary or final
17 approval. (*See also Williams v. Super. Ct. (Marshalls of CA, LLC)* (2017) 3 Cal.5th 531, 546-547
18 ("PAGA does not make other potentially aggrieved employees parties or clients of plaintiff's
19 counsel, does not impose on a plaintiff or counsel any express fiduciary obligations, and does not
20 subject a plaintiff or counsel to scrutiny with respect to represent a large class"); *Mendoza v.*
21 *Nordstrom, Inc.* (2017) 2 Cal.5th 1074, 1079 ("PAGA authorizes a representative action without the
22 need for class certification"); *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1122-1123 (9th
23 Cir. 2014) ("[A] PAGA suit is fundamentally different than a class action" in that "PAGA has no
24 notice requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA
25 action").)

26 WHEREAS, the Parties seek to obtain the Court's approval of the Settlement and resolve this
27 matter in the most efficient manner possible.

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1 WHEREAS, upon the entry of a final order in this case, each Aggrieved Employee (including
2 Plaintiff), shall, for the period from December 8, 2020, through July 15, 2022, fully release and
3 forever discharge the claims alleged or which could have been alleged in the Lawsuit arising during
4 the PAGA Period for civil penalties under PAGA for any and all Labor Code violations including all
5 claims that were asserted or could have been asserted in the operative Complaint in this case
6 (“Released Claims”) against Defendants and CCM’s past, present, and future owners, parents,
7 subsidiaries, and all of their current, former, and future officers, directors, members, managers,
8 employees, consultants, partners, shareholders, joint venturers, successors, assigns, accountants,
9 insurers, or legal representatives (“Released Parties”). (*ZB, N.A. v. Superior Court (Lawson)* (2019)
10 8 Cal.5th 175, 185 (“The employee may therefore seek any civil penalties the state can, including
11 penalties for violations involving employees other than the PAGA litigant herself.”); *Arias, supra*,
12 46 Cal.4th at p. 986 (PAGA representatives all have the same primary right: “the same legal right
13 and interest as state labor law enforcement agencies—namely, recovery of civil penalties that
14 otherwise would have been assessed and collected by the Labor Workforce Development Agency”);
15 *see Brunswick Drug Co. v. Springer* (1942) 55 Cal.App.2d 444, 450.)

16 WHEREAS, counsel for both Parties conducted a thorough investigation of both the factual
17 and legal issues affecting the strengths and weaknesses of Plaintiff’s claims and potential recovery.
18 Prior to settlement, Defendants produced the relevant documents, as well as information regarding
19 Plaintiff’s PAGA claim. Plaintiff and Defendants engaged in an arms-length negotiation as to
20 Plaintiff’s allegations and this agreement. This allowed both Parties to reach a reasoned and
21 informed resolution of this matter.

22 WHEREAS, based on their own independent investigation and evaluation, Plaintiff and her
23 counsel are of the opinion that the settlement for the consideration and on the terms set forth in the
24 attached Settlement is fair, reasonable, and adequate, and is in the best interests of Plaintiff,
25 Aggrieved Employees, and the State of California in light of all known facts and circumstances and
26 the risks inherent in litigation, including the potential appellate issues. Plaintiff’s counsel believes
27 that the settlement amount entered into is in the best interests of the Aggrieved Employees, as
28 defined below, and the settlement for each Aggrieved Employee is fair, reasonable, and adequate

1 given the inherent risk of litigation. Plaintiff's counsel also believes the settlement amount is in line
2 with comparable PAGA settlements approved by courts.

3 WHEREAS, Plaintiff and her counsel recognize the risks inherent in PAGA actions,
4 including courts' discretion to reduce the amount of civil penalties. (*See Thurman v. Bayshore*
5 *Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (“[U]nder section 2699, subdivision (e)(2) a
6 trial court may exercise its discretion to award lesser penalties based on the enumerate
7 considerations.”) (emphasis in original, internal quotation marks and citations omitted).)
8 Specifically, the trial court may reduce the civil penalty if declining to do so “would result in an
9 award that is unjust, arbitrary, oppressive, or confiscatory based on the facts and circumstances of
10 [the] case.” (*Ibid.*) Court routinely exercise this discretion in the rare PAGA cases that proceed to
11 trial and obtain a successful verdict. (*See, e.g., Fleming v. Covidien, Inc.*, No. ED CV 10-01487
12 RGK (OPx), 2011 WL 7563047, at *4 (C.D. Cal. Aug. 12, 2011) (awarding PAGA penalties of
13 \$500,000 instead of maximum recover of \$2.8 million); *cf. Aguirre v. Genesis Logistics*, No. SACV
14 12-00687 JVS (ANx), 2013 WL 10936035, at *2-3 (C.D. Cal. Dec. 30, 2013) (after granting
15 summary judgment, awarding PAGA penalty of \$500,000 instead of maximum recover of \$1.8
16 million).)

17 WHEREAS, the Parties provided notice of the proposed settlement to the LWDA as required
18 by PAGA. Attached hereto as **Exhibit 2** is a true and correct copy of the e-mail confirmation
19 showing the Parties submitted the proposed Settlement to the LWDA.

20 WHEREAS, in order to effectuate the terms of the Settlement, **THE PARTIES**
21 **STIPULATE AND REQUEST THE COURT ENTER AN ORDER APPROVING THE**
22 **SETTLEMENT AS FOLLOWS:**

23 1. **Aggrieved Employee(s).** The “Aggrieved Employee” or “Aggrieved Employees”
24 shall be defined as Loan Originators (Outside and Inside), Loan Partners, and Loan Processors who
25 were employed by CCM in a California location at any time from December 8, 2020, through the
26 date upon entry of an Order by the Court approving this Settlement Agreement and Stipulation. The
27 total number of Aggrieved Employees is approximately 850 through June 2022.

28 ///

1 2. **PAGA Period.** The “PAGA Period” means the time period from December 8, 2020,
2 through July 15, 2022.

3 3. **Release of Claims.** The Court finds and orders that Plaintiff, on behalf of herself, the
4 State of California, and Aggrieved Employees fully releases and forever discharges the claims
5 alleged or which could have been alleged in the Lawsuit arising during the PAGA Period for civil
6 penalties under PAGA for any and all Labor Code violations, including all claims that were asserted
7 or could have been asserted in the operative Complaint in this case (“Released Claims”) against
8 Defendants and CCM’s past, present, and future owners, parents, subsidiaries, and all of their
9 current, former, and future officers, directors, members, managers, employees, consultants, partners,
10 shareholders, joint venturers, successors, assigns, accountants, insurers, or legal representatives
11 (“Released Parties”). The Court finds and orders that Plaintiff and all Aggrieved Employees are
12 forever barred from pursuing any and all of the Released Claims that arose during the PAGA Period.
13 With the exception of Plaintiff, the Released Claims do not include any employee’s individual, non-
14 PAGA claims which are the subject of a separate agreement. No person other than Plaintiff shall be
15 barred from bringing individual, non-PAGA claims under the terms of the Settlement set forth in
16 **Exhibit 1.**

17 4. **Waiver of Civil Code § 1542.** The Court finds and orders that Plaintiff (*as to herself*
18 *only*) has waived the provisions of California Civil Code § 1542. Civil Code § 1542 provides as
19 follows:

20 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
21 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
22 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
23 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
24 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
25 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
26 OR RELEASED PARTY.

27 This release in all respects has been voluntarily and knowingly executed with the express
28 intention of effecting the legal consequences provided in the California Civil Code § 1542, that is,

1 the extinguishment of obligations herein designated.

2 5. **Fairness, Reasonableness, and Adequacy.** The Court hereby finds that the
3 Settlement as set forth in **Exhibit 1** is fair, reasonable, and adequate.

4 6. **Notice of PAGA Settlement and Release of Claims.** The Court hereby approves, as
5 to form and content, the Notice of PAGA Settlement and Release of PAGA Claims attached to the
6 Settlement as **Exhibit 3**.

7 7. **Payment to Aggrieved Employees.** No later than fifteen (15) business days after the
8 Court's approval of this Stipulation and Settlement Agreement for the PAGA claims, Phoenix Class
9 Action Administration Services ("Settlement Administrator") shall be directed to mail settlement
10 checks to the Aggrieved Employees.

11 8. **Gross PAGA Settlement Fund.** Within fifteen (15) business days after the Court's
12 approval of this Stipulation and Settlement Agreement, and in exchange for the Release set forth in
13 Paragraphs 3 and 4 above, Defendants shall make a payment in the amount of Thirty Thousand
14 Dollars and Zero Cents (\$30,000.000) ("Gross PAGA Settlement Fund") which shall be all
15 inclusive, encompassing (i) all payments to the LWDA and Aggrieved Employees; (ii) all payments
16 to the Settlement Administrator; and (iii) all attorneys' fees and costs.

17 9. **Attorneys' Fees and Costs.** Plaintiff shall be paid attorneys' fees and costs equal to
18 \$5,000 Five Thousand Dollars and Zero Cents ("Attorney Fee") as compensation for the reasonable
19 attorneys' fees and costs incurred in connection with the work performed to litigate the PAGA claim
20 ("Attorney Fee/Cost Payment"). The Attorney Fee/Cost Payment is appropriate under the
21 circumstances of this case and consistent with the public policy underpinning PAGA's attorneys'
22 fees regime. Plaintiff's counsel has thoroughly and diligently litigated this case since 2021. The
23 attorneys' work resulted in the creation of a Gross PAGA Settlement of Thirty Thousand Dollars and
24 Zero Cents (\$30,000.00). The Attorney Fee/Cost Payment is reasonable in light of the amount
25 recovered and the relevant factors under California law, and will include the issuance of an IRS
26 Form 1099 in connection with this payment. Plaintiff's counsel represents and will offer evidence if
27 necessary that this payment is below the lodestar amount incurred in the litigation of the PAGA
28 issues in this case.

10. **Settlement Administrator Fees.** The Parties have mutually selected Phoenix Class Action to manage and administer the PAGA settlement payments in this matter for each of the Aggrieved Employees. Phoenix Class Action's fees for this service are not to exceed Eight Thousand Five Hundred Dollars and Zero Cents (\$8,500.00) ("Administration Fee").

11. **Net PAGA Settlement Fund.** The remaining funds after the amounts allocated to the Attorney Fee/Cost Payment and the Administration Fee have been deducted from the Gross PAGA Settlement Fund will be referred to as the "Net PAGA Settlement Fund." The Net PAGA Settlement Fund shall be allocated as follows: A total of seventy-five percent (75%) of the Net PAGA Settlement Fund shall be paid to the LWDA ("LWDA Payment"). The remaining twenty-five percent (25%) of the Net PAGA Settlement Fund ("Aggrieved Employee Fund") shall be payable to the Aggrieved Employees, and each Aggrieved Employee shall receive a pro rata share of this amount as further detailed in Paragraph 12, below.

12. **Allocation of Aggrieved Employee Fund.** Each Aggrieved Employee shall be sent a pro rata share of the Aggrieved Employee Fund ("Individual Settlement Shares") based on the number of pay periods that he or she worked for CCM in the State of California during the PAGA Period ("Qualifying Pay Periods"). The Individual Settlement Shares shall be calculated as follows:

a. First, each Aggrieved Employee's number of Qualifying Pay Periods will be divided by the total number of Qualifying Pay Periods for all Aggrieved Employees, and the resulting figure will be referred to as the "Multiplier."

b. Second, each Aggrieved Employee's Multiplier will be applied to the Aggrieved Employee Fund to calculate each employee's dollar share of the Aggrieved Employee Fund.

13. **Distribution and Taxes.** No later than five (5) business days after receipt of the Total PAGA Settlement Amount, the Settlement Administrator shall be instructed to distribute a check to each Aggrieved Employee in the amount of the employee's Individual Settlement Share, and a check in the amount of the LWDA Payment shall be sent to the LWDA. Each Individual Settlement Share, which constitutes payment for civil penalties, shall be treated as non-wage income and reported on an IRS Form 1099 to the respective Aggrieved Employee and applicable governmental authorities.

1 Within twenty (20) calendar days of distributing all payments required under this Agreement, the
2 Settlement Administrator shall provide the Parties' respective counsel with written confirmation
3 verifying the effected disbursement of the Gross PAGA Settlement Fund pursuant to the terms of
4 this Agreement.

5 14. **Expiration of Settlement Checks.** Expiration of Settlement Checks. Settlement
6 checks issued to Aggrieved Employees pursuant to this Order will expire one hundred and eighty
7 (180) days from the date they are issued. After the expiration of the check cashing period, Plaintiff's
8 counsel shall remit any unclaimed funds to the California LWDA with an identification of the
9 Aggrieved Employees and the amounts allocated to each.

10 15. **Disputes Relating to Settlement Administration.** Any disputes concerning
11 administration of the Settlement which cannot be resolved by the Parties shall be submitted to and
12 resolved by the Court.

13 16. **Effect of Order.** Upon entry of the Approval Order, the Parties agree that this
14 Action will be disposed of and that the PAGA claims against Defendants will be disposed of. The
15 Court permanently enjoins and forever bars Plaintiff and the Aggrieved Employees from instituting
16 or prosecuting any action against the Released Parties which was resolved as part of the Settlement.
17 Without affecting the finality of this Final Order in any way, the Court retains jurisdiction to enforce
18 the terms of the Settlement.

19 17. **Settlement of Individual Claims.** Notwithstanding any provision herein, the
20 stipulation of PAGA Settlement does not include Plaintiff's individual non-PAGA claims which are
21 subject to a separate settlement.

22 **IT IS SO STIPULATED.**

23 DATE: July 15, 2022

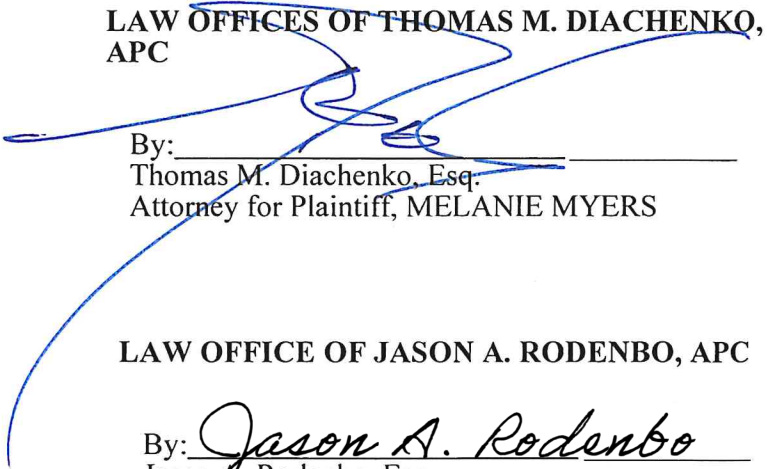
NUKK-FREEMAN & CERRA, P.C.

24 By: 

25 Stacy L. Fode, Esq.
26 Carol K. Shieh, Esq
27 Attorneys for Defendants
28 CROSSCOUNTRY MORTGAGE, LLC;
CROSSCOUNTRY MORTGAGE, INC.
ROSS STABACK; SCOTT EVANS;
and RANDY FOJA

1 DATE: July 15, 2022

**LAW OFFICES OF THOMAS M. DIACHENKO,
APC**

2
3 By: 
4 Thomas M. Diachenko, Esq.
Attorney for Plaintiff, MELANIE MYERS

5
6 DATE: July 15, 2022

LAW OFFICE OF JASON A. RODENBO, APC

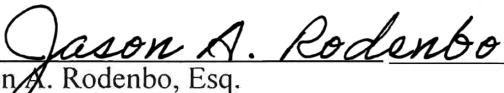
7
8 By: 
9 Jason A. Rodenbo, Esq.
Attorney for Plaintiff, MELANIE MYERS

EXHIBIT 1

PAGA SETTLEMENT AND RELEASE AGREEMENT

This PAGA Settlement Agreement (“PAGA Agreement”) under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”) is made by and between Plaintiff Melanie Myers (“Plaintiff”), on behalf of herself and on behalf of the State of California and “other aggrieved employees,” on the one hand, and CrossCountry Mortgage, LLC and CrossCountry Mortgage, Inc. and their agents, employees, officers and directors, attorneys, successors and assigns (collectively, “CCM”), Ross Staback (“Staback”), Scott Evans (“Evans”), and Randy Foja (“Foja”) (CCM, Staback, Evans, and Foja will be collectively referred to as “Defendants”), on the other, subject to approval by the Court in accordance with California Labor Code Section 2699(l), and subject to the following terms and conditions:

I. DEFINITIONS.

Unless otherwise defined herein, the following terms used in this PAGA Settlement Agreement shall have the meanings ascribed to them as set forth below:

- A. “Action” means only the PAGA Claims encompassed within the civil action entitled *Melanie Myers v. Cross Country Mortgage, LLC, et. al.*, Superior Court of California, County of San Diego, Case No. 37-2021-00051499-CU-OE-CTL, specifically, the First Amended Complaint filed on May 6, 2022, but relating back to the December 8, 2021, filing of the Original Complaint, hereinafter also referred to as the “Complaint”.
- B. “PAGA Agreement” and “PAGA Settlement,” mean this PAGA Settlement Agreement which encompasses only the PAGA claims and not the individual claims brought by Plaintiff against Defendants in the Complaint.
- C. “Complaint” means the PAGA Claims included in the First Amended Complaint filed by Plaintiff on May 6, 2022, in the Action described in Section A above.
- D. “Court” means the Superior Court for the State of California, County of San Diego.
- E. “Covered Period” means the period of time from December 8, 2020, through July 15, 2022.
- F. “Defendants” means CrossCountry Mortgage, LLC and CrossCountry Mortgage, Inc. and their agents, employees, officers and directors, attorneys, successors and assigns, Ross Staback, Scott Evans, and Randy Foja.
- G. “Defendants’ Counsel” means Nukk-Freeman & Cerra, PC, including but not limited to Stacy Fode, Esq. and Carol Shieh, Esq.
- H. “Effective Date” means the later of: (a) ten (10) calendar days after entry of the Order approving the PAGA Settlement in compliance with California Labor Code Section 2699(l)(3) and Paragraph IV(L) of this PAGA Agreement, if no objection or motion to intervene has been filed by the LWDA.

- I. “LWDA” means the California Labor & Workforce Development Agency.
- J. “LWDA Payment” means the portion of the payment from the Net PAGA Settlement Amount to be paid to the LWDA under the PAGA Settlement Agreement.
- K. “Net PAGA Settlement Amount” means the amount from the Total PAGA Settlement Amount that is available for distribution as the LWDA Payment and PAGA Settlement Shares to the PAGA Settlement Group Members after the deductions set forth in Sections IV(D) through IV(I). The entire Net PAGA Settlement Amount will be distributed to the LWDA and PAGA Settlement Group Members for settlement of PAGA penalties.
- L. “Order” means the Court’s Minute Order granting approval of the PAGA Settlement or the proposed Order Approving the PAGA Settlement signed by the Court.
- M. “PAGA” means the Labor Code Private Attorneys General Act of 2004, California Labor Code Section 2698, et seq.
- N. “PAGA Settlement Group Members” means all alleged “other aggrieved employees,” to include Loan Originators (Outside and Inside), Loan Partners, and Loan Processors who were employed by CCM in California during the Covered Period as defined in Paragraph I(F).
- O. “Plaintiff” means Melanie Myers.
- P. “Plaintiff’s Counsel” means the Law Offices of Thomas M. Diachenko, APC, including but not limited to Thomas M. Diachenko, Esq., and the Law Office of Jason A. Rodenbo, APC, including but not limited to Jason A. Rodenbo.
- Q. “Parties” means Plaintiff and Defendants.
- R. “Released PAGA Claims” means any claim under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2698, *et seq.*, against the Released Parties that were alleged or that could have been alleged against Defendants and the Release Parties based on or arising out of the facts, circumstances, and primary rights at issue in the Complaint, including but not limited to allegations of, and/or violation of, California Labor Code Sections set forth in the Complaint for the period spanning December 8, 2020 through July 15, 2022.
- S. “Released Parties” means Defendants and all of their past, present, and future owners, parents, subsidiaries, and all of their current, former, and future officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, successors, assigns, accountants, insurers, or legal representatives.

- T. “Releasing Parties” means Plaintiff, the LWDA, and all PAGA Settlement Group Members, and each of their predecessors, successors, and assigns.
- U. “PAGA Settlement Administrator” means the administrator Phoenix Class Action Administration Solutions or a comparable vendor approved by the Court.
- V. “PAGA Settlement Share” means the portion of the Net Settlement Amount allocable to each PAGA Settlement Group Member as consideration for the settlement and release of claims for penalties under PAGA as provided by this Agreement.
- W. “Total PAGA Settlement Amount” means the total amount to be paid by Defendants as consideration for the release of the Released PAGA Claims as provided by this Agreement.

II. PROCEDURAL BACKGROUND.

- A. On or about December 16, 2021, Plaintiff served a notice letter to the LWDA and CCM, pursuant to California Labor Code Section 2699.3, to notify the LWDA of alleged Labor Code violations. The LWDA did not respond to Plaintiff’s correspondence.
- B. On or about May 16, 2022, Plaintiff filed the Action via a Complaint for Civil Penalties Under PAGA in the Superior Court of California, County of San Diego, Case No. 37-2021-00051499-CU-OE-CTL. Plaintiff sought, on behalf of the State of California, to represent herself and the PAGA Settlement Group Members.
- C. Defendants have not filed an Answer, but instead immediately entered into settlement negotiations, have made an appearance, and stipulate to the jurisdiction of this Court.

III. NO ADMISSION OF LIABILITY.

- A. Defendants deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, or have any liability to anyone under the claims asserted in the Action. This PAGA Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this PAGA Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendants. This PAGA Settlement and the fact that Plaintiff and Defendants were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with the Settlement).
- B. Whether or not the Order becomes final and the Effective Date occurs, nothing in this PAGA Agreement, any document, statement, proceeding or conduct related to the PAGA Settlement, or any reports or accounting of those matters, will be construed as, offered or admitted in evidence as, received as, or deemed to be evidence of a presumption, concession, indication or admission by any of the

Released Parties of any liability, fault, wrongdoing, omission, concession or damage.

IV. **PAGA SETTLEMENT TERMS AND CONDITIONS.**

- A. **Stipulation for PAGA Settlement Only.** Consistent with this PAGA Agreement, Plaintiff will stipulate to the dismissal of the Action as alleged against Defendants, with prejudice. Plaintiff shall file the request for dismissal of the Action, with prejudice, within 14 days of receipt of all payments and proof of payment as described below.
- B. **PAGA Settlement Group Members.** Defendant represents that there are approximately 850 individuals that compose the PAGA Settlement Group Members.
- C. **Total PAGA Settlement Amount.** Subject to the terms and conditions of this Agreement, the Total PAGA Settlement Amount is \$30,000. The Total PAGA Settlement Amount will cover: (a) the LWDA Payment; (b) all Settlement Shares to PAGA Settlement Group Members pursuant to the Settlement (described in Section IV(F)); (c) Plaintiff's attorneys' fees, costs, and expenses related to the claims encompassed by this PAGA Agreement (which includes, but is not limited to, all such fees and costs incurred to date associated with the PAGA claims, as well as all such fees and costs incurred in documenting the Settlement, in the amount of \$5,000; (d) the PAGA Settlement Administrator's fees and expenses, not to exceed \$8,500. Said payments shall be accompanied by a letter with the text as set forth in Attachment A.
- D. **Attorneys' Fees and Costs.** The Parties have agreed that \$5,000 of the \$30,000 will be apportioned to Plaintiff's costs and attorney fees incurred as it pertains to the PAGA claims. The appropriate 1099 tax forms shall be provided by the PAGA Settlement Administrator to Plaintiff's Counsel for any payments made pursuant to this Section IV(D).
- E. **PAGA Settlement Shares.** Subject to the terms and conditions of this PAGA Agreement, each PAGA Settlement Group Member will be allocated a PAGA Settlement Share from 25% of the Net Settlement Amount; the remainder of the Net PAGA Settlement Amount shall be paid to the LWDA, as described in Section IV(G).
- F. **Distribution of Settlement Shares to PAGA Settlement Group Members.** After deducting for the amounts for costs and fees (\$5,000), the LWDA Payment, the PAGA Settlement Administrator's fees and expenses (not more than \$8,500), the remainder of the Net Settlement Amount will be paid as PAGA Settlement Shares to each PAGA Settlement Group Member. The portion of the Net PAGA Settlement Amount available for distribution to PAGA Settlement Group Members (25% of the Net PAGA Settlement Amount) will be divided equally among all PAGA Settlement Group Members. Because these payments are for civil penalties, they

will be made without withholdings and with the PAGA Settlement Administrator issuing IRS Form 1099s to the PAGA Settlement Group Members for each PAGA Settlement Share. PAGA Settlement Group Members will be responsible for any and all taxes due because of their PAGA Settlement Shares.

- G. **Payment to LWDA.** The PAGA Settlement Administrator will pay 75% of the Net PAGA Settlement Amount to the LWDA as its share of the PAGA Settlement attributable to civil penalties under Labor Code Section 2699(i) (the “LWDA Payment”).
- H. **Appointment of PAGA Settlement Administrator.** In connection with a joint submission to the Court for an order approving this PAGA Agreement, the Defendants will propose a PAGA Settlement Administrator to distribute the PAGA Settlement Shares and other payments due under the PAGA Settlement, and otherwise administer the PAGA Settlement amounts. The PAGA Settlement Administrator, as a condition of appointment, will agree to be bound by this PAGA Agreement with respect to the performance of its duties and its compensation.
- I. **Payment to PAGA Settlement Administrator.** The PAGA Settlement Administrator will pay to itself, out of the Total PAGA Settlement Amount, its reasonable fees and expenses as approved by the Court. The PAGA Settlement Administrator’s fees are estimated to not exceed \$8,500.00.
- J. **Procedure for Seeking Approval of the PAGA Settlement.**
 - 1. The Parties will cooperate in seeking approval of the PAGA Settlement pursuant to California Labor Code Section 2699(l). The Parties will submit the following to the Court: a copy of this Agreement, a stipulation of settlement and proposed order granting approval of the PAGA Settlement, and any other documents or briefing required by the Court. The Parties agree to fully cooperate in the drafting and/or filing of any documents reasonably necessary to be prepared or filed and shall take all steps that may be requested by the Court relating to the approval and implementation of the PAGA Settlement.
 - 2. Plaintiff shall submit a copy of the PAGA Settlement to the LWDA at the same time that the PAGA Settlement is submitted to the Court for approval, pursuant to California Labor Code Section 2699(l)(2).
 - 3. If the Court does not issue an order approving the PAGA Settlement, under the specific terms requested, the Parties agree to meet and confer to determine whether resolution of the claims encompassed by the PAGA Settlement can be obtained in a manner consistent with the Court’s concerns.
- K. **Submission of Order to LWDA.** Within 10 calendar days after entry of the Order approving the PAGA Settlement, Plaintiff shall submit a copy of the Order to the LWDA in compliance with California Labor Code Section 2699(l)(3).

- L. **Compliance with All Required Notice to the LWDA.** Plaintiff's compliance with the notice procedures described in Sections IV(J) and IV(K) shall constitute due and sufficient notice to the LWDA, and shall be deemed by the Parties to satisfy any requirement of due process. Nothing else shall be required of, or done by, the Parties, Plaintiff's Counsel, or Defendants' Counsel to provide the LWDA with notice of the PAGA Settlement.
- M. **No Right to Opt Out.** The Parties agree there is no statutory right for any PAGA Settlement Group Member to opt out or otherwise exclude themselves from the PAGA Settlement.
- N. **Payment of Settlement Shares to PAGA Settlement Group Members.**
1. No later than ten (10) business days after the Court's entry of Order approving the PAGA Settlement, Defendants shall provide the PAGA Settlement Administrator with a list of the PAGA Settlement Group Members (the "PAGA Settlement Group Members List"). The PAGA Settlement Group Members List shall state each PAGA Settlement Group Member's (1) full name, (2) last known address, (3) last known phone number, (4) social security number, and (5) number of pay periods and/or sufficient data and information so that the PAGA Settlement Administrator may calculate the PAGA Settlement Group Member's respective pay periods. This information shall be treated as and remain confidential and shall be used solely to manage the notice and settlement administration process described herein, shall not be disclosed to anyone other than the PAGA Settlement Administrator, except to applicable taxing authorities, or pursuant to the express written authorization of Defendants, the individual in question, or by order of the Court.
 2. Prior to mailing the Individual PAGA Settlement Shares with the PAGA Settlement Group Member Cover Letter (the "Cover Letter," attached hereto as Attachment A), the PAGA Settlement Administrator shall check the addresses provided using the National Change of Address database. If any Individual PAGA Settlement Shares with the PAGA Settlement Group Member Cover Letter are returned as undeliverable, but with a forwarding address the PAGA Settlement Administrator shall, within five (5) calendar days, re-mail the Individual PAGA Settlement Shares with the PAGA Settlement Group Member Cover Letter to the forwarding address. If any Individual Penalties Payments and Cover Letter are returned as undeliverable without a forwarding address, the PAGA Settlement Administrator shall, within five (5) calendar days, conduct a skip trace search for a more current address of the PAGA Settlement Group Member and re-mail the Individual PAGA Settlement Shares with the PAGA Settlement Group Member Cover Letter to any alternative or updated address obtained by the PAGA Settlement Administrator.

3. If a PAGA Settlement Group Member fails to cash the Check or deposit the check, the PAGA Settlement Administrator will distribute the funds represented by the uncashed check(s) to the California State Controller's Office Unclaimed Property Fund, or alternatively to a single recipient designated by the Court in its discretion in connection with the Court's consideration and approval of the PAGA Settlement.
- O. **Timing of PAGA Settlement Payments.** Within five (5) business days of the Court's entry of the Order approving the PAGA Settlement, the PAGA Settlement Administrator will provide Defendants with wire transfer information. Within ten (15) business days after the Court's entry of the Order approving the PAGA Settlement, Defendants will transfer the Total PAGA Settlement Amount to the PAGA Settlement Administrator via wire transfer. The PAGA Settlement Administrator will then distribute the payments required under this Agreement within five (5) business days of receipt of the wire transfer from Defendants. No person or entity shall have any claim against Defendants, Defendants' Counsel, Plaintiff, Plaintiff's Counsel or any PAGA Settlement Administrator based on distributions and payments made in accordance with this PAGA Agreement.
- P. **Waiver of Right to Appeal.** Provided that the Court's approval of this PAGA Settlement is consistent with the material terms of this PAGA Agreement, Plaintiff, Defendant, and their respective counsel hereby waive any and all rights to appeal the approval of the PAGA Settlement, and the Order therefore will become non-appealable at the time it is entered.
- Q. **Representative Group Release.** Upon the Effective Date, this settlement forever bars Releasing Parties, for the period spanning December 8, 2020, through July 15, 2022, from pursuing the Released PAGA Claims. This release applies whether or not a given PAGA Settlement Group Member receives or cashes his or her individual PAGA Settlement Share.
- Releasing Parties agree that this waiver is an essential and material term of this release and the PAGA Settlement that underlies it, and that without such waiver, the PAGA Settlement would not have been accepted.
- R. **General Release By Plaintiff.** Plaintiff, on her individual behalf only, agrees to a complete release of claims against the Released Parties pertaining to her PAGA claims.
- S. **No Injunctive Relief.** As part of this PAGA Settlement, Defendants shall not be required to enter any consent decree, nor shall Defendants be required to agree to any provision of injunctive relief.
- T. **Interim Stay of Proceedings.** The Parties agree to refrain from further litigation of this matter, except such proceedings necessary to implement and obtain entry of the Order granting approval of the PAGA Settlement. The Parties further agree

that the mutual, voluntary cessation of litigation shall terminate if the PAGA Settlement is not approved by the Court.

- U. **Continued Jurisdiction.** Pursuant to CCP §664.6, after entry of the request for dismissal of the Action, with prejudice, the Court shall have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the PAGA Agreement, (ii) PAGA Agreement administration matters, and (iii) such matters as may be appropriate under court rules or applicable law, or as set forth in this PAGA Agreement.
- V. **Fair PAGA Settlement.** The Parties and their respective counsel believe and warrant that this PAGA Agreement reflects a fair, reasonable, and adequate settlement of the Action reached through arms-length negotiations, taking into account all relevant factors, current and potential.
- W. **Tax Liability.** Other than the reporting requirements set forth in Paragraph IV.G, the PAGA Settlement Group Members, including Plaintiff, shall be responsible for the reporting and payment of any federal, state, and/or local income or other tax or any other withholdings, if any, on any of the payments made to them pursuant to this PAGA Agreement. Defendants make no representations, and it is understood and agreed that Defendants have made no representations, as to the taxability of any portions of the PAGA Settlement Shares to any PAGA Settlement Group Members, the payment of any costs or an award of attorney fees, or any payments to Plaintiff.
- X. **Miscellaneous Terms.**
 - 1. **Entire PAGA Agreement.** This Agreement contains the entire agreement between the Parties regarding this PAGA Settlement and the Released PAGA Claims and constitutes the complete, final, and exclusive embodiment of their agreement with respect to the subject matter hereof, and all prior or contemporaneous understandings, representations, and statements, oral or written, are merged into and superseded by this PAGA Agreement. No other promises or agreements, either expressed or implied, shall be binding unless signed in writing by Plaintiff and Defendants.
 - 2. **Attorney Authorization.** Plaintiff's Counsel and Defendants' Counsel warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this PAGA Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this PAGA Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the PAGA Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement this PAGA Agreement, or on any supplemental provisions that may become necessary to effectuate

the terms of this PAGA Agreement, the Parties may seek the assistance of the Court to resolve such disagreement.

3. **Modification of PAGA Agreement.** This PAGA Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their successors-in-interest.
4. **PAGA Agreement Binding on Successors.** This PAGA Agreement will be binding upon, and inure to the benefit of, the successors of the Parties.
5. **Applicable Law.** All terms and conditions of this PAGA Agreement 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.
6. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this PAGA Agreement. This PAGA Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
7. **Execution in Counterparts.** This PAGA Agreement may be executed in counterparts which shall be deemed to be part of one original, and facsimile signatures and signatures transmitted by PDF shall be equivalent to original signatures.
8. **Severability.** If any term or provision of this PAGA Agreement is held to be invalid or unenforceable, the remaining portions of this PAGA Agreement will continue to be valid and will be performed, construed and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the PAGA Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

V. EXECUTION

The Parties have duly authorized and caused this PAGA Settlement Agreement to be executed on the date(s) set forth below.

Dated: _____, 2022 _____
Melanie Myers

Dated: _____, 2022 CROSS COUNTRY MORTGAGE, LLC and CROSS
COUNTRY MORTGAGE, INC.

By: _____
Title: _____

Dated: _____, 2022 _____
Ross Staback

Dated: _____, 2022 _____
Scott Evans

Dated: _____, 2022 _____
Randy Foja

APPROVED AS TO FORM

Dated: _____, 2022 **NUKK-FREEMAN & CERRA, P.C.**
By: _____
Stacy L. Fode, Esq.
Carol K. Shieh, Esq
Attorneys for Defendants
CROSSCOUNTRY MORTGAGE, LLC;
CROSSCOUNTRY MORTGAGE, INC.
ROSS STABACK; SCOTT EVANS;
and RANDY FOJA

Signatures continue on next page

Dated: _____, 2022

**LAW OFFICES OF THOMAS M. DIACHENKO,
APC**

By: _____
Thomas M. Diachenko, Esq.
Attorney for Plaintiff, MELANIE MYERS

Dated: _____, 2022

LAW OFFICE OF JASON A. RODENBO, APC

By: _____
Jason A. Rodenbo, Esq.
Attorney for Plaintiff, MELANIE MYERS

EXHIBIT 2

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EXHIBIT 3

CALIFORNIA SUPERIOR COURT,
COUNTY OF SAN DIEGO
Myers v. CrossCountry Mortgage, LLC, et al.
Case No. 37-2021-00051499-CU-OE-CTL

NOTICE OF PAGA SETTLEMENT

*This is not a solicitation.
This is not a lawsuit against you and you are not being sued.*

The California Superior Court, County of San Diego has granted approval of a Private Attorneys General Act (“PAGA”) settlement in the above-captioned action. Because your rights are affected by this PAGA Settlement, it is important that you read this Notice of PAGA Settlement (“Notice”) carefully. The purpose of this Notice is to provide a brief description of the claims alleged in the action and the key terms of the settlement.

WHAT INFORMATION IS IN THIS NOTICE

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1. Why Have I Received This Notice?

CrossCountry Mortgage, LLC’s (“CCM”) records indicate that you worked as a Loan Originator, Loan Partner, or Loan Processor for CCM in the State of California at some time between December 8, 2020 and July 15, 2022.

A PAGA settlement approval hearing was held on July 19, 2022, in the California Superior Court, County of San Diego. The Court granted approval of the PAGA settlement. You are receiving this Notice to provide you with a brief description of the PAGA settlement and explain why you have received a settlement check.

2. What Is This Case About?

The action entitled *Myers v. CrossCountry Mortgage, LLC, et al.* was commenced by Plaintiff Melanie Myers (“Plaintiff”) in the San Diego County Superior Court (Case No. 37-2021-00051499-CU-OE-CTL) against CCM, CrossCountry Mortgage, Inc., Ross Stabak, Scott Evans, and Randy Foja (collectively, “Defendants”).

On December 16, 2021, Plaintiff provided notice to the California Labor and Workforce Development Agency (“LWDA”) of the Private Attorneys General Act of 2004 (“PAGA”) violations she alleged against Defendants in this matter.

On December 8, 2021, Plaintiff filed a complaint in the San Diego County Superior Court against Defendants in this matter, alleging claims under for failure to pay wages, overtime, premiums, waiting time penalties, and business expenses, and for paystub violations and unfair business practices. On May 6, 2022 Plaintiff filed a First Amended Complaint (“FAC”) adding a claim pursuant to the PAGA. Only the PAGA claims asserted in the FAC are the subject of this notice.

The Court has not made any determination as to whether the claims advanced by Plaintiff have any merit. In other words, the Court has not determined whether any laws have been violated, nor has it decided in favor of Plaintiff or Defendants; instead, both sides agreed to resolve the lawsuit with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, all parties avoid the risks and cost of the trial.

Defendants expressly deny that they did anything wrong or that they violated the law and further deny any liability whatsoever.

3. Who Are the Attorneys Representing the Parties?

Plaintiff’s Counsel

**LAW OFFICES OF THOMAS M.
P.C. DIACHENKO, APC**
Thomas M. Diachenko, Esq.
1916 Third Avenue
San Diego, CA 92101
619-699-5870

**LAW OFFICE OF JASON A. RODENBO,
APC**
Jason A. Rodenbo, Esq.
1916 Third Avenue
San Diego, California 92101
619-961-5433

Defendants’ Counsel

NUKK-FREEMAN & CERRA
Stacy L. Fode, Esq.
550 West B Street, 4th Floor
San Diego, CA 92101
619-292-0545

4. How Does This Settlement Affect My Rights? What are the Released Claims?

All Loan Originators, Loan Partners, and Loan Processors who worked for CCM in California at any time from December 8, 2020 through July 15, 2022 (“Aggrieved Employees”) release the Released Parties from the Released Claims, as defined below.

Released Parties: Defendants, including their past, present, and future divisions, affiliates, parent, subsidiaries, predecessors, successors, assigns, members, shareholders, owners, officers, directors, employees, agents, trustees, attorneys, representative, administrators, fiduciaries, beneficiaries, subrogees, executors, partners, and privies.

Released Claims: Each of the Aggrieved Employees, including Plaintiff, shall fully release and forever discharge all claims alleged by Plaintiff and Aggrieved Employees in the Lawsuit for any and all debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorneys' fees, damages, or interest based on any and all PAGA claims seeking civil penalties under California Labor Code sections 2698, et seq., Wage Orders, regulations and/or other provisions of law alleged or, based on the facts pled in the Lawsuit and PAGA Notice, that could have been alleged to have been violated in the Lawsuit with respect to the Aggrieved Employees, including but not limited to all claims for failure to provide meal periods, all claims for failure to authorize and permit rest breaks, all claims for failure to pay all wages, including overtime and premium wages, all claims for failure to provide compensation for all hours worked, all claims for failure to pay minimum wages, all claims for business expense reimbursements, all claims for waiting time penalties/late payment of wages, all claims for failure to maintain and provide accurate itemized wage statements during the PAGA Period. Aggrieved employees, other than Plaintiff, will not be deemed to have released any individual wage and hour claims by virtue of this Settlement.

5. How Much Can I Expect to Receive From This Settlement?

The total maximum amount that Defendants are requested to pay under the settlement is \$30,000 ("Maximum Settlement Amount"). The "Net Settlement Amount" or "NSA" means the portion of the Maximum Settlement Amount after the deduction of (1) the Settlement Administration Costs to the Settlement Administrator in the amount of \$8,500; and (2) payment to Plaintiff's Counsel in the amount of \$5,000.00 for attorneys' fees and costs. All of these payments were approved by the Court.

After deducting the above-referenced items, the remaining Net Settlement Amount, will be divided 75% to the LWDA, pursuant to California Labor Code § 2699, subdivision (i), for enforcement of labor laws, including the administration of this part, and for education of employers and employees about their rights and responsibilities under this Code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes; and 25% to the Aggrieved Employees. Therefore, the LWDA will receive \$12,375 and \$4,125 will be left for distribution to all person who worked as a Loan Originator, Loan Partner, or Loan Processor for CCM in California at any time from December 8, 2020 through July 15, 2022.

Each Aggrieved Employee will receive a proportionate share of the portion of the NSA available for distribution to Aggrieved Employees that is equal to the number of Pay Periods worked from December 8, 2022 through July 15, 2022. The amount paid to each Aggrieved Employee will be determined as follows: each Aggrieved Employee will receive a proportionate share of the NSA that is equal to (i) the number of pay periods he or she worked for CCM in California during the PAGA Period based on the database provided by CCM, 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 NSA. 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.

The check included with this notice represents your settlement share based on this formula. For purposes of computing taxes, one-hundred percent (100%) of the amount of money you received is considered to be a civil penalty and has not been subjected to tax withholding.

It is strongly recommended that upon receipt of your individual settlement share check, you immediately cash it or cash it before the 180-day void date shown on each check. Funds represented by settlement checks returned as undeliverable and those settlement checks remaining uncashed for more than 180 days after issuance will be transmitted to the LWDA.

6. How Can I Obtain Additional Information or Court Documents?

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS you may contact Plaintiff's Counsel listed above, on the Settlement Administrator at the telephone number listed below, toll free, Please refer to the Myers v. CrossCountry Mortgage, LLC, et al. Settlement.

PLEASE DO NOT CALL THE COURT OR THE COURT'S CLERK FOR INFORMATION ABOUT THIS SETTLEMENT.