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Attorneys for Plaintiff Dominique Mitchell, on behalf of herself and on behalf of all similarly situated individuals

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

DOMINIQUE MITCHELL, on behalf of
herself and on behalf of all similarly situated
individuals,

Plaintiffs,

v.

RMP SAFETY SERVICES INC., a California
corporation, and DOES 1 through 10,
inclusive,

Defendants.

Case No.: CIVSB2204808

Assigned to the Hon. David Cohn, Dept. S26

**DECLARATION OF DANIEL F. GAINES
IN SUPPORT OF REQUEST FOR
DISMISSAL OF CLASS AND
REPRESENTATIVE ACTION**

[Filed Concurrently: Request for Dismissal]

Complaint Filed: February 23, 2022

1 I, Daniel F. Gaines, declare as follows:

2 1. I am an attorney duly admitted to practice law in the State of California and I am a
3 managing shareholder at Gaines & Gaines, APLC, counsel of record for Plaintiff DOMINIQUE
4 MITCHELL ("Plaintiff") in this matter. The matters set forth herein are of my own personal
5 knowledge, and if sworn as a witness, I could and would testify competently thereto.

6 2. On February 23, 2022, Plaintiff filed the instant Action seeking damages on a class
7 wide and representative basis, on behalf of herself and on behalf of all similarly situated individuals
8 for Defendant RMP SAFETY SERVICES INC.'s ("Defendant") violations of California Labor Code,
9 Business & Professions Code, codified as § 17200, *et seq.*, and the Private Attorneys' General Act of
10 2004 ("PAGA"), codified as § 2698, *et seq.* by allegedly failing to pay all wages due by failing to pay
11 all wages due, provide meal and rest periods, or compensation in lieu thereof, issue complete and
12 accurate wage statements, and pay all wages due at separation of employment. The alleged violations
13 occurred when Plaintiff worked for Defendant in San Bernardino County, California.

14 3. Following conversations with Defendant's counsel, my office has ascertained that
15 Plaintiff's claims are quite individual. Furthermore, liability is disputed. This determination is based
16 on information provided by Defendant's counsel through discussions in this matter.

17 4. The Parties have negotiated a settlement of Plaintiff's individual claims only, and the
18 Class and PAGA claims will be dismissed without prejudice, as set forth in the concurrently-filed
19 request for dismissal. Attached hereto as **Exhibit A** is a true and correct copy of the Parties'
20 Confidential Settlement Agreement and Complete Release of all Claims.

21 5. The settlement of this Action does not provide for any consideration to any putative
22 class member in the Action nor does it provide for the waiver, settlement, or release of any class
23 claims asserted on behalf of any putative class member in the Action other than Plaintiff. Further,
24 the settlement does not contemplate the waiver of PAGA claims asserted on behalf of any employee
25 or the State, such that there is no allocation of civil penalties in the Settlement.

26 6. No notice is required to be given to the putative class because no notice of the pending
27 Action was ever given; there has been no publicity of which the Parties are aware; neither Plaintiff
28 nor my office have communicated with any absent class members about the Action; there is no other

1 pending action, of which the Parties are aware, brought by a member of the putative class or including
2 an overlapping putative class; and the putative class is not reasonably ascertainable at the present
3 time; consequently, no absent putative class member will suffer prejudice as a result of this dismissal.

4 7. Plaintiff, therefore, requests that the Court enter a dismissal of this action **with**
5 **prejudice** as to Plaintiff's individual claims and **without prejudice** as to the class and representative
6 action claims, pursuant to the request submitted concurrently herewith.

7 8. Concurrent with the filing of this Request for Dismissal, Plaintiff has submitted
8 the Settlement Agreement to the LWDA in compliance with Labor Code section 2699(1)(2).

9 I declare under penalty of perjury under the laws of the State of California that the foregoing
10 is true and correct and was executed on February 6, 2023, at Westlake Village, California.

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13 _____
14 DANIEL F. GAINES
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EXHIBIT A

CONFIDENTIAL

**CONFIDENTIAL SETTLEMENT AGREEMENT
AND COMPLETE RELEASE OF ALL CLAIMS**

This Confidential Settlement Agreement and Complete Release of All Claims (“Agreement”) is made and entered into by and between RMP SAFETY SERVICES INC. and its affiliated or related entities, parents, and subsidiaries (the “Company”) and DOMINIQUE MITCHELL on behalf of herself, her spouse or significant other, heirs, successors, assigns, executors and representatives of any kind, if any (individually, “Plaintiff,” and the parties hereinafter, collectively, the “Parties”).

WHEREAS, on December 15, 2021, Plaintiff filed a notice letter with the Labor and Workforce Development Agency (“LWDA”).

WHEREAS, on February 23, 2022, Plaintiff filed a putative class and representative action complaint against the Company in Superior Court for the County of San Bernardino, Case No. CIVSB2204808 (the “Lawsuit”);

WHEREAS, the Lawsuit alleges claims for relief under the California Labor Code, Private Attorneys General Act of 2004 (“PAGA”), and Business & Professions Code, including causes of action for: (1) failure to pay all wages due; (2) failure to provide meal periods or compensation in lieu thereof; (3) failure to provide rest periods or compensation in lieu thereof; (4) failure to issue complete and accurate wage statements; (5) failure to timely pay wages due at separation of employment; (6) unfair competition; and (7) penalties pursuant to Labor Code § 2699, *et seq.*

WHEREAS, the Company denies all allegations in the Lawsuit;

WHEREAS, Plaintiff and the Company desire to settle fully and finally any and all claims of Plaintiff arising out of Plaintiff’s employment relationship with the Company, including, but not limited to, all claims alleged in the Lawsuit, with a dismissal without prejudice of all class and PAGA claims.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained and other good and valuable consideration, receipt of which is hereby acknowledged, it is agreed by and between the Parties as follows:

1. No Admissions. This Agreement and compliance with this Agreement shall not be construed, either directly or by implication, as an admission by Plaintiff or the Company of any liability whatsoever or that any party violated another party’s rights or any order, law, statute, rule, regulation, contract or any other duty or obligation of any nature whatsoever. The Parties specifically deny and disclaim any liability to each other for any alleged violation of any party’s rights or for any alleged violation of any order, law, statute, rule, regulation, contract or any other duty or obligation of any nature whatsoever on the part of the Parties or their respective employees or agents, their respective affiliated entities or their employees or agents.

2. Consideration. In consideration for this Agreement, the Company shall pay the gross amount of Fifteen Thousand Dollars (\$15,000) (“Settlement Amount”).

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a. No later than 10 days after Plaintiff executes and returns a copy of this Agreement to Company's counsel, Company shall pay the full Settlement Amount via a check made payable to Gaines & Gaines, APLC Client Trust Account. The check will be mailed to Daniel Gaines at Gaines & Gaines, APLC at 4550 East Thousand Oaks Boulevard, Suite 100, Westlake Village, California 91362.

b. Plaintiff shall not be entitled to seek any further attorneys' fees or costs in this matter, as the Settlement Amount is in satisfaction of all such fees and costs.

c. Plaintiff acknowledges and agrees that the Company has made no representations or warranties regarding the tax consequences of any amounts paid by the Company to Plaintiff pursuant to this Agreement. Plaintiff agrees to pay all federal or state taxes owed by Plaintiff, if any, which are required by law to be paid with respect to the Settlement Amount. Plaintiff further agrees to indemnify and hold the Company harmless from any taxes owed by Plaintiff, including interest or penalties owed by Plaintiff, on account of this Agreement. Plaintiff further agrees to reimburse the Company for any attorneys' fees and costs incurred by the Company as a result of having to obtain indemnification under this Agreement.

d. No later than seven (7) days after Plaintiff's Counsel confirms receipt of the settlement payment, Plaintiff shall file a request for dismissal of the Lawsuit with the San Bernardino County Superior Court with prejudice as to Plaintiff's individual claims and without prejudice as to all class and PAGA claims. This settlement shall be filed with the Court and the LWDA to effectuate the settlement as required by PAGA.

3. No Further Compensation Due. Plaintiff agrees that the Settlement Amount shall constitute the entire amount of consideration provided to Plaintiff arising under this Agreement and from Plaintiff's employment with or separation from employment with the Company and that Plaintiff shall not seek any further compensation for any other claimed damages, losses, liabilities, costs or attorneys' fees in connection with the matters encompassed in or relating to the Lawsuit, Plaintiff's employment with, or separation from employment with the Company, or this Agreement. Plaintiff further agrees that, upon receipt of the Settlement Amount, Plaintiff shall have been paid all wages and all other monies due and owing to Plaintiff arising out of Plaintiff's employment with the Company.

4. Dismissal of Lawsuit. This Agreement is expressly conditioned upon the actual dismissal with prejudice of all individual causes of action alleged in the Lawsuit and without prejudice as to all class and PAGA claims, and Plaintiff agrees to take all reasonable and necessary steps to ensure the same. Plaintiff will dismiss the claims of putative class members without prejudice. If the Court refuses or fails to dismiss the entire Lawsuit as described herein, this Agreement shall be null and void and the Consideration set forth in Paragraph 2 shall be returned to the Company within seven (7) days following the Court's Order denying dismissal.

5. No Complaints, Charges, or Claims. Except as described herein, Plaintiff warrants and represents that other than the present Lawsuit, Plaintiff has not filed any other complaints, claims, charges, demands, petitions, or actions against the Company, and/or its past or present officers, directors, shareholders, owners, subsidiaries, divisions, affiliates, joint ventures, insurers, reinsurers, predecessors, successors, assigns, agents, employees, attorneys and representatives, and all other persons and entities acting by, through, under, or in concert with any

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of them or on their behalf, with any federal, state, or local agency or court or with any other forum, and that she will not do so in the future, including, but not limited to filing any complaint with the Labor and Workforce Development Agency or pursuing any claims pursuant to the California Private Attorneys General Act.

6. Fees and Costs. Other than the payments outlined in Paragraph 2, the Parties agree that each side shall bear their own fees, including but not limited to attorneys' fees and costs incurred in connection with the Lawsuit.

7. Release of Claims. In exchange for the Settlement Consideration, Plaintiff, on behalf of herself, and her heirs and assigns, unconditionally waives, releases, and forever discharges the Released Parties listed below of and from any and all claims, demands, suits, causes of action, liabilities, obligations, debts, losses, agreements, contracts, controversies, torts, damages of any kind (including economic, non-economic, and exemplary), penalties, costs, attorney's fees or liens, and expenses of any kind or nature, whether express or implied, known or unknown, which exist or may exist at any time on or before the date on which Plaintiff executes this Agreement. Plaintiff agrees and affirms that this Release is general and comprehensive in nature, and includes, but is not limited to, any of the following:

- a. any and all claims arising under, relating to, or in any way involving any state or federal employment law, statute, or regulation including, but not limited to, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Family and Medical Leave Act, the Age Discrimination in Employment Act, the Genetic Information Nondiscrimination Act, 42 U.S.C. § 1981, the Code of Federal Regulations, the Fair Labor Standards Act, the California Labor Code, the California Fair Employment and Housing Act, the California Family Rights Act; the California Business and Professions Code, the Ralph Civil Rights Act, and the Tom Bane Civil Rights Act, all as may be amended from time to time, and;
- b. any and all claims arising under, relating to, or in any way involving the common law, whether sounding in tort or contract, including claims of whistleblowing, wrongful discharge, breach of contract, breach of the implied covenant of good faith and fair dealing, defamation, slander, and intentional or negligent infliction of emotional distress, and;
- c. any and all claims which have been or could have been asserted in the Lawsuit.

Nothing in this Release is intended to release claims which may arise after Plaintiff signs this Release, or claims which by law cannot be released by private agreement (such as worker's compensation claims or claims for unemployment benefits). No claims of any other employees shall be released, or otherwise effected by, this Release.

The Released Parties covered by Plaintiff's general release are as follows: Defendant RMP SAFETY SERVICES INC., together with any of its respective predecessors, current and former parents, subsidiaries, and affiliated entities and, with respect to each such entity, each of their respective officers, directors, employees, shareholders, owners, members, contractors, joint venturers, partners, insurers, brokers, attorneys, representatives, agents, successors, and assigns. It is understood and agreed that all Released Parties have the right and standing to enforce the terms

of this Release.

Section 1542 Waiver. Plaintiff hereby agrees that all rights Plaintiff may have against Released Parties under section 1542 of the California Civil Code are hereby waived. Section 1542 provides:

“A general release does not extend to claims which 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 release party.”

8. Confidentiality. Plaintiff agrees that except that with the Company’s express written permission, Plaintiff and Plaintiff’s agents shall keep confidential any and all information concerning the facts and legal claims which were alleged or could have been alleged against the Company. With respect to Plaintiff’s employment with the Company and the terms and existence of this Agreement, Plaintiff and Plaintiff’s agents will not disclose any information concerning the facts and legal claims which were alleged or could have been alleged against the Company to anyone, including, but not limited to, any past, present, or prospective employee or other business unit of the Company. In the event that someone inquires about this matter, Plaintiff and Plaintiff’s agents shall respond only that “the matter has been resolved” and communicate nothing further. In communicating with third parties, neither the Plaintiff or the Company shall make any disparaging or derogatory statement regarding the other Party. Plaintiff shall submit a copy of this Agreement to the Court and the LWDA as part of the dismissal of this Action.

Nothing herein shall prevent Plaintiff from disclosing the terms of this Agreement to Plaintiff’s accountants, tax advisors, or attorneys.

9. Attorneys’ Fees. The Parties agree that in the event of a breach of this Agreement, including but not limited to Paragraph 8, the prevailing party in any action to enforce such provisions shall be entitled to recover attorneys’ fees and costs.

10. Neutral Reference. The Company and the Released Parties shall provide Plaintiff with a neutral reference upon inquiry by a current or prospective employer, indicating only her dates of employment and job positions held.

11. Successors. This Agreement shall be binding upon the Parties hereto and upon their heirs, administrators, representatives, executors, divisions, subsidiaries, parents’ subsidiaries, affiliates, partners, limited partners, successors and assigns, and shall inure to the benefit of said Parties and each of them and to their heirs, administrators, representatives, executors, divisions, subsidiaries, affiliates, partners, limited partners, successors, and assigns.

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12. **No Assignment.** Plaintiff represents that Plaintiff has not heretofore assigned or transferred, or purported to assign or transfer, to any person or entity not a party to this Agreement any Claim or any portion thereof or interest therein in any manner, including by way of subrogation or operation of law or otherwise. If any claim, action, demand, or suit should be made or instituted against the Released Parties, or any of them, because of any such purported assignment, subrogation, or transfer, Plaintiff agrees to indemnify and hold harmless the Released Parties, and each of them, against such claim, action, demand, or suit, including damages, expenses of investigation, attorneys' fees, and costs.

13. **Entire Agreement and Modification.** The Parties hereto represent and acknowledge that in executing this Agreement they do not rely and have not relied on any representation or statement made by any of the Parties or by any of the Parties' agents, attorneys, or representatives with regard to the subject matter or effect of this Agreement or otherwise, other than those specifically stated in this written Agreement. This is the entire agreement between Plaintiff and Company with respect to Plaintiff's individual rights and her claims for individual relief and takes the place of any prior agreement, representation, or promise, with respect to such rights and claims, except for the arbitration provisions contained in the Employee Acknowledgements, which shall continue in full force and effect. This Agreement cannot be modified or altered except in writing signed by both Plaintiff and an authorized representative of Company.

14. **Interpretation and Governing Law.** This Agreement shall be deemed to have been made under, and shall be construed and interpreted in accordance with, the laws of the State of California.

15. **Enforcement.** The Court shall retain jurisdiction over the Parties to enforce this Agreement, pursuant to Code of Civil Procedure section 664.6 and as otherwise allowed by law. It is further understood and agreed that if, at any time, a violation of any term of this Agreement is asserted by any party hereto, that party shall have the right to seek specific performance of that term and/or any other necessary and proper relief, including but not limited to damages, and the prevailing party shall be entitled to recover their reasonable costs and attorneys' fees.

16. **Admissibility.** This Agreement will not be admissible in any proceeding, except one to enforce the terms of this Agreement or one in which one of the Parties elects to use this Agreement as a defense to any claim.

17. **Counterparts and Electronic Records.** This Agreement may be executed in counterparts and each counterpart, when executed, shall have the efficacy of an original. Plaintiff agrees that the Company, in its sole discretion, may convert this Agreement into an electronic record and that in the event of any dispute involving this Agreement, a copy of such electronic record may serve as the exclusive original. The Parties consent to and recognize the validity, enforceability, and admissibility of any electronic record created in connection with this Agreement or the relationship contemplated by it.

18. **Effect of Invalid Part.** Should any provision of this Agreement be declared or be determined by any court, arbitrator, or other tribunal of appropriate jurisdiction to be illegal, invalid, or unenforceable, any such illegal, invalid, or unenforceable provision shall be deemed

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stricken and severed from this Agreement and any and all of the other terms of the Agreement shall remain in full force and effect to the fullest extent permitted by law.

19. No Waiver. No failure by either party hereto to enforce any right or remedy arising as a result of any breach or default of any term, provision, covenant, or condition of this Agreement committed by the other party shall be construed to be a waiver of the right to enforce any right or remedy arising as a result of any future breach or default of the same or any other term, provision, covenant, or condition hereof.

20. Certificate of Understanding and Voluntariness. By signing this Agreement, Plaintiff certifies and agrees as follows: (a) Plaintiff has read this Agreement and fully understands all of its provisions and fully intends to abide by its provisions; (b) Plaintiff knowingly and voluntarily enters into this Agreement of Plaintiff's own free will, without any coercion or duress, and Plaintiff is not relying upon any inducements, representations, agreements, or understandings other than as are expressly set forth in this Agreement; and (c) Plaintiff has had the opportunity to consult with an attorney of Plaintiff's choice about this Agreement and has either done so or has voluntarily chosen not to do so. Plaintiff further agrees and represents that Plaintiff is entering into this Agreement voluntarily, deliberately, and with all information needed to make an informed decision to enter this Agreement, and that Plaintiff is hereby given notice of and an opportunity to retain an attorney or is already represented by an attorney.

21. Protected Rights. Nothing in this Agreement including but not limited to the representation about pending claims, release of claims, confidential information, confidentiality, attorneys' fees, indemnification, and arbitration provisions (a) shall prohibit or prevent the disclosure of factual information related to any acts of sexual assault, sexual harassment, workplace harassment or discrimination, failure to prevent an act of workplace harassment or discrimination, or act of retaliation against a person for reporting harassment or discrimination which acts are related to the Lawsuit. In addition, nothing in this Agreement shall be construed as a waiver of Plaintiff's right to testify in an administrative, legislative, or judicial proceeding concerning alleged criminal conduct or alleged sexual harassment on the part of Company, or on the part of the agents or employees of Company, when Plaintiff has been required or requested to attend such a proceeding pursuant to a court order, subpoena, or written request from an administrative agency or the legislature. In addition, nothing in this Agreement prevents Plaintiff from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that Plaintiff has reason to believe is unlawful; (b) prevents Plaintiff from communicating with, filing a charge or complaint with, providing documents or information voluntarily or in response to a subpoena or other information request to, or from participating in an investigation or proceeding conducted by the Equal Employment Opportunity Commission, National Labor Relations Board, the Securities and Exchange Commission, law enforcement, or any other any federal, state, or local agency charged with the enforcement of any laws, or from responding to a subpoena or discovery request in court litigation or arbitration; or (c) limits Plaintiff from exercising rights under Section 7 of the NLRA or similar state law to engage in protected, concerted activity with other employees, although by signing this Agreement Plaintiff is waiving rights to individual relief (including backpay, front pay, reinstatement or other legal or equitable relief) in any charge, complaint, or lawsuit or other proceeding brought by Plaintiff or on Plaintiff's behalf by any third party, except for any right

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Plaintiff may have to receive a payment or an award from a government agency (and not Company) for information provided to the government agency or otherwise where prohibited.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates indicated below.

CAUTION: THIS AGREEMENT CONTAINS A FULL RELEASE OF CLAIMS. PLEASE READ CAREFULLY!

WHEREFORE, the Parties have read all of the foregoing, have been represented by counsel of their choosing, understand the terms, and voluntarily agree to all of the provisions contained herein.

AGREED AND UNDERSTOOD:

Dated: 12 / 09 / 2022, 2022



Plaintiff DOMINIQUE MITCHELL

Dated: 12/09/2022, 2022



Name:
On behalf of Defendant RMP SAFETY SERVICES
INC.

1 **PROOF OF SERVICE AND CERTIFICATION**

2 I am employed in the County of Ventura, State of California. I am over the age of 18 and not a party to the
3 within action; my business address is 4550 East Thousand Oaks Boulevard, Suite 100, Westlake Village, CA 91362.

4 _____ (For messenger) my business address is:

5 On February 6, 2023, I served the foregoing document described as **DECLARATION OF DANIEL F.**
6 **GAINES IN SUPPORT OF REQUEST FOR DISMISSAL OF CLASS AND REPRESENTAIVE ACTION** on the
7 interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

8 **Thomas F. Nowland, Esq.**

9 **Daniel A. Brodnax, Esq.**

10 **Scott A. Ezzati, Esq.**

11 **LAW OFFICES OF THOMAS F. NOWLAND**

12 **20241 SW Birch Street, Suite 203**

13 **Newport Beach, CA 92660**

14 **X**

15 (BY ☒ U.S. MAIL/ BY ☐ CERTIFIED MAIL, RETURN RECEIPT REQUESTED) The sealed envelope was
16 mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection
17 and processing correspondence for mailing. It is deposited with United States postal service on that same
18 day in the ordinary course of business. I am aware that on motion of party served, service is presumed
19 invalid if postal cancellation date or postage meter date is more that one day after date of deposit for
20 mailing in affidavit.

21 _____ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or
22 other facility regularly maintained by the express service carrier or delivered the sealed envelope to an
23 authorized carrier or driver authorized by the express carrier to receive documents.

24 _____ (BY FACSIMILE TRANSMISSION) On _____, at _____ a.m./p.m., at Westlake Village, California, I
25 served the above-referenced document on the above-stated addressee by facsimile transmission pursuant
26 to Rule 2008 of the California Rules of Court. The telephone number of the sending facsimile machine
27 was (818)703-8984 and the telephone number(s) of the receiving facsimile machine was (____) ____-____.
28 A transmission report was properly issued by the sending facsimile machine, and the transmission was
reported as complete and without error. Copies of the facsimile transmission cover sheet and the
transmission report are attached to this proof of service.

_____ (BY PERSONAL DELIVERY) By causing a true copy of the within document(s) to be personally hand-
delivered to the office(s) of the addressee(s) set forth above, on the date set forth above.

_____ (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

22 **X**

23 (UPLOADED TO LWDA WEB PORTAL) I caused the above-described documents to be delivered to the Labor
24 & Workforce Development Agency via online process at the PAGA Filing website (www.dir.ca.gov)
25 in accordance with the procedure imposed by the LWDA.

26 I certify that the above document was printed on recycled paper.

27 I declare under penalty of perjury that the foregoing is true and correct.

28 Executed on February 6, 2023, at Westlake Village, California.


AMELIA BOOTH