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8 **Attorneys for Plaintiff Michael Rodriguez**

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **IN AND FOR THE COUNTY OF SAN JOAQUIN**

11 **MICHAEL RODRIGUEZ, an individual,**

12 **Plaintiff,**

13 **v.**

14 **LANDMARK CAPITAL, INC., a**
15 **corporation; ZACH DOWNS, an individual;**
16 **and DOES 1-100, inclusive,**

17 **Defendants.**

Case No.: STK-CV-UOE-2022-00000382

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

18
19 The Parties hereto, Plaintiff Michael Rodriguez ("Plaintiff") as a proxy for the Labor and
20 Workforce Development Agency ("LWDA"), and Defendants Landmark Capital, Inc. and Zachary
21 Downs ("Defendants"), by and through their respective counsel of record, hereby stipulate and
22 agree as follows:

23 1. WHEREAS, on December 7, 2021, counsel for Plaintiff sent a letter to the LWDA
24 and Defendants, alleging violations of the Labor Code alleged to have occurred during Plaintiff's
25 employment with Defendants ("LWDA Letter").

26 2. WHEREAS, on January 20, 2022, Plaintiff filed a civil complaint in the above-
27 captioned matter, alleging violations of the Labor Code.

1 3. WHEREAS, on March 16, 2022, Plaintiff filed a First Amended Complaint, adding
2 a claim under the Private Attorneys General Act (“PAGA”, Lab. Code, § 2698, *et seq.*).

3 4. WHEREAS, subsequent to the filing of the Complaint, the Parties engaged in
4 formal discovery through which Defendant provided information regarding the number of
5 California employees believed to have been affected by the alleged violations during the relevant
6 time period. The total number of aggrieved employees potentially affected by the PAGA Claims as
7 of the date of this order (“Other Aggrieved Employee”) is believed to be eleven (11). However, as
8 Landmark Capital Inc. dissolved on November 5, 2021, Defendants have not retained personnel
9 and payroll records pertaining to these persons and both Parties’ attempts to obtain the records
10 from a third-party payroll service have been unsuccessful.

11 5. WHEREAS, Defendants deny all of Plaintiff’s allegations, both on factual and legal
12 bases.

13 6. WHEREAS, the Parties engaged in settlement negotiations primarily through their
14 respective attorneys: John P. Briscoe, a shareholder of Mayall Hurley P.C. and a member of that
15 firm’s employment litigation group; and Ricardo Aranda, a shareholder of Neumiller and Beardslee
16 and a member of the firm’s employment litigation group, both experienced litigators with
17 knowledge of employment law and the PAGA.

18 7. WHEREAS, the Parties have reached agreement on the terms of settlement
19 regarding the PAGA claims. (Plaintiff’s individual claims shall be resolved by way of a separate,
20 confidential settlement agreement.)

21 8. WHEREAS, Labor Code section 2699(l) requires that the court review and approve
22 any proposed settlement agreement pursuant to PAGA.

23 9. WHEREAS, Plaintiff and Plaintiff’s counsel concluded—after taking into account
24 the sharply disputed factual and legal issues involved in the Action, the risks attending further
25 prosecution, the discovery and investigation conducted to date, and the substantial benefits
26 received and to be received pursuant to the compromise and settlement of the Action, the nature of
27 the claimed violations and the wide discretion of the Court to reduce civil penalties imposed—that

1 settlement on the terms herein set forth is in the best interest of all interested parties, including the
2 Labor and Workforce Development Agency (the "LWDA"), and that the settlement adequately
3 serves the deterrent purposes of the PAGA when also considering that the employer, Landmark
4 Capital, Inc. is no longer in business.

5 10. WHEREAS, Plaintiff and Plaintiff's counsel have balanced their evaluation of the
6 validity and strength of the asserted claims against the problems of proof and the legal standards
7 governing the claims alleged.

8 11. WHEREAS, the Parties hereby agree to settle the PAGA claims at issue in the
9 Action ("the PAGA Settlement") for a total payment of **\$5,000.00** and dismiss with prejudice the
10 Ninth Cause of Action under the PAGA.

11 12. WHEREAS, the persons covered by the PAGA Settlement will be Plaintiff and all
12 other persons who were employed by Landmark Capital, Inc. in California, and classified as
13 exempt from overtime, at any time from January 10, 2021 to the date of approval of this PAGA
14 Settlement. The time period covered by the PAGA Settlement will be from January 10, 2021
15 through the date of this order ("the PAGA Timeframe"). The Released Parties include Zachary
16 Downs and Landmark Capital Inc., as well as Landmark Capital Inc.'s parents, predecessors,
17 successors, related companies, subsidiaries, affiliates, partners, officers, directors, managers,
18 servants, agents, employees, former employees, future employees, future entities, trusts,
19 employment agencies and professional employer organizations, and their employees, officers,
20 agents, representatives, attorneys, past or present, insurers, stockholders, fiduciaries, and other
21 service providers, and their successors and assigns, and all persons acting under, by, through, or in
22 concert with any of them (hereinafter collectively referred to as the "Released Parties").

23 13. Upon the Effective Date (the date the Court signs this stipulated order), the LWDA
24 and each of the Other Aggrieved Employees, including Plaintiff, hereby voluntarily and knowingly
25 release and forever discharge any and all claims against the Released Parties that could have been
26 premised or predicated on any claims, causes of action, or legal theories of relief described or
27 pleaded in the operative complaint filed in this action and the written notice of any such claims

submitted to the LWDA by Plaintiff under PAGA, specifically for violations of Labor Code sections 226, 226.7, 246, 510, 512, 1182.12, 1197, and 2802, arising from January 10, 2021 through the date of this order ("PAGA Released Claims").

14. Neither the distribution of Individual Settlement Payment checks to, nor the use or enjoyment of any Individual Settlement Payment checks by Other Aggrieved Employees shall constitute consideration offered or exchanged for the release of any Other Aggrieved Employees or private rights of action against any person.

15. This Stipulation of Settlement shall not operate as a waiver of any of Plaintiff's individual (i.e., non-PAGA) claims, which are to be resolved by a separate agreement.

16. WHEREAS, the sum of \$5,000 (the "Gross PAGA Settlement Sum") shall be allocated as follows:

- a. \$1,666, representing approximately 33 1/3% of the Gross PAGA Settlement Sum as attorneys' fees incurred for prosecution of the PAGA Claim; and
- b. \$1,463 for costs of suit.

The Net PAGA Settlement Amount of \$1,871 will be further allocated as follows:

- e. \$467.75, or 25 percent (25%) of the Net PAGA Settlement Sum will be distributed by Defendant to Plaintiff and the Other Aggrieved Employees who worked during the PAGA Timeframe. These payments are referred to as "Individual Settlement Payments." Each employee will receive a proportional share of the net PAGA Settlement Sum based on the number of pay periods he/she was employed during the PAGA Timeframe. Any such employees still employed with or on behalf of Defendant will receive the appropriate credit apart from their regular pay. Defendant will send each Other Aggrieved Employee their portion of the settlement by mail to the last known address. Settlement checks issued to the Other Aggrieved Employees pursuant to this Agreement shall expire 180 days from the date they are issued. Any unclaimed funds after the 180 days shall be remitted to the State Controller's Unclaimed Property Fund.
- f. \$1,403.25 or 75 percent (75%) of the Net PAGA Settlement Sum shall be paid to the LWDA in accordance with Section 2699(i) of the California Labor Code.

17. In no event shall Defendant pay more than \$5,000.00 pursuant to this Stipulation of Settlement.

18. WHEREAS, on the condition that the Court approves this Stipulation and enters the attached Order: the PAGA Settlement Sum will be paid as follows:

- a. Within three (3) calendar days after the Court enters the attached Order, Defendants shall (1) pay to Mayall Hurley P.C. attorney's fees in the amount of \$1,666 and costs in the amount of \$1,463; (2) pay \$1,403.25 to the LWDA; and (3) pay the Individual Settlement Payments to the Other Aggrieved Employees.
- b. With regard to the Other Aggrieved Employees with the exception of Plaintiff, their Individual Settlement Payments shall be sent to each Other Aggrieved Employee by U.S. First Class mail to the Other Aggrieved Employee's last known address. If Defendants do not have a last-known address for an Other Aggrieved Employee, that person's Individual Settlement Payment will be sent directly to the State Controller's Unclaimed Property Fund in the name of that person. A letter explaining this Settlement Agreement will be included in the mailing of each Other Aggrieved Employee's check. Plaintiff's payment will be sent with the other consideration provided for resolution of his individual claims. It will be conclusively presumed that any Other Aggrieved Employee's check was received if the payment check has not been returned within thirty (30) days of the original mailing of the payment check.
- c. Settlement checks shall remain valid and negotiable for one hundred twenty (120) calendar days from the date of their issuance. If there are uncashed checks following this period, Defendant will ensure that uncashed funds shall be forwarded to the State Controller's Unclaimed Property Fund in the name of the Other Aggrieved Employee who did not cash his or her Individual Settlement Payment.
- d. The settlement payments set forth above will be reported on IRS Form 1099s. The Parties acknowledge and agree that all settlement payments set forth under this Agreement are attributable as penalties. None are attributable as wages. Accordingly, the parties acknowledge and agree that Defendants are not responsible for any employer-side taxes in connection with any PAGA settlement payments under this Agreement. Plaintiff, Mayall Hurley P.C., and the Other Aggrieved Employees shall be solely responsible for the reporting and payment of their share of any federal, state and/or municipal income or other taxes on payments made pursuant to this Agreement, and shall hold Defendants and Defendants' counsel free and harmless from any claims resulting from treatment of such payments as non-taxable, including the treatment of such payments as not subject to withholding or deduction for payroll and employment taxes. No party has made any representation to any of the other Parties as to the taxability of any payments pursuant to this agreement, including the payments to Plaintiff and the Other Aggrieved Employees, the payments to Plaintiff's counsel, or otherwise as to the tax implications of any provision of this Agreement.

19. The Parties jointly request that the Court approve the penalties sought as part of the
PAGA Settlement.

20. This Stipulation is made for the sole purpose of settling this Action. This
Stipulation and the settlement it evidences are made in compromise of disputed claims. Because
this action was pleaded as a PAGA action, this Stipulation must receive approval by the Court.
Accordingly, the Parties enter into this Stipulation and associated settlement on a conditional basis.
If the Court does not enter an order granting approval of this Stipulation, this Stipulation shall be
deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred to or
utilized for any purpose whatsoever; and the negotiation, terms and entry of the Stipulation shall
remain subject to the provisions of California Evidence Code sections 1119 and 1152, Federal Rule
of Evidence 408, and any other analogous rules of evidence that may be applicable. If the Court
does enter an order granting approval of this Stipulation, and following payment of the PAGA
Settlement Sum as set forth in Section 20(a), *supra*, Plaintiff shall cause to be filed a Request for
Dismissal as to the Ninth Cause of Action, with prejudice.

21. Plaintiff's attorney has calculated the attorneys' fees included in paragraph 16. The
Parties agree that if the Court approves an amount of attorneys' fees less than the amount set forth
in Paragraph 16, the unapproved portion shall revert to the Net PAGA Settlement Amount to be
distributed between the Plaintiff, the Other Aggrieved Employees and the LWDA in the same
percentages as set forth in Paragraph 16.

IT IS SO STIPULATED.

PLAINTIFF AND PLAINTIFF'S COUNSEL

DATED: 6/19/2023

DocuSigned by:
Michael Rodriguez
0B2D8F35856847D...
Plaintiff Michael Rodriguez

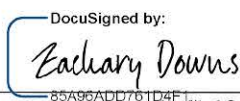
1 DATED: 6/19/2023

MAYALL HURLEY P.C.

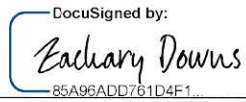
2
3 By: 
4 John P. Briscoe
5 Attorneys for Plaintiff

6 **DEFENDANTS AND DEFENDANTS' COUNSEL**

7
8
9 DATED: 6/21/2023

10 By: 
11 Zachary Downs, on behalf of Landmark
12 Capital, Inc.

13
14 DATED: 6/21/2023

15 By: 
16 Zachary Downs, individually

17 DATED: June 20, 2023

NEUMILLER & BEARDSLEE

19
20 By: 
21 Ricardo Aranda
22 Attorneys for Defendant

ORDER

Upon review of the foregoing stipulation entered into by and between the parties in the above-referenced action, and good cause appearing therefor,

IT IS HEREBY ORDERED that the foregoing stipulation is hereby approved and the Court approves the Parties' PAGA Settlement pursuant to Labor Code § 2699(l). The parties are ordered to perform their respective duties as stipulated thereto.

DATED:

Judge of the Superior Court