

07/06/2023

David W. Slayton, Executive Officer / Clerk of Court

By: D. Provencio Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES- GLENDALE COURTHOUSE

JOSEPH GAMIL AND MARIE GAMIL,
individually and on behalf of all other
Aggrieved Employees;

Plaintiff,

vs.

444-448 W. WINDSOR, LLC, a Delaware
Limited Liability Company; CODA
EQUITIES, LLC, a Delaware Limited Liability
Company; CODA EQUITIES II, LLC, a
Delaware Limited Liability Company; CODA
MANAGEMENT INC., a Delaware
Corporation; WESTERN HOLDINGS
GROUP, a California Corporation; DRU
BOYARSKY, an individual; and DOES 1
through 100, inclusive,

DEFENDANTS.

Case No. 22GDCV00100

*[Assigned for all purposes to the Honorable
David A. Rosen, Dept. E]*

**~~PROPOSED~~ ORDER APPROVING
PAGA SETTLEMENT**

*[FILED CONCURRENTLY WITH STIPULATION
REQUESTING APPROVAL OF PAGA
SETTLEMENT; DECLARATION OF HAIG B.
KAZANDJIAN IN SUPPORT THEREOF; AND
[PROPOSED] FINAL JUDGMENT]*

Complaint Filed: February 25, 2022

Trial Date: None

Pursuant to the Stipulation of the Parties and good cause appearing: Having considered the
Parties' submissions, and all legal authorities and documents submitted in support thereof,
including the PAGA Settlement Agreement ("PAGA Settlement Agreement" or "Settlement"),
attached hereto as **Exhibit 1**, and good cause appearing, IT IS HEREBY ORDERED that the
Parties' request is GRANTED, subject to the following findings and orders:

a) All terms used herein shall have the same meaning as defined in the PAGA Settlement

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Agreement attached hereto as **Exhibit 1**.

b) The Court hereby approves the terms set forth in the PAGA Settlement Agreement and finds that the PAGA Settlement Agreement is, in all respects, fair, adequate, and reasonable and directs the Parties to effectuate the PAGA Settlement Agreement according to its terms. The Court finds that the PAGA Settlement Agreement has been reached as a result of informed and non-collusive arm's-length negotiations. The Court further finds that the Parties were able to reasonably evaluate their respective positions. The Court also finds that settlement now will avoid additional and potentially substantial litigation costs, as well as delay and risks if the Parties were to continue to litigate the case. The Court has reviewed the monetary recovery being provided as part of the Settlement and recognizes the value accorded to the State of California and Aggrieved Employees.

c) The PAGA Settlement Agreement is not an admission by Defendants or by any other Released Party, nor is this Order a finding of the validity of any allegations or of any wrongdoing by Defendants. Neither this Order, the PAGA Settlement Agreement, nor any document referred to herein, nor any action taken to carry out the PAGA Settlement Agreement, may be construed as, or may be used as, an admission of any fault, wrongdoing, omission, concession or liability whatsoever by or against Defendants or any of the other Released Parties.

d) Defendants shall pay the Aggrieved Employees pursuant to the procedure described in the PAGA Settlement Agreement attached hereto as **Exhibit 1**.

e) The payments to the Aggrieved Employees shall be mailed to the Aggrieved Employees with the Notice attached to Exhibit 1, as **Exhibit A**.

f) After reviewing the proposed PAGA Settlement Agreement, the Declaration of Haig B. Kazandjian in Support of Joint Stipulation For Approval of PAGA Settlement, and the Joint Stipulation and the Exhibits attached to the Kazandjian Declaration, the Court finds that the PAGA penalties awarded in this matter are fair and reasonable.

g) The Court hereby confirms Haig B. Kazandjian Lawyers, APC, Haig B. Kazandjian and Cathy Gonzalez as PAGA Counsel.

h) The Court hereby awards attorneys' fees in the amount of 40% of the total Settlement amount, which is \$10,000.00 in attorneys' fees and \$4,888.01 in attorneys' costs incurred as of the date of the filing of the Stipulation for Approval of PAGA Settlement. The Court finds that attorneys' fees and costs requested are reasonable in light of the amount recovered and the relevant factors under California law. The payment of fees to PAGA Counsel shall be made in accordance with the terms of the Settlement.

i) The Court appoints Phoenix Settlement Administrators as the Settlement Administrator and directs that the PAGA penalty payments be distributed by Phoenix Settlement Administrators as set forth in the PAGA Settlement Agreement, Joint Stipulation, and this Order. The Court approves Phoenix Settlement Administrators' Administration Fees for its services in this matter in an amount not to exceed \$2,200.00.

j) Defendants and Plaintiffs shall have no further liability for costs, expenses, interest, attorneys' fees, or for any other charge, expense, or liability, except as may be provided in the PAGA Settlement Agreement.

k) The Court further orders, adjudges and decrees that each Aggrieved Employee (including Plaintiffs) and the State of California, shall fully release and forever discharge Defendants, for the Covered Period of December 22, 2020 through the date of this Order, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, assigns, and the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Complaint and the PAGA Notice.

m) The Court shall have and retain continuing jurisdiction pursuant to California Code of Civil Procedure section 664.4 over this action and the Parties, and the State of California as real party in interest for the Aggrieved Employees, after the entry of this Order, to the fullest extent necessary to interpret, enforce and effectuate the terms and intent of the PAGA Settlement Agreement and this Order.

DATED: 07/06/2023



Honorable David A. Rosen
David A. Rosen, Judge

EXHIBIT 1

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiffs Joseph Gamil and Marie Gamil (together, “Plaintiffs”), on the one hand, and Defendants 444-448 W. Windsor, LLC; Coda Equities, LLC; Coda Equities II, LLC; Coda Management, Inc.; Western Holdings Group; and Dru Boyarsky (collectively “Defendants”), on the other hand. The Agreement refers to Plaintiffs and Defendants collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiffs’ PAGA lawsuit alleging wage and hour violations against Defendants captioned *Joseph Gamil, et al. v. 444-448 W. Windsor, LLC, et al.*, Case No. 22GDCV00100, initiated on February 25, 2022, and pending in Superior Court of the State of California, County of Los Angeles.
- 1.2. “Administrator” means Phoenix Settlement Administrators, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.
- 1.4. “Aggrieved Employee” means all non-exempt, hourly paid employees who worked for Defendants in California during the PAGA Period.
- 1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in Defendant Western Holdings Group’s possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.
- 1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.
- 1.7. “Court” means the Superior Court of California, County of Los Angeles.

1.8. “Defense Counsel” means:

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*Counsel for Defendant Western
Holdings Group*

1.9. “Effective Date” means the date the Court enters the Approval Order approving the settlement of the Action.

1.10. “Gross Settlement Amount” means TWENTY-FIVE THOUSAND DOLLARS AND ZERO CENTS (\$25,000.00) which is the total amount to be paid on behalf of Defendants under the Settlement except as provided in Paragraph 10 below. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator’s Expenses Payment.

1.11 “Individual Action” means the lawsuit Plaintiffs filed on February 28, 2022 against 444-448 W. Windsor, LLC; Coda Equities, LLC; Coda Equities II, LLC; Coda Management, Inc.; Western Holdings Group; and Mashcole Property Management, Inc., titled *Gamil, et al. v. 444-448 W. Windsor, et al.*, Case No. 22DCV00102, and pending in Superior Court for the State of California, for the County of Los Angeles.

1.12. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.

1.13. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

1.14. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1.15. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be distributed as the LWDA PAGA Payment (75% of Net Settlement Amount); and as Individual PAGA Payments (25% of Net Settlement Amount on a pro rata basis.

- 1.16. “PAGA Counsel” means Haig B. Kazandjian Lawyers, APC, the attorneys representing the Plaintiffs in the Action.
- 1.17. “PAGA Counsel Fees Payment” and “PAGA Counsel Litigation Expenses Payment” mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.18. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendants for at least one day during the PAGA Period.
- 1.19. “PAGA Period” means the period from December 22, 2020 to the Effective Date.
- 1.20. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.21. “PAGA Notice” means Plaintiffs’ December 2, 2021 letter to Defendants and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.22. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$1,978.00) and the 75% to LWDA (\$5,933.99) in settlement of PAGA claims.
- 1.23. “Plaintiffs” means Joseph Gamil and Marie Gamil, the named plaintiffs in the Action.
- 1.24. “Approval Order” means the proposed Court Order Granting Approval of PAGA Settlement.
- 1.25. “Released PAGA Claims” means the claims being released by the Plaintiffs and PAGA Counsel and as described in Paragraph 5 below.
- 1.26. “Released Parties” means: Defendants and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, reinsurers, predecessors, successors, assigns, subsidiaries, and affiliates.
- 1.27. “Settlement” means the disposition of the Action effected by this Agreement and the Approval Order.
- 1.28. “Defendants” means named Defendants 444-448 W. Windsor, LLC; Coda Equities, LLC; Coda Equities II, LLC; Coda Management, Inc.; Western Holdings Group; and Dru Boyarsky.

2. RECITALS.

- 2.1. On February 25, 2022, Plaintiffs commenced this Action by filing a Complaint alleging a single cause of action under PAGA against Defendants for PAGA penalties. Defendants deny

the allegations in the Operative Complaint, deny any failure to comply with the laws identified in in the Operative Complaint and deny any and all liability for the causes of action alleged.

- 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiffs gave timely written notice to Defendants and the LWDA by sending the PAGA Notice.
- 2.3. On November 18, 2022, the Parties participated in an all-day mediation presided over by Michael D. Young, Esq. which led to this Agreement to settle the Action.
- 2.4. Prior to mediation, negotiating the Settlement, Plaintiff obtained, through informal discovery, the size of the Aggrieved Employee Group, Plaintiff Joseph Gamil's wage statements and time records as exemplars¹, and the number of pay periods the Aggrieved Employees worked during the PAGA Period.
- 2.5. The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 10 below, the Parties agree that Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) and no more shall be paid on behalf of Defendants as the Gross Settlement Amount. Defendants have no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to the Defendants.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Approval Order:

- 3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 40% which is currently estimated to be \$10,000.00 and PAGA Counsel's actual Litigation Expenses Payment of \$4,888.01. Defendants will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiffs and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiffs' Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel

¹ Defendants contend that Plaintiff Marie Gamil was never an employee of Defendants, and they have no records evidencing that she ever worked as an employee for Defendants.

Fees Payment and PAGA Counsel Litigation Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendants harmless, and shall indemnify Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.2. To the Administrator: An Administrator Expenses Payment not to exceed \$2,200.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$2,200.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.3. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$7,911.99 to be paid from the Gross Settlement Amount, with 75% (\$5,933.99) allocated to the LWDA PAGA Payment and 25% (\$1,978.00) allocated to the Individual PAGA Payments.

3.2.3.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$1,978.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.3.2. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendants estimate there are 56 Aggrieved Employees who worked a total of 1,654 PAGA Pay Periods.

4.2. Aggrieved Employee Data. Within 30 days of the Approval Order, Western Holdings Group will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Western Holdings Group must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

4.3. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 30 days after the Effective Date, provided that Plaintiffs have not revoked the settlement agreement reached in the Individual Action. **If Plaintiffs revoke the settlement agreement reached in the Individual Action, this Agreement shall be null and void and Defendants shall have no obligations under this Agreement, including but not limited to, any obligation to pay Plaintiffs or PAGA Counsel any settlement monies.**

4.4. Payments from the Gross Settlement Amount. Within 10 business days after Defendants fund the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fees Payment, and the PAGA Counsel Litigation Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.

4.4.1. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within 7 business days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

4.4.3. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

4.4.4. The payment of Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS. Effective on the date when Defendants fully fund the entire Gross Settlement Amount, Plaintiffs and PAGA Counsel will release claims against all Released Parties as follows:

5.1 Plaintiffs' Release. Plaintiffs and their respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the PAGA Period, including, but not limited to: all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice, including but not limited to: failure to pay minimum wages, failure to pay overtime wages; failure to provide meal periods; failure to provide rest periods; failure to timely pay wages during employment; failure to timely pay wages upon separation of employment; failure to pay reporting pay; failure to pay split shift premiums; failure to provide accurate wage statements; failure to reimburse business expenses; failure to maintain and provide employment records; and PAGA claims for civil penalties due to the alleged Labor Code violations by Defendants during the PAGA Period including alleged violations of California Labor Code sections 201-204, 210, 216, 218.5, 224, 225.5, 226, 226.3, 226.4, 226.6, 226.7, 245-249, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, and their subsections, applicable IWC Wage Order 5-2001 ("Plaintiffs' Release"). Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the PAGA Period. Plaintiffs acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be true but agree, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them.

5.1.1 Plaintiffs' Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.

5.2 Release by Aggrieved Employees:

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

5.3 Release by PAGA Counsel:

PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

6. MOTION OR STIPULATION FOR APPROVAL OF SETTLEMENT. The Parties agree to jointly prepare and file a stipulation, or motion for approval of this Settlement.

6.1 Plaintiffs' Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiffs, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (iv) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiffs and PAGA Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.2 Responsibilities of PAGA Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement no later than 30 days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's Approval Order to the Administrator.

6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. PUBLICITY. Plaintiffs and PAGA Counsel agree that they have not and will not publish this Agreement. More specifically, Plaintiffs and PAGA Counsel agree that they

will not report the Settlement in any medium or in any publication, shall not post or report anything regarding the claims of Plaintiffs or the Settlement on any website, and shall not contact any reporters or media regarding the Settlement. However, nothing in the provision shall be construed from as preventing the Parties from taking following actions: (a) the Parties shall have the right to disclose the Agreement as may be required under federal or state tax and/or securities laws or under Generally Accepted Accounting Principles; (b) the Parties may refer to the Agreement, describe its terms, and submit a copy of the Agreement to the Court, LWDA, and the Settlement Administrator in connection with any proceedings that are reasonably necessary to obtain approval of the Settlement; (c) the Parties or their representatives may communicate with accountants or legal advisors regarding the Agreement; and (d) Plaintiff's Counsel may communicate confidentially with Aggrieved Employees as necessary to fulfill their obligations as Plaintiff's Counsel to respond to inquiries by Aggrieved Employees about this Settlement. Except for the previously listed exceptions, in response to any inquiries about the Action, the Parties shall state only that "the case was resolved, and it was resolved confidentially."

8. SETTLEMENT ADMINISTRATION.

- 8.1 Selection of Administrator. The Parties have jointly selected Phoenix Settlement Administrators to serve as the Administrator and verified that, as a condition of appointment, Phoenix Settlement Administrators agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 8.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of providing reports to state and federal tax authorities.
- 8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 8.4 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

9. AGGRIEVED EMPLOYEE SIZE ESTIMATES & ESCALATOR CLAUSE

Based on its records, Defendants estimate that, as of the date of this Settlement Agreement, there are 56 Aggrieved Employees who worked 1,654 Pay Periods during the PAGA Period. If more than 1,654 Pay Periods are identified for the PAGA Period, the Gross Settlement Amount will be increased on a pro rata basis according to the number of additional Pay Periods.

10. CONTINUING JURISDICTION OF THE COURT. The Parties agree that, after entry of the Approval Order, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or the Approval Order, (ii) addressing settlement administration matters, and (iii) addressing such post-matters as are permitted by law.

10.1 Waiver of Right to Appeal. Provided the Approval Order is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties, their respective counsel waive all rights to appeal the Approval Order, including all rights to appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Approval Order, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is fully resolved, except as to matters that do not affect the amount of the Net Settlement Amount.

11. ADDITIONAL PROVISIONS.

11.1 No Admission of Liability or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that Defendants' defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Defendants reserve all available defenses to the claims in the Action, and Plaintiffs reserve the right to contest Defendants' defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

11.2 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

11.3 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiffs and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

- 11.4 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 11.5 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Parties in this Settlement.
- 11.6 No Tax Advice. Neither Plaintiffs, PAGA Counsel, Defendants, nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 11.7 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 11.8 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 11.9 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 11.10 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 11.11 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 11.12 Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds,

Plaintiffs shall destroy all paper and electronic versions of Aggrieved Employee Data received from Defendants unless, prior to the Administrator's payment of all Settlement Funds, Defendants make a written request to PAGA Counsel for the return, rather than the destructions, of Aggrieved Employee Data.

11.13 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

11.14 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

11.15 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiffs:

Haig B. Kazandjian
Cathy Gonzalez
Haig B. Kazandjian Lawyers, APC
801 North Brand Boulevard, Suite 970
Glendale, California 91203
haig@hbklawyers.com
cathy@hbklawyers.com

To Defendants:

Andrea F. Oxman
Kishaniah Dhamodaran
Jackson Lewis P.C.
725 S. Figueroa Street, Suite 2500
Los Angeles, California 90017
Andrea.oxman@jacksonlewis.com
Kishaniah.dhamo@jacksonlewis.com
*Counsel for Defendants 444-448 W. Windsor, LLC;
Coda Equities, LLC; Coda Equities II, LLC; Coda
Management, Inc.; and Dru Boyarsky*

Joshua Feldman
Littler Mendelson P.C.
2049 Century Park East, 5th Floor
Los Angeles, California 90067
jfeldman@littler.com
*Counsel for Defendant Western
Holdings Group*

11.16 Severability. In the event that any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision if the

Parties' counsel mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in the Agreement.

11.17 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

11.18 Stay of Litigation. The Parties agree that upon the execution of this Agreement the Action shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

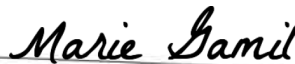
JOSEPH GAMIL

Dated: 06/01, 2023



MARIE GAMIL

Dated: 06/01, 2023



DRU BOYARSKY

Dated: May 3, 2023



CODA EQUITIES, LLC

Dated: May 3, 2023


By: Dru Boyarsky

CODA EQUITIES II, LLC

Dated: May 3, 2023


By: Dru Boyarsky

CODA MANAGEMENT, INC.

Dated: May 3, 2023


By: Dru Boyarsky

444-448 W. WINDSOR, LLC

Dated: May 3, 2023


By: Dru Boyarsky

WESTERN HOLDINGS GROUP

Dated: _____, 2023

By: _____

HAIG B. KAZANDJIAN LAWYERS, APC

Dated: June 1, 2023


Haig B. Kazandjian
Cathy Gonzalez
Attorneys for Plaintiffs JOSEPH
GAMIL and MARIE GAMIL

[Signatures Continued on Next Page]

CODA EQUITIES II, LLC

Dated: _____, 2023

By:

CODA MANAGEMENT, INC.

Dated: _____, 2023

By:

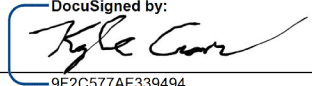
444-448 W. WINDSOR, LLC

Dated: _____, 2023

By:

WESTERN HOLDINGS GROUP

Dated: May 5 _____, 2023

DocuSigned by:


By: 9F2C577AF339494...
KYLE CROWN

HAIG B. KAZANDJIAN LAWYERS, APC

Dated: _____, 2023

Haig B. Kazandjian
Cathy Gonzalez
Attorneys for Plaintiffs JOSEPH
GAMIL and MARIE GAMIL

[Signatures Continued on Next Page]

JACKSON LEWIS P.C.



Dated: May 9, 2023

Andrea F. Oxman

Kishaniah Dhamodaran

Attorneys for Defendants 444-448 W.
WINDSOR, LLC; CODA EQUITIES,
LLC; CODA EQUITIES II, LLC;
CODA MANAGEMENT, INC; and
DRU BOYARSKY

LITTLER MENDELSON P.C.



Dated: May 8,, 2023

Joshua Feldman

Attorneys for Defendant WESTERN
HOLDINGS GROUP

4877-7371-5041, v. 1

EXHIBIT A

**SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES**

*This is NOT a solicitation from a lawyer.
This is NOT a lawsuit against you and you are NOT being sued.*

NOTICE OF SETTLED REPRESENTATIVE ACTION

If you were employed by 444-448 W. Windsor, LLC; Coda Equities, LLC; Coda Equities II, LLC; Coda Management, Inc.; Western Holdings Group; and/or Dru Boyarsky as an hourly, non-exempt employee in California at any time during the time period from December 22, 2020 and [REDACTED], 20[REDACTED], then you are receiving money from a representative action settlement.

PLEASE READ THIS NOTICE CAREFULLY!

I. What Is the Purpose of This Settlement?

The purpose of this notice is to let you know that there was a representative action lawsuit that settled in the Superior Court of California for the County of Los Angeles (the “Court”), and you are considered to be an Aggrieved Employee for purposes of this settlement. The lawsuit was filed by alleged former employees of 444-448 W. Windsor, LLC; Coda Equities, LLC; Coda Equities II, LLC; Coda Management, Inc.; Western Holdings Group; and/or Dru Boyarsky, (“Defendants”) named Joseph Gamil and Marie Gamil (“Plaintiffs”) in the Court (the “Lawsuit”). On [REDACTED], 2023, a Judge of the Court approved the settlement of the Lawsuit entitled *Joseph Gamil, et al. v. 444-448 W. Windsor, LLC., et al.* Sup. Ct. (Los Angeles) Case No. 22GDCV00100 (the “Settlement”). The Court did not rule on the merits of Plaintiffs’ claims or the defenses of Defendants.

II. What Is the Position of Defendants on the Settlement?

Defendants deny any wrongdoing and are entering this Settlement in order to avoid the costs, uncertainty and burden of litigation. Defendants are not admitting to any allegations in the Lawsuit. Again, Defendants deny that they have engaged in any unlawful activity, that they failed to comply with the law in any material respect, or that they have any liability to anyone under the claims asserted in the Lawsuit.

III. Why Did I Get This Notice?

You received this notice because Defendants’ records identify you as an Aggrieved Employee. Specifically, an “Aggrieved Employee” is defined as follows: all non-exempt, hourly paid employees who worked for Defendants in California during the PAGA Period.

PAGA Period is defined as follows: the period from December 22, 2020 to the date the Court entered an Order approving the Settlement, [REDACTED].

IV. Who Are the Parties in This Representative Action?

This Lawsuit was filed against Defendants. Plaintiffs, who are alleged former employees, brought the Action on behalf of themselves and all Aggrieved Employees, as that term is defined above.

V. What is the Settlement?

Defendants have agreed to pay a Settlement Sum of \$25,000.00. This sum includes the following expenses: (1) fees for claims administration, which are estimated to be \$2,200.00, (2) the Labor Workforce Development Agency Payment in the estimated amount of \$5,933.99, and (3) Plaintiffs' attorneys' fees in the amount \$10,000.00 (i.e., 40% of the Settlement Sum) and actual litigation costs of \$4,888.01. Each of these expense amounts was approved by the Court on _____, 2023 ("Court-approved expenses").

After the deduction of the Court-approved expenses from the Settlement Sum, the remaining sum in the amount of \$1,978.00 ("Employee Net Settlement Amount") will be available to pay Aggrieved Employees. Each Aggrieved Employee is receiving a proportionate share that is based on the total number of pay periods the individual Aggrieved Employee worked for Defendants during the time period from December 22, 2020 to _____.

The amount paid to each Aggrieved Employee will be allocated 100% to penalties and will be reported on an IRS Form 1099. Plaintiffs and Defendants agree that all Aggrieved Employees who receive payment pursuant to this Settlement will be responsible for any and all tax obligations associated with such receipt. **You will be responsible for correctly characterizing this compensation for tax purposes and paying any taxes that may be due on the payment you receive. Neither Counsel for Plaintiffs, Counsel for Defendants, nor the Settlement Administrator may legally provide you with advice regarding the tax implications of the receipt of this Settlement payment.**

VI. What is the Effect of This Settlement on My Rights?

Each Aggrieved Employee is releasing Released Claims (defined below) against Defendants and all related parties.

Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

VII. Why Does the Labor Workforce Development Agency Receive Any Money?

PAGA allows private citizens to act on behalf of the State of California and recover civil penalties for violations of California's Labor Code. Seventy-five percent (75%) of any such recovery *must* be given to the State by law. Without PAGA, Plaintiffs would not have been able to bring this Lawsuit on behalf of the Aggrieved Employees. In the present case, the Settlement provides that \$5,933.99 be paid to the State as its share of the penalties recovered in this Lawsuit.

VIII. How Much Did It Cost to Administer the Settlement?

It costs approximately \$2,200.00 for the Settlement Administrator to fully administer the Settlement.

IX. Who is the Settlement Administrator?

The Settlement Administrator is an independent third party selected by Plaintiffs and Defendants to send this notice, process and issue settlement checks, and otherwise administer the Settlement. The Court has approved

Phoenix Settlement Administrators to be the Settlement Administrator in this Lawsuit. You may contact the Settlement Administrator at:

GO TO OUR WEBSITE AT

<https://>

CALL OUR REPRESENTATIVES AT

SEND US MAIL AT

X. Who Can I Contact If I Have Any Questions?

You can contact the Settlement Administrator Phoenix Settlement Administrators, for this representative action settlement. Ask about *Joseph Gamil. v. 444-448 W. Windsor, LLC, et al.* Case No. 22GDCV00100.

IMPORTANT: PLEASE DO NOT TELEPHONE THE COURT REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS.

4886-1612-6042, v. 2

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 801 North Brand Boulevard, Suite 970, Glendale, California 91203.

On July 5, 2023, I served the foregoing document(s) described as: [PROPOSED] ORDER APPROVING PAGA REPRESENTATIVE SETTLEMENT by method indicated below, on the interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

Andrea F. Oxman
Kishaniah Dhamodaran
Jackson Lewis P.C.
725 S. Figueroa Street, Suite 2500
Los Angeles, California 90017
Andrea.oxman@jacksonlewis.com
Kishaniah.dhamo@jacksonlewis.com
Counsel for Defendants 444-448 W. Windsor, LLC;
Coda Equities, LLC; Coda Equities II, LLC; Coda
Management, Inc.; and Dru Boyarsky

Joshua Feldman
Littler Mendelson P.C.
2049 Century Park East, 5th Floor
Los Angeles, California 90067
jfeldman@littler.com
Counsel for Defendant Western
Holdings Group

[X] **BY ELECTRONIC MAIL:** I transmitted the foregoing document(s) by electronic mail from ingrid@hbklawyers.com to the electronic mail addresses indicated on the attached mailing list. The transmission was reported as complete and without error.

[X] (STATE): I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 5, 2023, at Glendale, California.

/s/ Ingrid Cortez

Ingrid Cortez

4875-7027-9018, v. 1