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Attorneys for Plaintiff
Jose Argueta

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

JOSE ARGUETA, individually, and on behalf of
all others similarly situated,

Plaintiff,

vs.

ASMB, LLC, a limited liability company; and
DOES 1 through 10, inclusive,

Defendants

Case No.: 22STCV08327
(REPRESENTATIVE ACTION)

Assigned For All Purposes to the Honorable
Richard L. Fruin

PAGA SETTLEMENT AGREEMENT

Complaint filed: March 8, 2022
Trial date: Not set

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Jose Argueta (“Plaintiff”) and defendant ASMB, LLC (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. **DEFINITIONS.**

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *Jose Argueta v. ASMB, LLC* initiated on March 8, 2022 and pending in Superior Court of the State of California, County of Los Angeles (LASC Case No. 22STCV08327).
- 1.2. “Administrator” means ILYM Group, Inc., 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 the Settlement.
- 1.4. “Aggrieved Employee” means all non-exempt employees who worked at ASMB, LLC in California at any time during the PAGA Period.
- 1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in Defendant’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. “Approval Order” means the proposed Court Order Granting Approval of PAGA Settlement.

- 1.8. “Court” means the Superior Court of California, County of Los Angeles.
- 1.9. “Defendant” means named Defendant ASMB, LLC.
- 1.10. “Defense Counsel” means Martin Law Firm, PC, the attorneys representing Defendant in the Action.
- 1.11. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order approving the PAGA Settlement; and (b) the Judgment is final. The Judgment is final when it is no longer subject to appeal, or sixty-one (61) days after Judgment is entered, as long as no notice of appeal is filed; or, if a notice of appeal is filed, the date that appeal is fully resolved and no longer subject to appeal.
- 1.12. “Gross Settlement Amount” means \$135,000.00 which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 8 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, Plaintiff’s Payment as set forth in section 3.2.3, and the Administrator’s Expenses.
- 1.13. “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.
- 1.14. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.15. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.16. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.17. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, Plaintiff’s Payment as set forth in section 3.2.3, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA

1 Payments.

2 1.18. "PAGA Counsel" means Moon & Yang APC, the attorneys representing Plaintiff in the
3 Action.

4 1.19. "PAGA Counsel Fees Payment" and "PAGA Counsel Litigation Expenses Payment"
5 mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys'
6 fees and expenses, respectively, incurred to prosecute the Action.

7 1.20. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked
8 for Defendant for at least one day during the PAGA Period.

9 1.21. "PAGA Period" means the period from February 20, 2021 to the date the Court approves
10 the PAGA settlement.

11 1.22. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).

12 1.23. "PAGA Notice" means Plaintiff's February 20, 2022 letter to Defendant and the LWDA
13 providing notice pursuant to Labor Code section 2699.3, subd. (a).

14 1.24. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the
15 Gross Settlement Amount, allocated 25% to the Aggrieved Employees and 75% to the
16 LWDA in settlement of PAGA claims.

17 1.25. "Plaintiff" means Jose Argueta, the named plaintiff in the Action.

18 1.26. "Released PAGA Claims" means all PAGA claims that were alleged or reasonably could
19 have been alleged in the Second Amended Complaint and the PAGA notice and as
20 described in Paragraph 5 below.

21 1.27. "Released Parties" means: Defendant, including Defendant's joint employers, staffing
22 companies, officers, owners, directors, shareholders, agents, assigns, attorneys, insurers,
23 agents, independent contractors, employees, predecessors, successors, parents, subsidiaries,
24 affiliates, related entities or other representatives of any kind.

25 1.28. "Settlement" means the disposition of the Action effected by this Agreement and the
26 Judgment.

1 **2. RECITALS.**

2 2.1. On March 8, 2022, Plaintiff commenced this Action by filing a Complaint alleging causes
3 of action against Defendant for (1) Failure to Pay Minimum Wage and Straight Time
4 Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime
5 Compensation [Cal. Lab. Code §§ 1194 and 1198]; (3) Failure to Provide Meal Periods
6 [Cal. Lab. Code §§ 226.7 and 512]; (4) Failure to Authorize and Permit Rest Breaks [Cal.
7 Lab. Code § 226.7]; (5) Failure to Indemnify Necessary Business Expenses [Cal. Lab.
8 Code § 2802]; (6) Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§
9 201-203]; (7) Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code §
10 226]; and (8) Unfair Business Practices [Cal. Bus & Prof. Code §§ 17200, et seq.]. On May
11 3, 2022, Plaintiff filed a First Amended Complaint alleging a cause of action against
12 Defendant for civil penalties under PAGA. On August 31, 2022, the Parties stipulated to
13 dismiss class claims due to the existence of an arbitration agreement and on September 9,
14 2022, Plaintiff file a Second Amended Complaint with PAGA as the sole cause of action.
15 The Second Amended Complaint is the operative complaint in the Action (the “Operative
16 Complaint.”) Defendant denies the allegations in the Operative Complaint, denies any
17 failure to comply with the laws identified in the Operative Complaint and denies any and
18 all liability for the causes of action alleged.

19 2.2. Pursuant to Labor Code section 2699.3 subd. (a), Plaintiff gave timely written notice to
20 Defendant and the LWDA by sending the PAGA Notice.

21 2.3. On March 23, 2023, the Parties participated in an all-day mediation presided over by
22 Kelly Knight, Esq., which led to this Agreement to settle the Action.

23 2.4. Prior to mediation, Plaintiff obtained, through informal discovery, policy documents, time
24 and pay records, and data points related to the Aggrieved Employees.

25 2.5. The Parties, PAGA Counsel, and Defense Counsel represent that they are not aware of any
26 other pending matter or action asserting claims that will be extinguished or affected by the
27 Settlement.
28

1 **3. MONETARY TERMS.**

2 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Defendant
3 promises to pay \$135,000.00 and no more as the Gross Settlement Amount. Defendant has
4 no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph
5 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement
6 Amount without asking or requiring Aggrieved Employees to submit any claim as a
7 condition of payment. None of the Gross Settlement Amount will revert to Defendant.

8 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the
9 following payments from the Gross Settlement Amount, in the amounts specified by the
10 Court in the Final Approval:

11 3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 33 1/3 %,
12 which is currently estimated to be \$45,000.00 and a PAGA Counsel Litigation
13 Expenses Payment of not more than \$13,000.00. Defendant will not oppose
14 requests for Court approval of these payments provided that they do not exceed
15 these amounts. Plaintiff and/or PAGA Counsel will file an application or motion
16 for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the
17 Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel
18 Litigation Expenses Payment less than the amounts requested, the Administrator
19 will allocate the remainder to the Net Settlement Amount. Released Parties shall
20 have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from
21 any claim to any portion of any PAGA Counsel Fee Payment and/or PAGA
22 Counsel Litigation Expenses Payment. The Administrator will pay the PAGA
23 Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more
24 IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes
25 owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation
26 Expenses Payment and holds Defendant harmless, and indemnifies Defendant,
27 from any dispute or controversy regarding any division or sharing of any of these
28 Payments.

3.2.2. To the Administrator: An Administrator Expenses Payment not to exceed \$7,500.00 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 \$7,500.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.3. To the Plaintiff: Plaintiff will receive a payment of \$7,500.00 (the "Plaintiff's Payment") in exchange for the releases made as set forth in section 5.1 of this Agreement.

3.2.4. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$135,000.00 less attorneys' fees and costs, Plaintiff's Payment, and administration costs approved by the Court, to be paid from the Gross Settlement Amount, with 75% allocated to the LWDA PAGA Payment and 25% allocated to the Individual PAGA Payments.

3.2.4.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties 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.

3.2.4.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. 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, Defendant estimates there are approximately 506 Aggrieved Employees who worked a total of

approximately 8,040 PAGA Pay Periods.

4.2. Aggrieved Employee Data. Within 15 days after the Court approves the PAGA settlement, Defendant will 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. Defendant has 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 Defendant 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. Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 30 days after the Effective Date.

4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant funds 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 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

1 Administrator must update the recipients' mailing addresses using the National
2 Change of Address Database.

3 4.4.2. The Administrator must conduct an Aggrieved Employee Address Search for all
4 Aggrieved Employees whose checks are returned undelivered without USPS
5 forwarding address. Within 7 days of receiving a returned check the Administrator
6 must re-mail checks to the USPS forwarding address provided or to an address
7 ascertained through the Aggrieved Employee Address Search. The Administrator
8 need not take further steps to deliver checks to Aggrieved Employees whose re-
9 mailed checks are returned as undelivered. The Administrator shall promptly send
10 a replacement check to any Aggrieved Employee whose original check was lost or
11 misplaced, requested by the Aggrieved Employee prior to the void date.

12 4.4.3. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed
13 and cancelled after the void date, the Administrator shall transmit the funds
14 represented by such checks to The State Bar of California's Justice Gap Fund.

15 4.4.4. The payment of Individual PAGA Payments shall not obligate Defendant to confer
16 any additional benefits or make any additional payments to the Aggrieved
17 Employees (such as 401(k) contributions or bonuses) beyond those specified in this
18 Agreement.

19
20 5. **RELEASES OF CLAIMS.** Effective on the date when Defendant fully funds the entire
21 Gross Settlement Amount, Plaintiff and PAGA Counsel will release claims against all Released
22 Parties as follows:

23 5.1. **Plaintiff's Release.** Plaintiff, on behalf of himself, and his respective former and present
24 spouses, representatives, agents, attorneys (including PAGA Counsel), heirs,
25 administrators, successors, and assigns generally, release and discharge the Released
26 Parties from all claims, transactions, or occurrences of whatever kind or nature, fixed or
27 contingent, whether known or unknown, suspected or unsuspected, which Plaintiff now
28 owns or holds or has at any time before this date owned or held against any of the Released

Parties, including but not limited to any and all claims: (1) which arose out of or are in any way connected with Plaintiff's employment with Defendant or the Released Parties; (2) which are related to or concern any law, including, but not limited to: (i) discrimination, harassment, and retaliation under local, state, or federal law based on age, sex, race, color, national origin, religion, disability status, or any other category protected by any such law including, but not limited to, the Americans with Disabilities Act, 42 U.S.C. § 12112, *et seq.*, and all other Federal and State Civil Rights Statutes; (ii) wrongful termination, breach of express and implied-in-fact contract, breach of the covenant of good faith and fair dealing, intentional and negligent infliction of emotional distress, defamation and self-compelled defamation, invasion of privacy, breach of employment contract, fraud or negligent misrepresentation, assault, battery, intentional interference with contractual relations and prospective economic advantage, violation of public policy, and other torts; and (iii) failure to pay wages, overtime, meals and rest breaks, penalties, interest, severance pay, commissions, bonuses, sick leave, holiday pay, and vacation pay, either individually or as part of a class action, collective action, and/or representative action; (3) which are related to or concern any violation of California *Business and Professions Code* Section 17200, *et seq.*, and/or the California *Labor Code*, including *Labor Code* section 1102.5; the California Fair Employment and Housing Act; the California Industrial Welfare Commission Wage Orders; and the California Private Attorney General Act; (4) which are related to or concern any violation of the CFRA or the FMLA or other leave statute, or; (5) which are related to allegations of sexual harassment, discrimination based on sex, retaliation, failure to prevent sexual harassment, failure to prevent retaliation, failure to accommodate, failure to engage in a good faith interactive process, and wrongful termination, or; (6) which arose out of or are in any way connected with any transactions, occurrences, acts, omissions, loss, damage or injury whatsoever resulting from any act committed or omission made prior to the date of this Agreement ("Plaintiff's Release"). Plaintiff's 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

1 security benefits, workers' compensation benefits (other than Labor Code sections 132(a)
2 and 4553). Plaintiff acknowledges that Plaintiff may discover facts or law different from,
3 or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees,
4 nonetheless, that Plaintiff's Release shall be and remain effective in all respects,
5 notwithstanding such different or additional facts or Plaintiff's discovery of them.

6 5.1.1. Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For
7 purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the
8 provisions, rights, and benefits, if any, of section 1542 of the California Civil Code,
9 which reads:

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

15 5.2. Release by Aggrieved Employees:

16 All Aggrieved Employees are deemed to release, on behalf of themselves and their
17 respective former and present representatives, agents, attorneys, heirs, administrators,
18 successors, and assigns, the Released Parties from all claims for PAGA penalties during
19 the PAGA Period that were alleged, or reasonably could have been alleged, based on the
20 facts stated in the Operative Complaint and/or the PAGA Notice dated February 20, 2022
21 ("PAGA Notice") that was sent to Defendant and the Labor & Workforce Development
22 Agency ("LWDA") by Plaintiff, which includes but is not limited to the California Labor
23 Code Private Attorneys General Act of 2004 (PAGA) claims based on Defendant's alleged
24 failure to pay minimum wages, pay overtime, provide meal periods and rest periods,
25 failure to maintain accurate records of all meal periods taken or missed, failure to pay meal
26 period premiums and rest period premiums, failure to reimburse business expenses, failure
27 to timely pay wages during employment, failure to timely pay wages at termination, failure
28 to pay accrued vacation wages at termination, provide accurate itemized wage statements,
failure to maintain accurate records of the hours that employees worked, violation of
Business & Professions Code section 17200, et seq., and all other claims and allegations

made or which could have reasonably been made in the Action based on the facts and allegations pled in the Operative Complaint and PAGA Notice. The Parties intend this release to be limited to claims for civil penalties only.

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 APPLICATION FOR APPROVAL OF SETTLEMENT.

The Parties agree to jointly prepare and file an application or motion for approval of this Settlement.

6.1. Plaintiff's 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 and Judgment; (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 Plaintiff, 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, Plaintiff and PAGA Counsel shall aver whether they are 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, stipulation, 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 Preliminary Approval 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 teleconference, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

7.1. Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. 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. ILYM Group, Inc. agrees that it shall provide written documentation to the Parties demonstrating that it timely distributed all funds in this matter, including but not limited to the payments to the LWDA and the designated cy pres recipient. 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.

7.2. Employer Identification Number. The Administrator shall have and use its own Employer

Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

7.3. 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.

7.4. 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.

8. AGGRIEVED EMPLOYEE SIZE ESTIMATES AND ESCALATOR CLAUSE.

Based on its records, Defendant estimates that, as of the date of this Settlement Agreement, there are approximately 506 Aggrieved Employees who worked approximately 8,040 Pay Periods during the PAGA Period. If as of the end of the PAGA Period the actual number of pay periods is more than 10% larger than the estimated number of 8,040 pay periods (i.e., 8,845 or more pay periods), then the Gross Settlement Amount shall be increased by the percentage by which the actual number of pay periods exceeds 8,845 pay periods. However, Defendant may, at its sole discretion, adjust the length of the PAGA Period by moving the start date so as to keep the number of pay periods less than 8,845 and avoid triggering the escalation clause. Any adjustment shall not cause the Gross Settlement Amount to be less than \$135,000.

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

9.1. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the release, the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties and their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and 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 Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10. ADDITIONAL PROVISIONS.

10.1. 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 Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's 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, Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendant's 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).

10.2. 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.

10.3. Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties 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.

10.4. 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.

10.5. 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 Party in this Settlement.

10.6. No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendant 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.

10.7. 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.

10.8. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

10.9. 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.

10.10. 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.

10.11. 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.

10.12. Representation. Plaintiff represents and warrants that he is not currently aware of any: (a) unalleged claims against Defendant or the Released Parties in addition to, or different from, those which are finally and forever settled and released against Defendant and the Released Parties by this settlement; or (b) unalleged facts or legal theories upon which any claims or causes of action could be brought against Defendant, except such facts and theories specifically alleged in the Operative Complaint in this action. PAGA Counsel represents and warrants that they are not currently aware of any: (a) unalleged claims against Defendant in addition to, or different from, those which are finally and forever settled and released against Defendant by this settlement; or (b) unalleged facts or legal theories upon which any claims or causes of action could be brought against Defendant, except such facts and theories specifically alleged in the Operative Complaint in this action. Plaintiff further represents that, other than this action, he has no current intention of asserting any other claims against Defendant or the Released Parties in any judicial or administrative forum, including but not limited to any class claims. PAGA Counsel further represents that, other than this action, they have no current intention of asserting any other claims against Defendant in any judicial or administrative forum, including but not limited to any class claims. PAGA Counsel also represents that they have no current intention of asserting any claims on behalf of Plaintiff against the Released Parties in any judicial or administrative forum, including but not limited to any class claims. Plaintiff and PAGA Counsel represent that they do not currently know of or represent any persons who have expressed any interest in pursuing litigation or seeking any recovery against Defendant.

10.13. Acknowledgement of Resignation. Plaintiff acknowledges and agrees that he voluntarily resigned his employment with ASMB, LLC on March 15, 2023. Plaintiff also acknowledges that he was timely paid all sums owed to him during his employment with Defendant.

10.14. 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 Defendant in connection with the mediation, other

1 settlement negotiations, or in connection with the Settlement, may be used only with
2 respect to this Settlement, and no other purpose, and may not be used in any way that
3 violates any existing contractual agreement, statute, or rule of court. Not later than 90 days
4 after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff
5 shall destroy all paper and electronic versions of Aggrieved Employee Data received from
6 Defendant unless, prior to the Administrator's payment of all Settlement Funds, Defendant
7 makes a written request to PAGA Counsel for the return, rather than the destruction, of
8 Aggrieved Employee Data.

9 10.15. Headings. The descriptive heading of any section or paragraph of this Agreement is
10 inserted for convenience of reference only and does not constitute a part of this
11 Agreement.

12 10.16. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be
13 to calendar days. In the event any date or deadline set forth in this Agreement falls on a
14 weekend or federal legal holiday, such date or deadline shall be on the first business day
15 thereafter.

16 10.17. Notice. All notices, demands or other communications between the Parties in connection
17 with this Agreement will be in writing and deemed to have been duly given as of the third
18 business day after mailing by United States mail, or the day sent by email or messenger,
19 addressed as follows:

20 To Plaintiff:

21 Kane Moon (SBN 249834)
22 Allen Feghali (SBN 301080)
23 Edwin Kamarzarian (SBN 327830)
MOON & YANG, APC
24 1055 W. Seventh St., Suite 1880
25 Los Angeles, California 90017
26 Telephone: (213) 232-3128
Facsimile: (213) 232-3125
Email: kane.moon@moonyanglaw.com
Email: allen.feghali@moonyanglaw.com
Email: edwin.kamarzarian@moonyanglaw.com

27 To Defendant:

28 David L. Martin

Ethan Lai
MARTIN LAW FIRM, PC
 19800 MacArthur Boulevard, Suite 680
 Irvine, California 92612
 dave@employmentdefenselaw.com
 ethan@employmentdefenselaw.com
 Attorneys for Defendant ASMB, LLC

10.18. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (e.g., 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.

10.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation 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.

10.20 Enforcement Actions. In the event that one or more of the Parties to this Settlement institutes any legal action or other proceeding against any other party or parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful party or parties shall be entitled to recover from the unsuccessful party or parties reasonable attorney's fees and costs, including expert witness fees incurred in connection with any enforcement actions.

Plaintiff:

Dated: 5/1/2023

By: _____

Jose Argueta

DocuSigned by:

Jose Luis Argueta Flores

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[Counsel's Signature on Following Page]

Plaintiff's Counsel:

Dated: 5/1/2023

MOON & YANG, APC

By: 

Kane Moon
Allen Feghali
Edwin Kamarzarian

Attorneys for Plaintiff

Defendant:

Dated:

ASMB, LLC

By: _____

Signature

Printed Name

Title

Defendant's Counsel:

Dated:

MARTIN LAW FIRM, PC

By: _____

David L. Martin
Ethan Lai

Attorneys for Defendant ASMB, LLC

Plaintiff's Counsel:

Dated: MOON & YANG, APC

By: _____
 Kane Moon
 Allen Feghali
 Edwin Kamarzarian
 Attorneys for Plaintiff

Defendant:

Dated: 5/2/2023 ASMB, LLC

By: _____
 DocuSigned by:
Jared Kirkwood
 30C727E45DBC4D6...
 Signature

Jared Kirkwood

Printed Name

General Counsel

Title

Defendant's Counsel:

Dated: 5/2/2023 MARTIN LAW FIRM, PC

By: *D. L. Martin*
 David L. Martin
 Ethan Lai

Attorneys for Defendant ASMB, LLC