

Brandon R. McKelvey (SBN 217002)
 brandon@medinamckelvey.com
 Douglas R. Leach (SBN 325955)
 doug@medinamckelvey.com
MEDINA McKELVEY LLP
 925 Highland Pointe Drive, Suite 300
 Roseville, California 95678
 Telephone: (916) 960-2211

Attorneys for defendant AWI MANAGEMENT CORPORATION

Kane Moon (SBN 249834)
 Allen Feghali (SBN 301080)
 Jacquelyne VanEmmerik (SBN 339338)
MOON LAW GROUP, PC
 1055 West Seventh Street, Suite 1880
 Los Angeles, California 90017
 Telephone: (213) 232-3128
 kmoon@moonlawgroup.com
 afeghali@moonlawgroup.com
 jvanemmerik@moonlawgroup.com

Attorneys for plaintiff RUSSELL STRICKLAND

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF PLACER**

RUSSELL STRICKLAND, individually, and on
 behalf of all others similarly situated,

Plaintiff,

v.

AWI MANAGEMENT CORPORATION, a
 California corporation; and DOES 1 through 10
 inclusive,

Defendants.

Case No. S-CV-0048084

**PRIVATE ATTORNEYS GENERAL ACT
 SETTLEMENT AGREEMENT**

Complaint Filed: February 24, 2022
 Trial Date: None Yet Set

PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT

This Private Attorneys General Act Settlement Agreement (“Agreement” or “Settlement”) is made by and between plaintiff Russell Strickland (“Plaintiff”) and defendant AWI Management Corporation (“AWI” or “Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS

1.1. “Action” means Plaintiff’s class and Private Attorneys General Act (“PAGA”) action lawsuit alleging wage and hour violations against Defendant, captioned *Russell Strickland v. AWI Management Corporation*, filed on February 24, 2022 and pending in the Superior Court of the State of California, County of Placer, Case Number S-CV-0048084.

1.2. “Administrator” means Simpluris, 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 the approval of this Settlement.

1.4. “Aggrieved Employee” means all persons who worked for Defendant in California as an hourly paid or non-exempt employee during the PAGA Period.

1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in AWI’s possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods that the Aggrieved Employee worked during the PAGA Period.

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 Placer.

1 1.8. "Defense Counsel" means Brandon R. McKelvey and Douglas R. Leach of Medina
2 McKelvey, LLP (counsel for AWI).

3 1.9. "Effective Date" means the date by when both of the following have occurred: (a) the Court
4 enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. The
5 Judgment is final as of the latest of the following occurrences: (a) the day the Court enters Judgment if
6 no objections are filed to this settlement or if all objections are withdrawn prior to the Court ruling on
7 them; or (b) sixty-one (61) days after the date of entry of the settlement approval order if objections are
8 filed and overruled and no appeal is taken from the order approving the settlement; or (c) if a timely
9 appeal is made, ten (10) business days after the final resolution of that appeal if the appeal is rejected,
10 the settlement is upheld, and the settlement approval order is no longer subject to further judicial review.

11 1.10. "Gross Settlement Amount" means \$450,000.00, which is the total amount Defendant
12 agrees to pay under the Settlement except as provided in Section 8, below. The Gross Settlement
13 Amount will be used to pay the Individual PAGA Payments, LWDA PAGA Payment, PAGA Counsel
14 Fees Payment, PAGA Counsel Litigation Expenses Payment, PAGA Representative Enhancement
15 Payment, and Administration Expenses Payment.

16 1.11. "Individual PAGA Payment" means the Aggrieved Employee's *pro rata* share of 25% of
17 the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked
18 during the PAGA Period.

19 1.12. "Judgment" means the judgment entered by the Court based upon the Final Approval.

20 1.13. "LWDA" means the California Labor and Workforce Development Agency, the agency
21 entitled, under Labor Code section 2699, subd. (i).

22 1.14. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA
23 under Labor Code section 2699, subd. (i).

24 1.15. "Net Settlement Amount" means the Gross Settlement Amount, less the following
25 payments in the amounts approved by the Court: the LWDA PAGA Payment, PAGA Counsel Fees
26 Payment, PAGA Counsel Litigation Expenses Payment, PAGA Representative Enhancement Payment,
27 and Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as
28 Individual PAGA Payments.

1.16. "PAGA Counsel" means Kane Moon, Allen Feghali, and Jacquelyne VanEmmerik of Moon Law Group, PC, the attorneys representing the Plaintiff in the Action.

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

1.18. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for AWI for at least one day during the PAGA Period and recorded work time in AWI's timekeeping system.

1.19. "PAGA Period" means the period from February 24, 2021 to the date of approval of the Settlement by the Court.

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

1.21. "PAGA Notice" means Plaintiff's February 20, 2022 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a) attached to this Agreement as **Exhibit 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 and 75% to the LWDA in settlement of PAGA claims.

1.23. "Plaintiff" or "PAGA Representative" means Russell Strickland, the named plaintiff in the Action.

1.24. "Approval Order" means the proposed Court Order Granting Approval of Settlement.

1.25. "Released PAGA Claims" means the claims being released by the Plaintiff, Aggrieved Employees, and PAGA Counsel, as described in Paragraph 5 below.

1.26. "Released Parties" means Defendant and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.

1.27. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

1.28. "Defendant" means named defendant AWI Management Corporation.

1.29. "PAGA Representative Enhancement Payment" means the amount allocated to Plaintiff for his role, service, and risks undertaken as the PAGA Representative of the State of California in this Action and for his general release, pursuant to section 5.1 of this Agreement.

2. RECITALS

2.1. On February 20, 2022, Plaintiff sent a letter to the Labor and Workforce Development Agency ("LWDA"), stating that he intended to pursue a representative action under the PAGA for civil penalties against Defendant for the following alleged violations of the California Labor Code: Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2699(f)(2) and 2802.

2.2. On February 24, 2022, Plaintiff commenced this Action by filing a class action Complaint alleging causes of action against Defendant. Plaintiff's Complaint sought damages, on his behalf and on behalf of a class of all non-exempt or hourly employees, for the following alleged violations of the California Labor Code: (1) failure to pay all minimum wages (in violation of Labor Code sections 204, 1194, 1194.2, and 1197); (2) failure to pay all overtime compensation (in violation of Labor Code sections 1194 and 1198); (3) failure to provide compliant meal periods (in violation of Labor Code section 226.7 and 512); (4) failure to provide compliant rest periods (in violation of Labor Code section 226.7); (5) failure to indemnify for necessary business expenses (in violation of Labor Code section 2802); (6) failure to time all wages due at the time of termination (in violation of Labor Code sections 201-203); (7) failure to provide accurate itemized wage statements (in violation of Labor Code section 226); and (8) unfair competition (Business and Professions Code section 17200 *et seq.*)

2.3. On May 4, 2022, Plaintiff filed a First Amended Complaint, which added a cause of action for civil penalties pursuant to the PAGA based on the same Labor Code violations alleged in the Complaint. Plaintiff's First Amended Complaint is the operative complaint in the Action (the "Operative Complaint"). Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged.

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

2.5. On May 30, 2023, the Parties participated in an all-day mediation presided over by Kelly Knight, Esq., a well-respected wage and hour class and PAGA mediator, which led to this Agreement to settle the Action.

2.6. Prior to mediation, Plaintiff obtained, through informal discovery, employee and payroll data, policy documents, and additional information regarding AWI's non-exempt, hourly employees in California who worked as employees during the PAGA Period, which Plaintiff's Counsel reviewed and analyzed.

2.7. 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 8 below, Defendant promises to pay \$450,000.00 and no more as the Gross Settlement Amount. Defendant has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1 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 Defendant.

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 Final Approval:

3.2.1. *To PAGA Counsel:* A PAGA Counsel Fees Payment of not more than 40% which is currently estimated to be \$180,000.00 and PAGA Counsel Litigation Expenses Payment of not more than \$16,000.00. Defendant will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA 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 Plaintiff's 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 Fees Payment and PAGA Counsel 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 Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.2. *To the PAGA Representative:* A PAGA Representative Enhancement Payment not to exceed \$10,000.00 for Plaintiff's role, service, and risks undertaken as the PAGA Representative of the State of California in this Action and for his general release of claims, as set forth below.

3.2.3. *To the Administrator:* An Administration Expenses Payment not to exceed \$5,000.00 owing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$5,000.00, the Administrator will retain the remainder in the Net Settlement Amount. Simpluris, Inc. has been selected as the Administrator, based upon its "not to exceed" bid of \$5,000.00.

3.2.4. *To the LWDA and Aggrieved Employees:* PAGA Penalties to be paid from the Gross Settlement Amount equal to the Gross Settlement Amount less the PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, PAGA Representative Enhancement Payment, and Administration Expenses Payment—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 (i.e., the Net Settlement Amount) 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. The Individual PAGA Payments shall be allocated as 100% to penalties and interest.

1 **4. SETTLEMENT FUNDING AND PAYMENTS**

2 4.1. *Aggrieved Employee Pay Periods.* Based on a review of its records to date, Defendant
3 estimates there are 648 Aggrieved Employees who worked a total 20,596 of PAGA Pay Periods from
4 February 24, 2021 through May 30, 2023.

5 4.2. *Aggrieved Employee Data.* Within twenty-one (21) days of the complete execution of this
6 Agreement, Defendant will simultaneously deliver the Aggrieved Employee Data to the Administrator
7 in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employees' privacy rights, the
8 Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee
9 Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved
10 Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect
11 and perform under this Agreement. Defendant has a continuing duty to immediately notify PAGA
12 Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and
13 to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any
14 extension of the deadline by which Defendant must send the Aggrieved Employee Data to the
15 Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to
16 reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

17 4.3. *Funding of Gross Settlement Amount.* Defendant shall fully fund the Gross Settlement
18 Amount by transmitting the funds to the Administrator no later than fourteen (14) days after the
19 Effective Date.

20 4.4. *Payments from the Gross Settlement Amount.* Within fourteen (14) days after Defendant
21 funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA
22 Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fees
23 Payment, the PAGA Counsel Expenses Payment, and the PAGA Representative Enhancement Payment.
24 Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of
25 Individual PAGA Payments.

26 4.4.1. The Administrator will issue checks for the Individual PAGA Payments and send
27 them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid along with the Notice of
28 PAGA Representative Action Settlement (attached hereto as **Exhibit B**). The face of each check shall

1 prominently state the date (180 days after the date of mailing) when the check will be voided. The
2 Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the
3 Settlement Administrator must update the recipients' mailing addresses using the National Change of
4 Address Database.

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

13 4.4.3. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed
14 and cancelled after the void date, the Administrator shall transmit the funds represented by such checks
15 to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

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

19 **5. RELEASE OF CLAIMS**

20 Pursuant to the requirements of Labor Code sections 2698, *et seq.*, Plaintiff is the designated
21 agent of the California Labor and Workforce Development Agency ("LWDA"), and is proceeding as a
22 private attorney general, by bringing this enforcement action to recover civil penalties on behalf of the
23 LWDA and for the group of Aggrieved Employees. The Parties agree, and Plaintiff agrees, that effective
24 on the date when Defendant fully funds the entire Gross Settlement Amount, the LWDA shall release
25 the Released Parties from any claim for civil penalties arising out of the Released Claims. As
26 consideration for this release, the LWDA shall receive 75% of the PAGA Payment, consistent with the
27 requirements of the Labor Code sections 2698, *et seq.* The Aggrieved Employees shall receive 25% of
28 the PAGA payment consistent with the requirements of the Labor Code sections 2698, *et seq.*

1 5.1. *Plaintiff's Release.* Effective on the date when Defendant fully funds the entire Gross
2 Settlement Amount, Plaintiff and his respective former and present spouses, representatives, agents,
3 attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release
4 and discharge Released Parties from all claims, transactions, or occurrences that occurred during the
5 PAGA Period, including, but not limited to: (a) all claims that were, or reasonably could have been,
6 alleged, based on the facts contained in the Operative Complaint and the PAGA Notice ("Plaintiff's
7 Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to
8 any claims for vested benefits, unemployment benefits, disability benefits, social security benefits,
9 workers' compensation benefits that arose at any time, or based on occurrences outside the PAGA
10 Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to,
11 the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's
12 Release shall be and remain effective in all respects, notwithstanding such different or additional facts or
13 Plaintiff's discovery of them.

14 Plaintiff stipulates and agrees that, upon the date on which the Court's Approval Order becomes
15 "Final", Plaintiff shall be deemed to have expressly waived and relinquished, to the fullest extent
16 permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any
17 other similar provision under federal or state law, which provides:

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

24 This release specifically excludes claims for unemployment insurance, disability, social security,
25 and workers compensation (with the exception of claims arising pursuant to California Labor Code
26 Sections 132(a) and 4553). Accordingly, if the facts relating in any manner to this Settlement are found
27 hereafter to be other than or different from the facts now believed to be true, the release of claims
28 contained herein shall be effective as to all unknown claims.

 5.2. *Release by Aggrieved Employees.* Effective on the date when Defendant fully funds the
entire Gross Settlement Amount 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 (“Released Claims”).

5.3. Release by PAGA Counsel. Effective on the date when Defendant fully funds the entire Gross Settlement Amount, PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Counsel 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; (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)); (iv) a redlined version of the parties’ Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (v) 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 that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

1 6.2. *Responsibilities of PAGA Counsel.* PAGA Counsel and Defense Counsel are jointly
2 responsible for expeditiously finalizing and filing the application or motion for approval of this
3 Settlement no later than sixty (60) days after the full execution of this Agreement and, if necessary,
4 obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the
5 motion. PAGA Counsel is responsible for delivering the Court's Preliminary Approval to the
6 Administrator. Concurrently with the filing a motion for approval of the Settlement, PAGA Counsel
7 shall file a noticed motion to dismiss without prejudice the class claims alleged in the Operative
8 Complaint, in accordance with California Rules of Court, Rule 3.770.

9 6.3. *Duty to Cooperate.* If the Parties disagree on any aspect of the proposed application or
10 motion for approval of this Settlement and/or the supporting declarations and documents, PAGA
11 Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in
12 person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the
13 motion for approval of this Settlement or conditions its approval on any material change to this
14 Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the
15 Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise
16 satisfy the Court's concerns.

17 **7. SETTLEMENT ADMINISTRATION**

18 7.1. *Selection of Administrator.* The Parties have jointly selected Simpluris, Inc. to serve as the
19 Administrator and verified that, as a condition of appointment, Simpluris, Inc. agrees to be bound by this
20 Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for
21 payment of Administration Expenses. The Parties and their Counsel represent that they have no interest
22 or relationship, financial or otherwise, with the Administrator other than a professional relationship
23 arising out of prior experiences administering settlements.

24 7.2. *Employer Identification Number.* The Administrator shall have and use its own Employer
25 Identification Number for purposes of calculating payroll tax withholdings and providing reports state
26 and federal tax authorities.

1 7.3. *Qualified Settlement Fund.* The Administrator shall establish a settlement fund that meets
2 the requirements of a Qualified Settlement Fund (“QSF”) under U.S. Treasury Regulation section 468B-
3 1.

4 7.4. *Administrator Duties.* The Administrator has a duty to perform or observe all tasks to be
5 performed or observed by the Administrator contained in this Agreement or otherwise.

6 **8. AGGRIEVED EMPLOYEE SIZE ESTIMATES AND ESCALATOR CLAUSE**

7 Defendant represented that there was a total of 20,596 pay periods worked by an estimated 648
8 Aggrieved Employees from February 24, 2021 to May 30, 2023. If the number of pay periods during
9 the PAGA Period is more than 10% greater than this figure (*i.e.*, if there are approximately 22,656 or
10 more pay periods worked by Aggrieved Employees (as evidenced by a pay period with payment for time
11 worked, excluding vacation, sick time, and/or other personal leaves of absences), Defendant has the
12 option to either: (1) agree to increase the Gross Settlement Amount on a proportional basis (*i.e.*, if there
13 was 11% increase in the number of pay periods during the PAGA Period, Defendant would agree to
14 increase the Gross Settlement Amount on a proportionately by 1%); or (2) in the alternative, in the event
15 that this provision is triggered, then Defendant may elect to end the PAGA Period at an earlier date than
16 described above, so as to have an earlier end to the PAGA Period at the Defendant’s discretion in order
17 to limit the covered pay periods to 22,656 (or less) in lieu of paying an increase to the Gross Settlement
18 Amount.

19 **9. CONTINUING JURISDICTION OF THE COURT**

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

24 9.1. *Waiver of Right to Appeal.* Provided the Judgment is consistent with the terms and
25 conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA
26 Counsel Litigation Expenses Payment, the Parties, their respective counsel waive all rights to appeal
27 from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file
28 motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of

1 appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another
2 party appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended
3 until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters
4 that do not affect the amount of the Net Settlement Amount.

5 **10. ADDITIONAL PROVISIONS**

6 10.1. *No Admission of Liability or Representative Manageability for Other Purposes.* This
7 Agreement represents a compromise and settlement of highly disputed claims. Nothing in this
8 Agreement is intended or should be construed as an admission by Defendant that any of the allegations
9 in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor
10 should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action
11 have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If,
12 for any reason the Court does not approve this Settlement, Defendant reserves all available defenses to
13 the claims in the Action, and Plaintiff reserves the right to contest Defendant's defenses. The
14 Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will
15 not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the
16 Settlement and this Agreement).

17 10.2. *Integrated Agreement.* Upon execution by all Parties and their counsel, this Agreement
18 together with its attached exhibits shall constitute the entire agreement between the Parties relating to
19 the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made
20 to or by any Party.

21 10.3. *Attorney Authorization.* PAGA Counsel and Defense Counsel separately warrant and
22 represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action
23 required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and
24 to execute any other documents reasonably required to effectuate the terms of this Agreement including
25 any amendments to this Agreement.

26 10.4. *Cooperation.* The Parties and their counsel will cooperate with each other and use their
27 best efforts, in good faith, to implement the Settlement by, among other things, modifying the
28 Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as

1 requested by the Court. In the event the Parties are unable to agree upon the form or content of any
2 document necessary to implement the Settlement, or on any modification of the Agreement that may
3 become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or
4 the Court for resolution.

5 10.5. *No Prior Assignments.* The Parties separately represent and warrant that they have not
6 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
7 any person or entity and portion of any liability, claim, demand, action, cause of action, or right released
8 and discharged by the Party in this Settlement.

9 10.6. *No Tax Advice.* Neither Plaintiff, PAGA Counsel, Defendant nor Defense Counsel are
10 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as
11 such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as
12 amended) or otherwise.

13 10.7. *Modification of Agreement.* This Agreement, and all parts of it, may be amended,
14 modified, changed, or waived only by an express written instrument signed by all Parties or their
15 representatives, and approved by the Court.

16 10.8. *Agreement Binding on Successors.* This Agreement will be binding upon, and inure to the
17 benefit of, the successors of each of the Parties.

18 10.9. *Applicable Law.* All terms and conditions of this Agreement and its exhibits will be
19 governed by and interpreted according to the internal laws of the state of California, without regard to
20 conflict of law principles.

21 10.10. *Cooperation in Drafting.* The Parties have cooperated in the drafting and preparation of
22 this Agreement. This Agreement will not be construed against any Party on the basis that the Party was
23 the drafter or participated in the drafting.

24 10.11. *Confidentiality.* To the extent permitted by law, all agreements made, and orders entered
25 during Action and in this Agreement relating to the confidentiality of information shall survive the
26 execution of this Agreement.

27 10.12. *Use and Return of Aggrieved Employee Data.* Information provided to PAGA Counsel
28 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 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 ninety (90) days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from Defendant unless, prior to the Administrator's payment of all Settlement Funds, Defendant makes a written request to PAGA Counsel for the return, rather than the destruction, of Aggrieved Employee Data.

10.13. *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.

10.14. *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.

10.15. *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 Plaintiff:
Kane Moon, Esq.
Allen Feghali, Esq.
Jacquelyne VanEmmerik, Esq.
MOON LAW GROUP, PC
1055 West Seventh Street, Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
kmoon@moonlawgroup.com
afeghali@moonlawgroup.com
jvanemmerik@moonlawgroup.com

To AWI Management Corporation:
Brandon R. McKelvey
brandon@medinamckelvey.com
Douglas R. Leach
doug@medinamckelvey.com
MEDINA McKELVEY LLP
925 Highland Pointe Drive, Suite 300
Roseville, California 95678
Telephone: (916) 960-2211

10.16. *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.

10.17. *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, upon the signing of this Agreement and 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.

The Parties hereby execute this Agreement.

Dated: 9/6/2023

DocuSigned by:

 507D748381A9425...
 Russell Strickland

Dated: 8/24/2023

DocuSigned by:

 627AA6EF856E4F9...
 AWI Management Corporation
 Michael Burke
 Name
 Senior Vice President
 Title

APPROVED AS TO FORM:

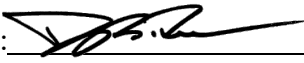
Dated: 09/06/2023

MOON LAW GROUP, PC

By: 
 Kane Moon, Esq.
 Allen Feghali, Esq.
 Jacquelyne VanEmmerik, Esq.
 Attorneys for plaintiff Russell Strickland

Dated: August 24, 2023

MEDINA McKELVEY LLP

By: 
Brandon R. McKelvey, Esq.
Douglas R. Leach, Esq.
Attorneys for defendant AWI Management
Corporation