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FILED
 Superior Court of California
 County of Los Angeles

MAY 31 2023

David W. Slayton, Executive Officer/Clerk of Court
 By: M. Zarate, Deputy

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

[Honorable Richard L. Fruin]

**[PROPOSED] ORDER AND JUDGMENT
 GRANTING PLAINTIFF'S MOTION TO
 APPROVE SETTLEMENT AGREEMENT
 AND RELEASE OF PAGA CLAIMS
 PURSUANT TO LABOR CODE SECTION
 2698 ET SEQ.**

*Filed with Notice and Motion to Approve
 Settlement, and Declaration of Kane Moon*

Date: May 31, 2023
 Time: 9:15 a.m.
 Dept.: 15
 Reservation # 913092461206

Complaint Filed: March 8, 2022
 Trial: None Yet Set

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

2. The Court hereby GRANTS the Motion and the Settlement is hereby accepted and approved.

4. Plaintiff and PAGA Counsel, by operation of this Order and Judgment, hereby fully, finally, and forever release, relinquish, and discharge the Released Parties from all Released Claims as follows:

Plaintiff, on behalf of himself, and his respective former and present spouses, representatives, agents, attorneys (Including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge the Released Parties from all claims, transactions, or occurrences of whatever kind or nature, fixed or contingent, whether known or unknown, suspected or unsuspected, which Plaintiff now 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

1 state, or federal law based on age, sex, race, color, national origin, religion,
2 disability status, or any other category protected by any such law including,
3 but not limited to, the Americans with Disabilities Act, 42 U.S.C. § 12112,
4 *et seq.*, and all other Federal and State Civil Rights Statutes; (ii) wrongful
5 termination, breach of express and implied-in-fact contract, breach of the
6 covenant of good faith and fair dealing, intentional and negligent infliction
7 of emotional distress, defamation and self-compelled defamation, invasion
8 of privacy, breach of employment contract, fraud or negligent
9 misrepresentation, assault, battery, intentional interference with contractual
10 relations and prospective economic advantage, violation of public policy,
11 and other torts; and (iii) failure to pay wages, overtime, meals and rest
12 breaks, penalties, interest, severance pay, commissions, bonuses, sick leave,
13 holiday pay, and vacation pay, either individually or as part of a class action,
14 collective action, and/or representative action; (3) which are related to or
15 concern any violation of California *Business and Professions Code* Section
16 17200, *et seq.*, and/or the California *Labor Code*, including *Labor Code*
17 section 1102.5; the California Fair Employment and Housing Act; the
18 California Industrial Welfare Commission Wage Orders; and the California
19 Private Attorney General Act; (4) which are related to or concern any
20 violation of the CFRA or the FMLA or other leave statute, or; (5) which are
21 related allegations of sexual harassment, discrimination based on sex,
22 retaliation, failure to prevent sexual harassment, failure to prevent
23 retaliation, failure to accommodate, failure to engage in a good faith
24 interactive process, and wrongful termination, or; (6) which arose out of or
25 are in any way connected with any transactions, occurrences, acts,
26 omissions, loss, damage or injury whatsoever resulting from any act
27 committed or omission made prior to the date of this Agreement ("Plaintiff's
28 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 security benefits, workers' compensation
benefits (other than Labor Code sections 132(a) and 4553). Plaintiff
acknowledges that Plaintiff may discover facts or law different from, or in
addition to, the facts or law that Plaintiff now knows or believes to be true
but agrees, nonetheless, that Plaintiff's Release shall be and remain effective
in all respects, notwithstanding such different or additional facts or
Plaintiff's discovery of them.

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 during the PAGA Period that were alleged, or
reasonably could have been alleged, based on the facts stated in the
Operative Complaint and/or the PAGA Notice dated February 20, 2022
("PAGA Notice") that was sent to Defendant and the Labor & Workforce
Development Agency ("LWDA") by Plaintiff, which includes but is not
limited to the California Labor Code Private Attorneys General Act of 2004
(PAGA) claims based on Defendant's alleged failure to pay minimum

1 wages, pay overtime, provide meal periods and rest periods, failure to
2 maintain accurate records of all meal periods taken or missed, failure to pay
3 meal period premiums and rest period premiums, failure to reimburse
4 business expenses, failure to timely pay wages during employment, failure
5 to timely pay wages at termination, failure to pay accrued vacation wages at
6 termination, provide accurate itemized wage statements, failure to maintain
7 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.

8 **Release by PAGA Counsel:**

9 PAGA Counsel release on behalf of their present and former attorneys,
10 employees, agents, successors and assigns the Released Parties from all
11 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.

12 **"Released Parties"** Defendant, including Defendant's joint employers,
13 staffing companies, officers, owners, directors, shareholders, agents,
14 assigns, attorneys, insurers, agents, independent contractors, employees,
predecessors, successors, parents, subsidiaries, affiliates, related entities or
other representatives of any kind.

15 **"PAGA Period"** the period from February 20, 2021 to the date the Court
16 approves the PAGA settlement.

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18 5. The Parties shall bear their own respective attorneys' fees and costs, except as
19 otherwise provided for in the Settlement and approved by the Court.

20 6. The Settlement is not an admission by Defendant, nor is this Order a finding of
21 the validity of any allegations or of any wrongdoing by Defendant. Neither this Order, the
22 Settlement, nor any document referred to herein, nor any action taken to carry out the
23 Settlement, may be used as an admission of any fault, wrongdoing, omission, concession, or
24 liability whatsoever by or against Defendant.

25 7. Through the Settlement Administrator, Defendant shall pay the PAGA
26 Members, Plaintiff's Counsel, the Labor and Workforce Development Agency ("LWDA"),
27 and the Settlement Administrator pursuant to the terms of the Settlement:
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- a. Actual administration costs of up to \$7,500.00, payable to the Settlement Administrator ILYM Group, Inc. for administration of the Settlement;
- b. Attorneys' fees to Plaintiff's Counsel in the amount of \$45,000.00 (33 1/3%);
- c. Reimbursement for actual costs incurred by Plaintiff's Counsel of \$10,466.79; and
- d. Payment to Plaintiff in the amount of \$7,500.00, in exchange for a general release pursuant to the terms of the Settlement.

8. The remaining amount to the PAGA Fund, which shall be allocated as set forth in Labor Code § 2699(d), with 75% allocated to the LWDA, and the remaining 25% to the PAGA Members on a pro-rata basis. Aggrieved Employees shall have 180 calendar days after the date the PAGA Packet is mailed to them to cash their settlement payment checks. If any Aggrieved Employee's check is not cashed within that period, the settlement payment check will be voided and a stop-payment will be issued. Neither Defendant, Defendant's counsel, Plaintiff, nor PAGA Counsel will have any liability for lost or stolen settlement payment checks, forged signatures on settlement payment checks, unauthorized negotiation of settlement payment checks or failure to timely cash a settlement payment check within the 180-day period. After 180 days from the date of their mailing by the Settlement Administrator, any uncashed checks will be void and funds will be sent to The State Bar of California's Justice Gap Fund.

9. The Court orders, adjudges, and decrees that Plaintiff, the aggrieved employees, the LWDA, and any employee or other person acting as a private attorney general on the LWDA's behalf, have released and forever discharged Defendant and the Released Parties from the Released PAGA Claims for the PAGA Period.

10. Defendant and the Released Parties shall have no further liability for costs, expenses, interests, attorneys' fees, or for any other charge, expense, or liability relating to the Released PAGA Claims and shall be released from all claims as set forth in the Settlement Agreement and in this Order and Judgment.

1 11. “Effective Date” means the date by when both of the following have
2 occurred: (a) the Court enters a Judgment on its Order approving the PAGA Settlement;
3 and (b) the Judgment is final. The Judgment is final when it is no longer subject to appeal,
4 or sixty-one (61) days after Judgment is entered, as long as no notice of appeal is filed; or,
5 if a notice of appeal is filed, the date that appeal is fully resolved and no longer subject to
6 appeal.

7 12. Subject to Court approval of the Settlement, payment shall be made to the
8 administrator within 91 days of Court approval (assuming that the LWDA has not
9 intervened or indicated in any way that it intends to intervene in the settlement). If the
10 LWDA has intervened, or indicated that it may intervene, payment will be due 30 days
11 after any such intervention is resolved, or the LWDA indicates that it is no longer going to
12 intervene in the Action.

13 13. Within 14 days after Defendant funds the settlement, the Settlement
14 Administrator shall issue payment to the Aggrieved Employees, the LWDA and PAGA
15 Counsel.

16 14. The Court hereby confirms Kane Moon, Allen Feghali, and Edwin Kamarzarian
17 of Moon & Yang, APC as PAGA Counsel.

18 15. The Court finds that the fees requested by Plaintiff’s Counsel of \$45,000.00 (33
19 1/3%) of the total settlement amount is reasonable, and the costs requested of \$10,466.79 were
20 reasonable and necessary for the prosecution of this action. The Court hereby awards
21 attorney’s fees in the amount of \$45,000.00 and costs of \$10,466.79 to Plaintiff’s Counsel.
22 The payment of fees and costs to Plaintiff’s Counsel shall be made in accordance with the
23 terms of the Settlement.

24 16. The Court approves of the proposed letter attached to the Settlement as Exhibit
25 A to be sent to PAGA Members along with their respective settlement check.

26 17. This action is dismissed with prejudice.
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1 18. Plaintiff shall submit a copy of this Order and Judgment to the LWDA within
2 thirty calendar days after entry of the Order and Judgment.

3 19. This Court shall retain jurisdiction, pursuant to C.C.P. section 664.6, over this
4 action, the Parties, and the PAGA Members to the fullest extent necessary to interpret,
5 enforce, and effectuate the terms and intent of the Settlement and this Order and Judgment.

6 20. The Court sets a status conference re: final accounting for ~~December~~¹, 2023. At
7 least nine court days prior to the hearing, Plaintiff shall submit a final report including the
8 actual amounts paid to aggrieved employees, the other amounts distributed under the
9 settlement, and the amounts tendered to The State Bar of California's Justice Gap Fund.

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11 **IT IS SO ORDERED.**

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14 DATED: May 31, 2023



Hon. Richard L. Fruin
Los Angeles County Superior Court

EXHIBIT A

[SETTLEMENT ADMINISTRATOR LETTERHEAD]

[Mailing Date]

NOTICE OF SETTLEMENT

Re: Jose Argueta v. ASMB, LLC, Los Angeles County Superior Court, Case No. 22STCV08327, filed March 8, 2022

[settlement admin info]

You have received the enclosed check in connection with the Settlement of the above-referenced lawsuit brought by former employee Jose Argueta ("Plaintiff") against ASMB, LLC ("Defendant") for civil penalties pursuant to the Private Attorneys General Act, Labor Code § 2698 et seq. ("PAGA").

Plaintiff claimed he and other non-exempt employees of Defendant employed anytime from February 20, 2021, to **[Approval Date]** were subjected to various Labor Code violations for which civil penalties are owed.

Defendant denies all allegations and liability, but to avoid further time and the expense of protracted and uncertain litigation, Defendant and Plaintiff have agreed to settle the lawsuit for civil penalties. The settlement, approved by the Court on **[DATE]**, resolves the alleged claims for civil penalties brought on behalf of all past and present non-exempt hourly employees of Defendant in California at any time February 20, 2021 to **[Approval Date]** ("PAGA Group"). No other claims are released other than a general release by the named plaintiff.

Pursuant to the Court's Order, a payment of \$135,000.00 was approved in settlement of this lawsuit. Effective on the date when Defendant fully funds the entire Gross Settlement Amount, the PAGA Group 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 during the PAGA Period that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and/or the PAGA Notice dated February 20, 2022 ("PAGA Notice") that was sent to Defendant and the Labor & Workforce Development Agency ("LWDA") by Plaintiff, which includes but is not limited to the California Labor Code Private Attorneys General Act of 2004 (PAGA) claims based on Defendant's alleged failure to pay minimum wages, pay overtime, provide meal periods and rest periods, failure to maintain accurate records of all meal periods taken or missed, failure to pay meal period premiums and rest period premiums, failure to reimburse business expenses, failure to timely pay wages during employment, failure to timely pay wages at termination, failure 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.

After accounting for Plaintiff's Counsel's attorneys' fees of \$45,000 and reimbursement of litigation costs of \$_____, and settlement administration costs of \$_____, the remaining sum called the "PAGA Payment" will be divided pursuant to California law as follows: \$_____ (75%) to the State of California Labor and Workforce Development Agency and \$_____ (25%) to all PAGA Group employees to be shared on a proportionate basis. The enclosed check represents your share based upon the number of Pay Periods you worked any time during the period from February 20, 2021 to the date the Court approves the PAGA settlement ("PAGA Period"). An IRS 1099 form is enclosed. You will be solely responsible for paying federal, state, or local taxes, if any, on the amount of your check.

Regardless of whether you negotiate the enclosed check, by way of this Settlement and the corresponding Final Order, for the PAGA Period, each PAGA Settlement Employee fully releases Defendant for all claims for civil penalties under PAGA as alleged in the LWDA Letter and Plaintiff's Operative Complaint filed in the Action or reasonably could have been asserted under Labor Code § 2698 et seq. based upon the facts alleged in the LWDA Letters and Plaintiff Complaints filed in this Matter.

Your enclosed check is valid for 180 days from the date of its issuance. **It is strongly recommended that you cash or deposit this check immediately.** After 180 days, you cannot cash the check, it will be null and void, and the amount will be forwarded to The State Bar of California's Justice Gap Fund. **Even if you fail to cash the enclosed check, you will still be deemed to have waived all claims arising from the Lawsuit, including all claims set forth in the release of claims described above.**

If the check is lost or misplaced, please contact the Administrator immediately, [xxx-xxx-xxxx] to have it reissued. If you have any questions about your check, please contact the [insert administrator information].

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)

3 COUNTY OF LOS ANGELES) ss

4 I am employed in the county of Los Angeles, State of California. I am over the age of
5 18 and not a party to the within action; my business address is 1055 W. 7th Street, Suite 1880,
6 Los Angeles, California 90017. On May 8, 2023, I served the foregoing document described
as:

7 **[PROPOSED] ORDER AND JUDGMENT GRANTING PLAINTIFF'S MOTION TO**
8 **APPROVE SETTLEMENT AGREEMENT AND RELEASE OF PAGA CLAIMS**
9 **PURSUANT TO LABOR CODE SECTION 2698 ET SEQ.**

10 X by placing ___ the original X a true copy thereof enclosed in sealed envelope(s)
11 addressed as follows:

12 Ethan Lai, Esq. (ethan@employmentdefenselaw.com)
13 David Martin, Esq. (dave@employmentdefenselaw.com)
14 **Martin Law Firm, PC**
15 19800 MacArthur, Suite 680
16 Irvine, CA 92612
17 Phone: (949) 491-4805

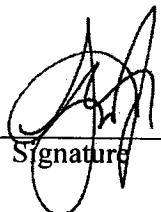
18 *Attorneys for Defendant ASMB, LLC*

19 **[X] BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to
20 accept electronic service, I caused the documents to be sent to the persons at the
21 electronic service addresses listed above via third-party cloud service **CASE**
22 **ANYWHERE.**

23 I declare under penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct.

25 Executed this May 8, 2023 at Los Angeles, California.

26 Janelle Jickain
27 Type or Print Name

28 
Signature