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Attorneys for Plaintiff Maria Smeby and all Aggrieved Employees

SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA

MARIA SMEBY, individually, on behalf of
herself, those similarly situated, and all
Aggrieved Employees,

Plaintiff,

vs.

SEATEL, INC., a California corporation; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: C22-01360

[Hon. Charles S. Treat]

**DECLARATION OF JOHN A. VAN HOOK
IN SUPPORT OF PLAINTIFF'S MOTION
AND MOTION FOR APPROVAL OF
SETTLEMENT OF REPRESENTATIVE
PAGA CLAIMS**

Filed concurrently herewith:

- **MOTION FOR PRELIMINARY
APPROVAL; AND**
- **[PROPOSED] ORDER AND
JUDGMENT**

1 I, John A. Van Hook, declare as follows:

2 1. I am a member of the Bar of the State of California (SBN 205067) and am
3 admitted to practice before all courts of the State of California. I am the owner of the Van
4 Hook Law Firm, and co-lead counsel of record for the named Plaintiff, Maria Smeby
5 (“Plaintiff” or “Smeby”) and the allegedly aggrieved employees. I submit this declaration in
6 support of Plaintiff’s Motion for Approval of Representative PAGA Claims (the “Motion”). I
7 have personal knowledge of the facts set forth in this declaration and, if called upon to do so,
8 could and would testify competently thereto, except where I make a statement on information
9 and belief, in which case I am informed and believe the statement to be true.

10 2. Along with my co-counsel, Adrian C. Byrne of The Byrne Law Group, I have
11 been lead counsel on behalf of Plaintiff and the allegedly aggrieved employees throughout this
12 action.

13 3. My co-counsel and I began to investigate potential wage and hour claims by
14 Plaintiff against Defendant SeaTel, Inc. (“Defendant” or “SeaTel”) in or about April 2022. On
15 April 25, 2022, Plaintiff filed a notice of potential claims with the Labor and Workforce
16 Development Agency (“LWDA”) pursuant to PAGA, in which Plaintiff identified as allegedly
17 “Aggrieved Employees” all of Defendant’s non-exempt employees in California from April 25,
18 2021, to the present (the “PAGA Period”).

19 4. On June 30, 2022, after waiting the statutorily required 65-day notice period,
20 Plaintiff filed this action in the Superior Court of California, County of Contra Costa, Case No.
21 C22-01360 (“the Complaint”). The Complaint asserted individual, representative PAGA, and
22 putative class action claims against Defendant, including the sixth (6th) cause of action for civil
23 penalties on a representative basis pursuant to the California Private Attorneys General Act,
24 Labor Code section 2698, et seq. (“PAGA”).

25 5. Plaintiff’s PAGA claims rested primarily on two legal theories: (1) that Plaintiff
26 and other Aggrieved Employees were not provided timely meal periods, and (2) that Defendant
27 improperly rounded employees’ time.

6. After Plaintiff filed the Complaint, Defendant's counsel provided us with a copy of a severance agreement signed by Plaintiff, purporting to release Plaintiff's employment claims against SeaTel.

7. Based on our analysis of the severance agreement and the circumstances surrounding Plaintiff's execution of it, we believed there were questions as to the enforceability of its release. Nevertheless, we recognized that the existence of the severance agreement would cast doubt on Plaintiff's ability to adequately represent a class. As a result, on December 22, 2022, Plaintiff filed a request to dismiss, without prejudice, the Complaint's individual and putative class claims asserted in the following causes of action: First (Failure to Provide Meal Periods), Second (Failure to Pay All Unused Vested Vacation Time Upon Separation), Third (Failure to Pay Final Wages Due Upon Separation), Fourth (Failure to Provide Accurate Itemized Wage Statements), and Fifth (Unfair Competition) Causes of Action.

8. Following that dismissal without prejudice, Plaintiff's sixth cause of action for representative PAGA penalties and her seventh cause of action for failure to provide employment records, remained in the Complaint.

9. A dispute remained as to the ability of Plaintiff to pursue a PAGA action. Defendant contended that Plaintiff had no standing to pursue PAGA claims on account of her released individual claims. Plaintiff argued that she retained standing to pursue PAGA claims for multiple reasons, including that some of her claims arose after execution of the severance agreement, that the release was not legally effective, and that PAGA claims cannot be released absent court approval.

10. Defendant also provided information that the group of Aggrieved Employees was small. In recognition of the potential risk that protracted litigation of these claims would cause both parties to incur attorney's fees and costs that would far outweigh the potential PAGA penalties at issue, and in the interests of judicial economy, the parties agreed to participate in private mediation.

11. The Parties engaged in both formal discovery as well as informal exchanges of information and documents. Defendant responded to Plaintiff's formal written discovery requests. Defendant also produced personnel, payroll and timekeeping documents for Plaintiff and produced certain information and documentation relating to the putative Aggrieved Employees, including information regarding their dates of employment, and relevant pay periods.

12. On August 16, 2023, Defendants provided data for the allegedly Aggrieved Employees which indicated that there were 43 Aggrieved Employees who worked a total of 1,836 pay periods during the PAGA Claim Period.

13. On September 1, 2023, Defendant also provided a sampling of time and pay data for the Aggrieved Employees. These records allowed my co-counsel and me to analyze the claims regarding the provision of meal periods, rounding of time entries, among other issues.

14. In further preparation for mediation and to facilitate analysis of Defendant's PAGA exposure, we conducted extensive interviews with the Plaintiff, reviewed the sample data, as well as the relevant policies and procedures applicable to the PAGA claims at issue.

15. On September 12, 2023, the Parties participated in a full-day private mediation with experienced mediator and retired Superior Court Judge, Patrick J. O'Hara. Plaintiff was an active participant in the mediation.

16. At the conclusion of the mediation, the Parties reached an agreement on the principal terms of a settlement of the entire action, including a settlement of Plaintiff's individual claims and a proposed settlement of the representative PAGA claims. The Parties proceeded to negotiate the terms of a long-form settlement agreement.

17. On September 29, 2023, the Parties finalized a long-form agreement with respect to the proposed PAGA Settlement and Plaintiff’s individualized claims (the “Settlement Agreement”). Attached as **Exhibit 1** is a true and correct copy of the Settlement Agreement.

1 18. As required by PAGA, concurrently with the filing of this Motion, I submitted
2 the Settlement Agreement to the LWDA for its review.

3 19. The Settlement Agreement provides that Defendant will pay a total of \$72,500
4 (the “Gross PAGA Settlement Fund”), as a non-reversionary settlement fund to settle the
5 representative PAGA claims in this action. Separately, Defendant will pay a total of \$5,000 as
6 a settlement for Plaintiff’s individual claims.

7 20. The “Aggrieved Employees” for purposes of the PAGA Settlement consist of
8 all current and former non-exempt employees who worked for SeaTel in California at any time
9 between April 25, 2021, through the date of the Court Order granting approval of the PAGA
10 Settlement.

11 21. From the Gross PAGA Settlement Fund of \$72,500, the following amounts will
12 be paid, subject to this Court’s approval:

- 13 • Plaintiff’s Counsel’s attorney’s fees of 1/3 of the Gross PAGA Settlement Fund
14 (\$24,166.00);
- 15 • Plaintiff’s Counsel’s out-of-pocket litigation expenses of \$3,985.00 arising out of the
16 PAGA Claims (including the mediation fee);
- 17 • PAGA Settlement administration expenses of \$2,000; and
- 18 • Plaintiff’s Enhancement Payment of \$2,500 for serving as the representative Plaintiff
19 in the PAGA action.
- 20 • This results in an estimated Net PAGA Settlement Fund of \$39,849.00 (i.e., the Gross
21 PAGA Settlement Fund, minus requested fees, costs, enhancement payment, and
22 PAGA settlement administration expenses).

23 22. As required by PAGA, 75% of the Net PAGA Settlement Fund will be paid to the
24 LWDA and the remaining 25% of the Net PAGA Settlement Fund will be distributed among the
25 Aggrieved Employees on a pro-rata basis according to their pay periods during the relevant time
26 period.

27 23. The data that Defendant provided for the mediation indicates 43 current and
28

former Aggrieved Employees (including Plaintiff) and a total of 1,836 pay periods. Recognizing that these figures may vary somewhat, and would likely increase through the date of court approval, the Parties agreed that the 1,836 pay periods would be subject to a 15% buffer, meaning that no additional consideration shall be necessary if the total number of weekly pay periods covered by the PAGA Settlement is not greater than 2,111. If the total number of pay periods is greater than 2,111, Defendant shall have the option to (i) end the PAGA Period before the date of court approval, to a date that the pay period count does not exceed 2,111, or (ii) increase the Net PAGA Settlement Amount in proportion to the increase in pay periods in excess of 15%.

24. Payments will be made to the Aggrieved Employees by check to their last known home address, and Aggrieved Employees will not be required to submit a claim form or take any other steps to receive their payment.

25. Subject to the Court's approval, the settlement administration, including calculation and issuance of payments, will be performed by Phoenix Settlement Administrators ("PSA"), a nationally recognized settlement administrator. Attached as **Exhibit 2** is a true and correct copy of PSA's quote in the amount of \$1,750 for administration of the PAGA Settlement. As this quote did not include the mailing of the agreed-upon letter that would accompany the settlement payments, and did not include the potential additional number of Aggrieved Employees, Plaintiff seeks reimbursement for up to \$2,000 in settlement administrative expenses.

26. Accompanying the payments to the Aggrieved Employees the PAGA Settlement Administrator shall mail copies of the explanatory letter, which has been mutually approved by the Parties and is attached **Exhibit A** to the Settlement Agreement, along with Individual PAGA Payments to all Aggrieved Employees via regular First-Class U.S. Mail.

27. As set forth in the Motion, the PAGA settlement and the Settlement Agreement were the result of extensive arm's-length negotiations between the Parties. Given the risks and challenges that Plaintiff's claims would face in extended litigation, and the vigorous

substantive and procedural defenses that Defendant would present, my co-counsel and I believe that this is a fair and reasonable settlement, and a fair and reasonable outcome for the LWDA and for the Aggrieved Employees.

28. We also considered that, given the small number of Aggrieved Employees and relevant pay periods, protracted litigation of these claims would cause Plaintiff to incur attorney's fees and costs that could far outweigh the amounts of PAGA penalties potentially at issue. In negotiating this PAGA settlement, my co-counsel and I applied various risk discounts to account for the perceived strengths and weaknesses of each claim, as well as Defendant's anticipated defenses.

29. Throughout this litigation, including in the settlement negotiations and in the settlement agreement, Defendant has steadfastly argued that Plaintiff would lose her PAGA claims if they were tried because Defendant complied with its obligations under the Labor Code. As to claims regarding untimely meal periods, Defendant argued that meal period timing was largely the choice of employees. Defendant also argued that time rounding was facially neutral, and as applied to the Aggrieved Employees, generally benefited employees. Defendant further argued that any violations of the Labor Code were technical, and did not result in actual harm to employees. Defendant also argued that even if some violations could be proven, not every aggrieved employee could establish a violation in every pay period, greatly reducing the potential PAGA penalties that Plaintiff could recover. These were just some of the substantive and procedural defenses that Defendant advanced.

30. While Plaintiff rejects these various defenses, they have not been tested in litigation, raising substantial risks and uncertainty that some or all of Plaintiff's PAGA claims might be defeated on the merits if this litigation continued. Further, even if Plaintiff were to prevail on all of her PAGA claims, it is far from certain that Plaintiff could prove that *every aggrieved employee* suffered a violation in *every pay period*, as is assumed by Plaintiff's estimate of potential PAGA penalties.

1 31. Additional uncertainties existed with respect to the valuation of Plaintiff's
2 PAGA claims. In addition to Defendant's defenses on the underlying claims, there is
3 conflicting and developing case law regarding PAGA and its calculation of penalties, including
4 the availability of "stacked" PAGA penalties and the Court's discretion to reduce PAGA
5 penalties under Labor Code § 2699(e)(2), which creates further uncertainties as to the amounts
6 of PAGA penalties that Plaintiff might recover, even if she did prevail. While we dispute this
7 statutory interpretation, we also recognize the lack of certainty, including the lack of appellate
8 authority, as to how trial courts would interpret the statute and the amount of penalties, if any,
9 that may be awarded.

10 32. In light of these potential issues, and in my experience settling and obtaining court
11 approval of PAGA and other wage-and-hour settlements, I believe this PAGA settlement is an
12 outstanding result for the State of California and the Aggrieved Employees.

13 33. The following is a brief description of my legal background. I have been
14 practicing law in the State of California for more than 23 years. I graduated from Harvard Law
15 School in 1999 and was admitted to the California State Bar in December 1999. I have
16 practiced employment law almost exclusively since May 2003, including approximately 14
17 years in the Labor and Employment departments of two leading national law firms, during
18 which handled wage and hour class actions, FLSA collective actions, and representative PAGA
19 actions, among other wage and hour litigation. I also provided clients with employment advice
20 and counsel, including on wage and hour issues. I estimate that I handled more than 90 class,
21 collective, and PAGA representative cases during this time.

22 34. In June 2019, I started my own practice focusing on representing workers in
23 employment litigation, including wage and hour, class and PAGA representative actions. I am
24 currently handling multiple putative class and PAGA representative actions on behalf of
25 workers in California courts.

26 35. This PAGA Settlement Agreement provides for reimbursement of Plaintiff's
27 litigation costs of up to \$3,985. The following is a description of the costs already incurred in
28

1 connection with this PAGA settlement. Notably, this does not include the additional costs that
2 Plaintiff will incur, including the filing fee for the PAGA approval motion.

3 Cost Amount	Nature of Cost Incurred
4 \$75.00	PAGA notice filing fee
5 \$1,659.97	Court filing and service fees 6 (including \$1,534.53 to file the 7 Complaint)
8 \$2,250.00	Mediation fee
9 \$3,984.97	Costs Total

10 I declare under penalty of perjury under the laws of the State of California that the
11 foregoing is true and correct. Executed on October 2, 2023, at Sherman Oaks, California.

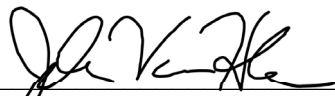
12
13 
14 John A. Van Hook

Exhibit 1

PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement (“Settlement Agreement” or “Settlement”) is made and entered into between Plaintiff Maria Smeby (“Plaintiff”), acting in a private attorney general capacity, and Defendant SeaTel, Inc. (“Defendant” or “SeaTel”) (collectively, the “Parties”).

I. DEFINITIONS

The following terms, when used in this Settlement Agreement, shall have the following meanings:

1. “Action” means the matter titled *Maria Smeby v. SeaTel, Inc.*, Contra Costa Superior Court, Case No. C22-01360, and as set forth in Plaintiff’s correspondence to the California Labor and Workforce Development Agency (“LWDA Letter”) dated April 25, 2022.

2. “Aggrieved Employees” consist of all current and former non-exempt employees who worked for SeaTel in California at any time during the PAGA Period.

3. “SeaTel” or “Defendant” means SeaTel, Inc.

4. “Settlement Administrator” means Phoenix Settlement Administrators.

5. “Complaint” means the operative complaint in the Action.

6. “Court” means the Superior Court of California for the County of Contra Costa.

7. “Individual PAGA Payment” means the amount to be paid to each Aggrieved Employee based on the formula described herein.

8. “LWDA” means the California Labor and Workforce Development Agency.

9. “Gross PAGA Settlement Amount” is the non-reversionary sum of Seventy-Two Thousand Five Hundred Dollars and Zero Cents (\$72,500.00), which represents the total amount payable under this Settlement Agreement by SeaTel in connection with the PAGA settlement, including, without limitation, payments to all Aggrieved Employees, payment to the LWDA, payment of Plaintiff’s attorneys’ fees and costs, payment of Plaintiff’s enhancement payment, and payment to the Settlement Administrator for administration costs

10. “Individual Settlement Amount” is the sum of Five Thousand Dollars (\$5,000.00), to be paid to Plaintiff as settlement for her individual claims, which represents the total amount payable under this Settlement Agreement by SeaTel in connection with Plaintiff’s individual claims, including without limitation those individual claims known or unknown.

11. “Net PAGA Settlement Amount” is the amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts, if approved by the Court, are subtracted from the Gross PAGA Settlement Amount: (a) Plaintiff’s attorneys’ fees up to Twenty-Four Thousand One Hundred Sixty-Six Dollars (\$24,166.00); (b) Plaintiff’s litigation costs up to

\$3,985.00; (c) Plaintiff's enhancement payment up to \$2,500.00; and (d) settlement administration costs up to Two Thousand Dollars (\$2,000.00).

12. "PAGA" means the California Labor Code Private Attorneys General Act, California Labor Code § 2698, *et seq.*

13. "PAGA Period" means the time period from April 25, 2021, through the date of the Court Order granting approval of the PAGA Settlement.

14. "PAGA Released Claims" mean all claims, rights, demands, liabilities and causes of action that arose during the PAGA Period for civil penalties under the PAGA, that were alleged in the Action or that could have been alleged in the Action. The PAGA Released Claims include, but are not limited to, claims under the PAGA for civil penalties for alleged violations of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 227.3, 512, 1174, 1198, and 1199 as well as all applicable Industrial Welfare Commission Wage Orders; and claims for attorneys' fees, costs, or interest resulting therefrom. The release of the PAGA Released Claims shall extend for the duration of the PAGA Period.

15. "Parties" means, collectively, Plaintiff and SeaTel.

16. "Plaintiff's Counsel" means John A. Van Hook of Van Hook Law Firm and Adrian Byrne of The Byrne Law Group.

17. "Released Parties" means SeaTel, Inc. and its related entities, joint venturers, parents, and subsidiaries, and each of their respective former and present officers, directors, owners, partners, shareholders, principals, employees, contractors, insurance carriers, payroll companies, attorneys, agents, representatives, successors and assigns.

II. RECITALS

1. Plaintiff performed work for SeaTel as a non-exempt employee in California during the PAGA Period.

2. On April 25, 2022, Plaintiff provided written notice to the LWDA and SeaTel asserting claims for civil penalties pursuant to PAGA stemming from alleged violations of various Labor Code sections and her intent to file a civil lawsuit under the PAGA.

3. On June 30, 2022, Plaintiff filed a complaint titled *Maria Smeby v. SeaTel, Inc.*, Contra Costa Superior Court, Case No. C22-01360, asserting putative class action claims against SeaTel based on violations of the Labor Code.

4. On December 22, 2022, Plaintiff filed a request to dismiss, without prejudice, the individual and putative class claims asserted in her First, Second, Third, Fourth, and Fifth Causes of Action.

5. In response to Plaintiff's Counsel's informal discovery requests, SeaTel provided Plaintiff's Counsel with information and documents pertaining to Plaintiff and a random sample of other Aggrieved Employees in order for Plaintiff's Counsel to investigate Plaintiff's allegations and value the claims prior to mediation.

6. On September 12, 2023, the Parties participated in mediation before mediator Judge Patrick J. O'Hara (Ret.). With the assistance of Judge Patrick J. O'Hara (Ret.), the Parties agreed to fully and finally resolve the PAGA Released Claims as to Plaintiff and Aggrieved Employees.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. **Non-Admission.** Nothing in this Settlement Agreement shall be construed to be an admission by Plaintiff that her claims do not have merit, or an admission by SeaTel of any liability or wrongdoing as to Plaintiff, the Aggrieved Employees or any other person. SeaTel specifically disclaims and denies any such liability or wrongdoing. The Parties have entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses and risks. This Settlement Agreement and any related court documents or orders are not and may not be cited or admitted as evidence of liability.

2. **Gross Settlement Amount.** SeaTel shall pay Seventy Seven Thousand Five Hundred Dollars and Zero Cents (\$77,500.00) as the non-reversionary Gross Settlement Amount. SeaTel will not pay more than the Gross Settlement Amount, except at SeaTel's option as provided in Paragraph III.7. SeaTel shall deposit the Gross Settlement Amount into a Qualified Settlement Account and agrees to fund the settlement within thirty (30) days of the Court's Judgment and Order approving the PAGA settlement. The Gross Settlement Amount shall be used to pay: (1) Amounts distributable to the LWDA and Aggrieved Employees; (2) Plaintiff's attorneys fees and litigation costs; (3) Plaintiff's enhancement payment; (4) Settlement administration costs; and (5) Plaintiff's individual settlement payment.

3. **Net PAGA Settlement Amount.** The Parties agree that the following amounts should be subtracted from the Gross PAGA Settlement Amount, if approved by the Court, resulting in a Net PAGA Settlement Amount to distribute to the LWDA and Aggrieved Employees:

a. **Plaintiff's Attorneys' Fees and Costs.** SeaTel will not oppose Plaintiff's request for attorneys' fees in the amount up to one third of the Gross PAGA Settlement Amount (currently estimated to be \$24,166.00) and costs up to \$3,985.00 incurred in prosecuting the Action. In the event the Court approves less than these amounts, the difference will be added to the Net PAGA Settlement Amount (although Plaintiff may appeal an order granting less than the full amount sought for attorneys' fees and costs). SeaTel, via the Settlement Administrator, will report these payments on IRS Form 1099 issued to Plaintiff's Counsel.

b. **Plaintiff's Individual Settlement Amount.** Subject to and conditioned upon the Court's Order approving the PAGA settlement, SeaTel shall pay Plaintiff \$5,000.00 for settlement of Plaintiff's individual claims, whether pleaded or unpleaded, and for a general release of all claims, known or unknown. SeaTel will report this payment on an IRS Form 1099 issued to Plaintiff.

c. **Plaintiff's Enhancement Payment.** SeaTel will not oppose Plaintiff's request for an enhancement payment of up to \$2,500.00 for serving as the representative Plaintiff in the Action. In the event the Court approves a payment of less than the requested amount, the difference will be added to the Net PAGA Settlement Amount (although Plaintiff may appeal an

order granting less than the full amount sought for Plaintiff's enhancement payment). SeaTel, via the Settlement Administrator, will report this payment on IRS Form 1099 issued to Plaintiff.

d. Administration Costs. SeaTel will not oppose the Settlement Administrator's costs in the amount up to \$2,000.00 for administering the settlement. In the event the Court approves a payment of less than this amount, the difference will be added to the Net PAGA Settlement Amount. SeaTel, via the Settlement Administrator, will report this payment on IRS Form 1099 issued to the Settlement Administrator.

4. Allocation of Net PAGA Settlement Amount. One hundred percent (100%) of the Net PAGA Settlement Amount shall be designated as "civil penalties" and shall be distributed 75% to the LWDA and 25% to Aggrieved Employees, pursuant to Labor Code § 2699(i). The 25% portion to be paid to Aggrieved Employees shall be paid to all Aggrieved Employees pro rata, based on the number of pay periods employed by each Aggrieved Employee during the PAGA Period.

a. The parties agree that should the Court deny approval of the Settlement based on the allocation of the Gross PAGA Settlement Amount or the Net PAGA Settlement Amount, the parties agree to re-negotiate in good faith in an effort to obtain approval of the Settlement.

5. PAGA Released Claims. Plaintiff agrees that upon entry of an Order approving the Settlement and judgment entered thereon, and upon the Settlement being fully funded, Plaintiff and all Aggrieved Employees release the PAGA Released Claims against the Released Parties that arose during the PAGA Period. Upon entry of the Order approving the settlement and judgment entered thereon and the Settlement being fully funded, Plaintiff and all Aggrieved Employees will be forever barred from pursuing any and all of the PAGA Released Claims that arose during the PAGA Period against the Released Parties.

6. General Release by Plaintiff.

a. In addition to the release made in paragraph 5 above, and in exchange for the Individual Settlement Amount, Plaintiff makes the additional following general release of all claims, known or unknown. Plaintiff releases the Released Parties, from all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule or regulation arising out of, relating to, or in connection with any act or omission by or on the part of Defendant. (The release set forth in this paragraph shall be referred to hereinafter as the "General Release.") With respect to the General Release, Plaintiff stipulates and agrees that, upon Court approval and full funding of the Gross Settlement Amount by Defendant, Plaintiff shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

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

b. If the facts relating in any manner to this Settlement are found hereafter to be other than or different from the facts now believed to be true, the release of claims contained herein shall be effective as to all unknown claims. Notwithstanding the foregoing provisions, the General Release by Plaintiff does not constitute a waiver of any claims that cannot by law be waived, including, *inter alia*, claims for workers' compensation, disability insurance, or unemployment insurance. Plaintiff agrees that she will not file any new claims or initiate any further action against the Released Parties for the claims released herein, except in the event action is necessary to enforce the terms of the Settlement Agreement.

7. **Escalator Clause.** Based on a review of its records, Defendant estimates that as of June 15, 2023, there are approximately 43 Aggrieved Employees who were employed a total of approximately 1,836 pay periods. These figures were the basis for the Parties' PAGA settlement. If the actual number of total pay periods through the date of Court approval is more than 15% greater than this estimate (i.e., if there are more than 2,111 pay periods from April 25, 2021 through the date of Court approval), Defendant shall have the option to (i) end the PAGA Period as of the first date that the pay period count exceeds 2,111, or (ii) increase the Net PAGA Settlement Amount in proportion to the increase in pay periods in excess of 15% (e.g., if the number of pay periods is 17% greater than 2,111, Defendant shall have the option to increase the Net PAGA Settlement Amount by 2%). Defendant shall have no obligation whatsoever to increase the Gross PAGA Settlement Amount.

8. **Covenants and Representations by Plaintiff and Plaintiff's Counsel.**

a. Plaintiff represents and warrants that she has not assigned or transferred or purported to assign or transfer to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Settlement Agreement.

b. Plaintiff acknowledges that she has read this Settlement Agreement, that she fully understands her rights, privileges and duties under the Settlement Agreement, and enters into this Settlement Agreement freely and voluntarily. Plaintiff further acknowledges that she has had the opportunity to consult with her attorneys to explain the terms of this Settlement Agreement and the consequences of signing this Settlement Agreement.

9. **Confidentiality.** Except as provided below to the extent necessary to effectuate the settlement or as required by court or legal process, Plaintiff and Plaintiff's Counsel will keep the terms of this Settlement Agreement confidential. Neither Plaintiff nor Plaintiff's Counsel shall issue a press release, hold a press conference, publish information about the settlement on any website or through any social media or otherwise publicize the settlement or communicate its terms in public or in private, unless ordered by the Court.

To permit judicial review and approval of the Settlement, as required by Labor Code section 2698, *et seq.*, Plaintiff's Counsel will file the Settlement Agreement with the Court and submit the Settlement to the LWDA as part of the parties' seeking Court approval of the Settlement, per Labor Code § 2699(1)(2).

10. **Motion or Joint Stipulation for Approval of PAGA Settlement by Plaintiff's Counsel.** Plaintiff's Counsel shall be responsible for promptly preparing and filing the Joint Stipulation or Motion for Approval of the PAGA Settlement. Plaintiff and Defendant will jointly

prepare the proposed Approval Order and Judgment to be entered by the Court to enforce this Agreement. The proposed Approval Order and Judgment will be submitted concurrently with the documents asking the court to approve the settlement. The Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

11. **Termination of Settlement Agreement.** If the Court does not approve the settlement, if the Court does not enter judgment as provided for in this Settlement Agreement, or if appellate review is sought and, on such review, the Court's decision is materially modified or reversed, or if one or more of the material terms of the Settlement Agreement is not approved or is materially modified or reversed or found to be invalid, then either of the Parties shall have the right within 10 days of written notice thereof to elect to terminate the Settlement Agreement, in which case the Settlement Agreement shall have no force or effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Settlement Agreement.

12. **Judgment.** As part of the Motion to approve the Settlement, Plaintiff shall submit a proposed judgment which enters judgment in the Action in accordance with the terms of the Settlement, retains jurisdiction over the Action under Cal. Code Civ. Proc. § 664.6 for the purpose of enforcing the terms of the Settlement following approval of the Settlement, and enjoins the prosecution of any of the PAGA Released Claims against any of the Released Parties upon the judgment being entered and the Settlement being fully funded. The Parties shall confer and agree on the Motion and the proposed judgment before submission to the Court. This Settlement Agreement is expressly conditioned upon the Court entering judgment as set forth herein.

13. **Preclusive Effect of Settlement Agreement and Approval.** The terms of this Settlement Agreement and the Order and judgement are binding on Plaintiff, the State of California, and all Aggrieved Employees, as well as their heirs, executors and administrators, successors and assigns, and those terms shall have res judicata, collateral estoppel and other preclusive effect in all pending and future claims, lawsuits or other proceedings maintained by or on behalf of any such persons, to the extent those claims, lawsuits or other proceedings constitute PAGA Released Claims as set forth in this Settlement Agreement. Notwithstanding any other provision in this Settlement Agreement, this Settlement Agreement and the Order and judgment in the Action may be filed in any action against or by Defendant or the Released Parties to support a defense of res judicata, collateral estoppel, release, waiver, good-faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim.

IV. ADMINISTRATION OF SETTLEMENT

1. **Settlement Administrator.** The Parties agree to engage Phoenix Settlement Administrators to handle the administration of this settlement.

2. **Provision of Information for Aggrieved Employees.** Within twenty (20) calendar days after entry of an order approving the settlement, SeaTel shall provide the Settlement Administrator with information for Aggrieved Employees. SeaTel will in good faith compile from its records a list of Aggrieved Employees that will be in a computer-readable format, such as a Microsoft Excel spreadsheet, and shall include each Aggrieved Employee's full name, last known

mailing address, number of pay periods employed during the PAGA Period, and Social Security numbers to the extent available from SeaTel's records. Because Social Security numbers are included in the list, the Settlement Administrator will maintain the list in confidence, and access shall be limited to those with a need to use the list as part of the administration of the Settlement. Within seven (7) calendar days of receiving the Aggrieved Employees' information from SeaTel, the Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the Individual PAGA Payments to each Aggrieved Employee and the data used to calculate said payments. The Settlement Administrator shall obtain approval from all counsel of the calculations before mailing Individual PAGA Payments.

3. **Explanatory Letter and Individual PAGA Payments.** Upon receipt of the information for Aggrieved Employees, the Settlement Administrator will perform a search on the National Change of Address database to update the Aggrieved Employees' addresses. Within fourteen (14) calendar days after the Settlement has been fully funded and after receiving approval from Plaintiff's Counsel and Defendant's counsel of the payment calculations as provided above, the Settlement Administrator shall mail copies of the explanatory letter, which has been mutually approved by the Parties and is attached hereto as **Exhibit A**, along with Individual PAGA Payments to all Aggrieved Employees via regular First-Class U.S. Mail.

The Settlement Administrator will calculate the amount to be received by each Aggrieved Employee, which will be based on the formula set forth above. The Settlement Administrator will send each Aggrieved Employee a check for his or her Individual PAGA Payment along with the explanatory letter. Checks will remain negotiable for 180 days. Each Individual PAGA Payment shall be deemed penalties and reported using IRS Form 1099, with no withholdings taken.

4. **Undeliverable Notices.** The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Aggrieved Employee. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Aggrieved Employee.

Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace or other reputable search method using the name, address or Social Security number of the Aggrieved Employee involved, and will perform up to a single re-mailing if a new address is located.

Funds represented by checks returned as undeliverable after a re-mailing, checks for whom the Settlement Administrator could not locate an updated address after performing a skip trace, and funds represented by checks remaining un-cashed more than 180 days after issuance (collectively, "Uncashed Checks"), shall be tendered to the State Controller's Office, Unclaimed Property Division.

In the event that an Aggrieved Employee's check is undeliverable, uncashed, or otherwise distributed to the State Controller's Office, Unclaimed Property Division, the terms of the final judgment and the Release of Claims will nevertheless be binding upon that Aggrieved Employee.

5. **Distribution of Payments.** Within fourteen (14) calendar days of the Settlement being fully funded, the Settlement Administrator shall issue payments to (1) Aggrieved Employees; (2) the LWDA; (3) Plaintiff's Counsel for Plaintiff's Counsel's Court-approved attorneys' fees and litigation costs and expenses; (4) Plaintiff for the Court-approved enhancement payment; and (5) the Settlement Administrator for Court-approved Settlement administration costs incurred in connection with the Settlement. Payments made by SeaTel pursuant to this Settlement shall be held by the Settlement Administrator in an interest-bearing account until they are disbursed, with any accrued interest inuring to the benefit of the Aggrieved Employees in the form of pro rata increases to Aggrieved Employees' Individual PAGA Payments.

6. **Accounting.** Within 45 days after all payments have been made under the Settlement, the Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid from the settlement.

7. **Tax Consequences.** Neither Plaintiff nor SeaTel, nor counsel for either of the Parties, makes any representations or warranties with respect to tax consequences of any payment under this Settlement Agreement. Aggrieved Employees are responsible for correctly characterizing compensation under this Settlement Agreement for tax purposes and paying any taxes owing on said amounts. The Administrator shall issue employees IRS 1099 Forms reflecting payment issued to them under this Agreement. Plaintiff understands and agrees that if any action is asserted against Defendant, Defendant's agents, Plaintiff, Plaintiff's agents, or by any taxing authority or government agency with respect to the payments to Plaintiff under this Agreement, she shall be liable for any taxes owed, and further agrees that she will hold Defendant and Defendant's agents free and harmless and indemnify them from and against any demands or lawsuits for payment of income taxes and payroll taxes, interest, or penalties relating to the monies paid to Plaintiff or for her benefit pursuant to this Agreement.

V. MISCELLANEOUS PROVISIONS

1. **Drafting.** The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that neither Party shall be considered the "drafter" of this Settlement Agreement for purposes of having terms construed against that Party.

2. **Successors.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators and successors.

3. **Costs and Fees.** The Parties shall each bear their own costs and attorneys' fees incurred in connection with this Settlement Agreement, the Action and Plaintiff's claims, except as otherwise set forth specifically herein.

4. **Governing Law.** This Settlement Agreement shall be construed under and governed by the laws of the State of California. This Settlement Agreement shall be deemed to have been entered into in Santa Barbara, California, and all questions of validity, interpretation or performance of any of its terms or of any rights or obligations of the Parties to this Settlement Agreement shall be governed by California law. If any legal or equitable action is necessary to

enforce the terms of this Settlement Agreement, it shall be brought in the State of California, County of Santa Barbara.

5. **Complete Agreement.** The Parties each acknowledge and represent that no promise or representation not contained in this Settlement Agreement has been made to them with respect to the subject matter of this Settlement Agreement, and acknowledge and represent that this Settlement Agreement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the PAGA claim in the Action.

6. **Nullification of Settlement Agreement.** In the event that: (i) the Court does not approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then this Settlement Agreement and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their respective positions before the Settlement was executed.

7. **Judgment and Continued Jurisdiction.** As noted above, after approval of this settlement, the Court will have continuing jurisdiction under Cal. Code Civ. Proc. § 664.6 for purposes of addressing: (i) the interpretation and enforcement of the terms of the settlement, (ii) settlement administration matters, and (iii) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement.

8. **Amendment or Modification.** This Settlement Agreement may be amended or modified only by a written instrument, signed by either the Parties or their successors-in-interest, or by counsel for all Parties.

9. **Authorization to Enter into Settlement Agreement.** Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this settlement, the Parties may seek the assistance of the mediator (Judge Patrick J. O'Hara (Ret.)) or the Court to resolve such disagreement.

10. **Execution and Counterparts.** This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

11. **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties believe this Settlement Agreement is a fair, adequate and reasonable settlement of the Action, and have arrived at this settlement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this

settlement.

12. **Invalidity of Any Provision.** Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Settlement Agreement valid and enforceable.

13. **Severability.** If any term or provision of this Settlement Agreement is held to be invalid or unenforceable, the remaining portions of this Settlement Agreement will continue to be valid and will be performed, construed and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

14. **Waiver.** No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right or remedy.

15. **Enforcement Action.** In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

16. **Mutual Preparation.** The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one Party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

17. **Representation by Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

18. **Cooperation and Execution of Necessary Documents.** All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

19. **Binding Agreement.** The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

IN WITNESS THEREOF, the Parties each acknowledge that he/it has read the foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement and hereby executes it voluntarily and with full understanding of its consequences.

30-Sep-2023

Dated: _____, 2023



Maria Smeby (Sep 30, 2023 15:47 PDT)

Maria Smeby, Plaintiff

SEATEL, INC.

Dated: _____, 2023

By: _____

Its: _____

APPROVED AS TO FORM:

2-Oct-2023

Dated: _____, 2023

**VAN HOOK LAW FIRM
THE BYRNE LAW GROUP**

By:  _____

John A. Van Hook
Adrian C. Byrne
Attorneys for Plaintiff Maria Smeby

Dated: _____, 2023

MULLEN & HENZELL, LLP

By: _____

Rafael Gonzalez
Attorney for Defendant SeaTel, Inc.

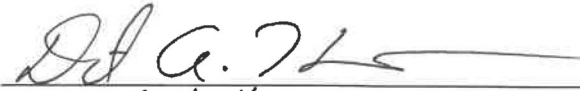
IN WITNESS THEREOF, the Parties each acknowledge that he/it has read the foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement and hereby executes it voluntarily and with full understanding of its consequences.

Dated: _____, 2023

Maria Smeby, Plaintiff

SEATEL, INC.

Dated: October 2, 2023


By: David A. Harris
Its: VP/GM Concord and Tracker

APPROVED AS TO FORM:

Dated: _____, 2023

**VAN HOOK LAW FIRM
THE BYRNE LAW GROUP**

By: _____
John A. Van Hook
Adrian C. Byrne
Attorneys for Plaintiff Maria Smeby

Dated: October 2, 2023

MULLEN & HENZELL, LLP

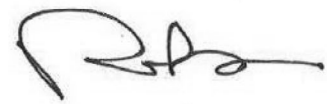

By: _____
Rafael Gonzalez
Attorney for Defendant SeaTel, Inc.

EXHIBIT A

Re: Payment from Maria Smeby v. SeaTel, Inc.
Superior Court of California Contra Costa County, Case No. C22-01360

Date: ___/___/2023

Name
Address

Dear Name:

Enclosed, please find a check made payable to you. This is your payment from the settlement of a lawsuit titled *Maria Smeby v. SeaTel, Inc.*, Case No. C22-01360, pending in the Superior Court of the State of California for the County of Contra Costa (the “Action”).

The Action was filed against SeaTel, Inc. (“SeaTel”) and include claims pursuant to the California Labor Code Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”). The Action brought by Plaintiff Maria Smeby (“Plaintiff”), a former employee of SeaTel, on behalf of the State of California and other alleged aggrieved employees. You have been identified as one of the employees on whose behalf the case was brought.

In the lawsuit, Plaintiff claimed that SeaTel violated the California Labor Code by failing to provide compliant meal periods or pay premium wages, failing to pay all unused vested vacation time upon termination from employment, failing to timely pay wages upon separation, failing to timely pay wages during employment, failing to maintain and provide accurate itemized wage statements, and failing to keep complete and accurate payroll records. SeaTel disputes all of Plaintiff’s allegations and denies that it engaged in any of the alleged misconduct. The parties have reached a settlement of Plaintiff’s representative PAGA claims, and on [DATE], the Court approved the settlement, including the amount of civil penalties to be paid under the settlement. A portion of the civil penalty settlement amount goes to the State of California’s Labor and Workforce Development Agency. Another portion of the civil penalty settlement amount goes to employees of SeaTel who were allegedly affected by the alleged violations of the Labor Code. In agreeing to enter into this settlement, SeaTel does not admit that it is liable in any way to current or former employees for any violations of the California Labor Code, or any penalties, and has denied and disputed all of Plaintiff’s contentions. The Court has not decided the merits of Plaintiff’s claims or SeaTel’s defenses.

Pursuant to the settlement, enclosed is a check for your share of a portion of the civil penalties. This check will remain valid for 180 days from the date of issuance. Please note that no deductions/withholdings have been made from your settlement payment, and you will be responsible for any tax consequences arising from your receipt of the same (for which an IRS Form 1099 will issue). If you do not cash your check within 180 days of issuance, the funds will be tendered to the State Controller’s Office, Unclaimed Property Division. If you are still employed by SeaTel, your decision to cash the check will not affect your employment in any way.

While you were not a party to the Action, you and the State of California have been bound by the settlement entered in this matter and approved by the Court, including the release contained in the settlement. The release pertains to civil penalties under PAGA only. The release includes all

claims under the PAGA that were alleged in, or could have been alleged in Plaintiff's complaint in the Action, including claims for civil penalties, attorneys' fees, costs, or interest under the PAGA based on SeaTel's alleged failure to provide compliant meal periods or pay premium wages, alleged failure to pay all unused vested vacation time upon termination from employment, alleged failure to timely pay wages upon separation, alleged failure to timely pay wages during employment, alleged failure to maintain and provide accurate itemized wage statements, and alleged failure to keep complete and accurate payroll records, during the time period April 25, 2021 through <DATE OF ORDER APPROVING THE PAGA SETTLEMENT> (the "PAGA Period").

If you have any questions, you can contact _____, the Settlement Administrator, at 1-____-____.

Exhibit 2



PHOENIX SETTLEMENT ADMINISTRATORS

CLASS ACTION SETTLEMENT SOLUTIONS

CASE ASSUMPTIONS

Class Members	43
Total Claims Processed	43
Subtotal Admin Only	\$1,750.00
WILL NOT EXCEED	\$1,750.00

September 12, 2023

Case: TBD - PAGA Settlement

Phoenix Contact: Jodey Lawrence
Contact Number: 949.566.1455
Email: Jodey@phoenixclassaction.com

Requesting Attorney: Adrian Byrne
Firm: Byrne Law Group
Contact Number: 800.805.4002
Email: adrian@thebyrnelawgroup.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly. Estimate is based on 43 Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup/ NCOA (USPS)/Language Translation				
Administrative Tasks:	Rate	Hours/Units	Line Item Estimate	
Programming Manager	\$125.00	1	\$125.00	
Programming Database & Setup	\$125.00	1	\$125.00	
NCOA	\$6.96	1	\$6.96	
Phone Setup	\$25.00	1	\$25.00	
Total			\$281.96	

Data Merger & Scrub				
Project Action	Rate	Hours/Units	Line Item Estimate	
Notice Packet/Check Formatting	\$125.00	1	\$125.00	
Data Merge & Duplication Scrub	\$0.20	43	\$8.60	
Total			\$133.60	

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.

Mailing and Case Management				
Project Action:	Rate	Hours/Units	Line Item Estimate	
Case Associate	\$125.00	2	\$250.00	
QSF Bank Account Fees	\$75.00	2	\$150.00	
Programming Calculations	\$125.00	1	\$125.00	
Disbursement Review	\$100.00	1	\$100.00	
Setup Printing Notice & Check	\$125.00	1	\$125.00	
Notice & Check	\$1.50	43	\$64.50	
Estimated Postage (up to 2 oz.)*	\$0.64	43	\$27.52	
Skip Tracing Undeliverables	\$1.00	4	\$4.30	
Remail Notice and Checks Packets	\$2.50	4	\$10.75	
Estimated Postage	\$0.55	4	\$2.37	
Programming Undeliverables	\$100.00	1	\$100.00	
Reconcile Uncashed Checks	\$125.00	1	\$125.00	
State Controller Uncashed Check QSF	\$250.00	1	\$250.00	
Annual Tax Reporting *				
Total			\$1,334.44	

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$1,750.00



PHOENIX
SETTLEMENT ADMINISTRATORS

CLASS ACTION SETTLEMENT SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are at \$10.00 per claim.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

PROOF OF SERVICE

STATE OF CALIFORNIA)
)
COUNTY CONTRA COSTA)

I, John A. Van Hook, declare and state as follows:

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to this action. My business address is VAN HOOK LAW FIRM, 14156 Magnolia Blvd., Suite 200, Sherman Oaks, CA 91423. I am a member of the State Bar of California.

On October 2, 2023, the following document:

- **DECLARATION OF JOHN A. VAN HOOK IN SUPPORT OF PLAINTIFF'S MOTION AND MOTION FOR APPROVAL OF SETTLEMENT OF REPRESENTATIVE PAGA CLAIMS**

was served on the parties in this action as indicated below:

Rafael Gonzalez
Christina M. Behrman
Mullen & Henzell L.L.P.
112 E. Victoria Street
Santa Barbara, CA 93101
rgonzalez@mullenlaw.com
cbehrman@mullenlaw.com
[X] ELECTRONIC MAIL

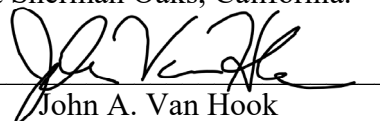
Counsel for Defendant SeaTel,
Inc.

Adrian C. Byrne
adrian@thebyrnelawgroup.com
THE BYRNE LAW GROUP
[X] BY ELECTRONIC MAIL

Counsel for Plaintiff Maria
Smeby

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

Executed this 2nd day of October, 2023 at Sherman Oaks, California.


John A. Van Hook