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17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 IN AND FOR THE COUNTY OF SISKIYOU

19 NATASHA TEMPLE, an individual, on her
20 own behalf and on behalf of the Labor and
21 Workforce Development Agency,

22 Plaintiff,

23 vs.

24 S & J SHELTON, INC., a corporation; and
25 DOES 1-100, inclusive,

26 Defendants.

Case No.: SCCVCVA22502

STIPULATION OF SETTLEMENT UNDER
PRIVATE ATTORNEYS GENERAL ACT OF
2004; [PROPOSED] ORDER

27 The Parties hereto, Plaintiff Natasha Temple ("Temple" or "Plaintiff"), as a representative
28 for the Labor and Workforce Development Agency ("LWDA"), and Defendant S & J Shelton, Inc.
("Defendant"), by and through their respective counsel of record, hereby stipulate and agree as
follows:

Stipulation of Settlement Under Private Attorneys General Act of 2004; [Proposed] Order
Page 1 of 10

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SISKIYOU

AUG 28 2023

BY: ENDORSED-M. INGLE
DEPUTY CLERK

1 1. WHEREAS, on April 4, 2022, counsel for Plaintiff sent a letter to the LWDA and
2 Defendant alleging violations of the Labor Code alleged to have occurred during Plaintiff's
3 employment with Defendant ("LWDA Letter").

4 2. WHEREAS, on May 11, 2022, more than 33 days after Plaintiff's LWDA Letter,
5 Plaintiff filed a complaint in the above-captioned matter, bringing individual employment claims,
6 and also a claim under the Private Attorneys General Act ("PAGA", Lab. Code, § 2698, *et seq.*). At
7 this time, Temple's PAGA claim was limited to allegations of incomplete wage statements, per
8 Labor Code section 226(a)(8) (i.e., that wage statements furnished to Defendant's employees failed
9 to show the name and address of the employer).

10 3. WHEREAS, Plaintiff subsequently filed a First Amended Complaint, clarifying that
11 the LWDA had not announced its intention to investigate any of the claims in the LWDA letter¹
12 (and that Plaintiff therefore had legal authority to pursue civil penalties for all violations alleged).
13 Under this "PAGA Claim", Plaintiff seeks to recover civil penalties for violations of the Labor
14 Code, namely failure to provide rest periods or pay premiums, failure to provide meal periods or
15 pay premiums, failure to furnish accurate wage statements, failure to provide paid sick leave and
16 written notice of accrued leave,² and failure to pay all wages at the end of employment.

17 4. WHEREAS, the Parties engaged in formal discovery through which Defendant
18 provided information regarding, *inter alia*, the number of California employees believed to have
19 been affected by the alleged violations during the relevant time period and the number of potential
20 violations. The total number of aggrieved employees potentially affected by the PAGA Claim as of
21 the date of this order is approximately 47.

22
23 ¹ A plaintiff seeking to recover civil penalties for certain wage statement violations may file a PAGA suit for the same
24 after 33 days, assuming the employer does not "cure" the violations. Otherwise, the employee generally must wait 65
25 days before filing suit, to allow time for the LWDA to announce its intent to investigate. See Lab. Code, § 2699.3,
26 subds. (a), (c). Thus, Temple filed the First Amended Complaint

27 ² This paid sick leave issue (i.e., violations of Labor Code section 246) was not alleged in the LWDA letter or in the
28 pleadings, but was discovered in the course of discovery and preparing for mediation. Counsel for Plaintiff has
evaluated carefully the strengths and weaknesses of all claims to be disposed of by this Stipulation of Settlement. It
should be noted that a settlement for civil penalties under the PAGA is not invalid because it encompasses claims
which were not specifically listed in the plaintiff's initial written notice to the employer and LWDA. See *Moniz v.*
Adecco USA, Inc. (2021) 72 Cal.App.5th 56, 82-83.

1 5. WHEREAS, Defendant denies all of Plaintiff's allegations, both on factual and legal
2 bases.

3 6. WHEREAS, the Parties engaged in settlement negotiations primarily through their
4 respective attorneys: John P. Briscoe, a shareholder of Mayall Hurley P.C. and a member of that
5 firm's employment litigation group; and Mark Vegh, an attorney at Reese, Smalley, Wiseman &
6 Schweitzer, both experienced litigators with knowledge of employment law and the PAGA.

7 7. WHEREAS, the Parties have reached agreement on the terms of settlement
8 regarding the PAGA Claims. (Plaintiff's individual claims were resolved by way of a separate,
9 confidential settlement agreement.)

10 8. WHEREAS, Labor Code section 2699(l) requires that the court review and approve
11 any proposed settlement agreement pursuant to PAGA.

12 9. WHEREAS, Plaintiff and Plaintiff's counsel concluded—after taking into account
13 the sharply disputed factual and legal issues involved in the Action, the risks attending further
14 prosecution, the discovery and investigation conducted to date, and the substantial benefits
15 received and to be received pursuant to the compromise and settlement of the Action, the nature of
16 the claimed violations and the wide discretion of the Court to reduce civil penalties imposed—that
17 settlement on the terms herein set forth is in the best interest of all interested parties, including the
18 Labor and Workforce Development Agency (the "LWDA"), and that the settlement adequately
19 serves the deterrent purposes of the PAGA.

20 10. WHEREAS, Plaintiff and Plaintiff's counsel have balanced their evaluation of the
21 validity and strength of the asserted claims against the problems of proof and the legal standards
22 governing the claims alleged. Following extensive discovery and analysis, and applying the
23 appropriate civil penalties as provided by the Labor Code, Plaintiff's counsel estimates the *absolute*
24 *maximum* recoverable civil penalties under the PAGA to be just in excess of \$215,000. However,
25 *half* of this exposure represents alleged violations of rest and meal break requirements, and this
26 assumes continuous and uniform violations which, Plaintiff's counsel can concede, cannot be
27 assumed to be proven at trial. \$53,900 of the total exposure represents alleged violations of paid

1 sick leave laws. (See Lab. Code, § 246.) There is a good faith debate as to whether Plaintiff would
2 be required to provide further written notice to Defendant and the LWDA before seeking civil
3 penalties for these violations, and whether Defendant would then have the opportunity to “cure”
4 these violations such that Plaintiff would be estopped from seeking civil penalties for them. (See
5 Lab. Code, § 2699.3(c).) Additionally, \$30,900 of the total exposure would result from
6 Defendant’s failure to include its address on wage statements furnished to its employees. A trial
7 court, per the PAGA, has discretion to reduce the assessed amount of civil penalties if to do
8 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory. (See
9 Lab. Code, § 2699, subd. (e)(2).) The settlement reached represents a recovery that is **twenty**
10 **percent** of the estimated maximum recoverable civil penalties. Based on this evaluation, Plaintiff’s
11 counsel believes that the settlement reached satisfies the public policies of PAGA to punish past
12 violations and deter future violations of the Labor Code.

13 11. WHEREAS, similarly, Defendant and Defendant’s counsel concluded there were
14 benefits associated with settling. Although Defendant denies the various allegations and
15 challenges the validity of each of the causes of action in the Action, Defendant took into account
16 the sharply disputed factual and legal issues involved in the Action, the risk attending further
17 defense, the expense, time, and burden of protracted litigation and potential appeal following a
18 judgment, and the desire to put the controversy to rest. Based on these factors, Defendant and
19 Defendant’s counsel agreed to this settlement without any admission of fault or liability. Nothing
20 in this Agreement, nor any action taken in implementation thereof, nor any statements, discussions
21 or communications, nor any materials prepared, exchanged, issued, or used during the course of the
22 negotiations leading to this Agreement, is intended by the Parties to constitute, nor will any of the
23 foregoing constitute, be introduced, be used or be admissible in any way in this case or any
24 judicial, arbitral, administrative, investigative, or other forum or proceeding as evidence of any
25 violation of any federal, state, or local law, statute, ordinance, regulation, rule, or executive order,
26 or any obligation or duty at law or in equity, against Defendant or any other Released Party (as
27 defined in paragraph 14, *infra*).

12. WHEREAS, the Parties hereby agree to settle the PAGA Claims at issue in the Action ("the PAGA Settlement") for a total payment of **\$43,000.00** and dismiss with prejudice the Fifth Cause of Action under the PAGA.

13. WHEREAS, the persons covered by the PAGA Settlement will be Plaintiff and all other persons who were employed by Defendant in California at any time from April 9, 2021 to the date of approval of this PAGA Settlement. The time period covered by the PAGA Settlement will be from April 9, 2021 through the date of the order approving this PAGA Settlement ("the PAGA Timeframe"). The Released Parties include Defendant, its parents, predecessors, successors, related companies, subsidiaries, affiliates, partners, owners, shareholders, officers, directors, managers, servants, agents, employees, former employees, future employees, attorneys, insurers, future entities, trusts, employment agencies and professional employer organizations, and their employees, officers, agents, representatives, attorneys, past or present, insurers, stockholders, fiduciaries, and other service providers, and their successors and assigns, and all persons acting under, by, through, or in concert with any of them (hereinafter collectively referred to as the "Released Parties").

14. Upon the Effective Date (the date the Court signs this stipulated order), the LWDA and each of the Other Aggrieved Employees, including Plaintiff, hereby voluntarily and knowingly release and forever discharge any and all claims against the Released Parties that could have been alleged in this matter under PAGA, specifically for violations of Labor Code sections 201-203, 226, 226.7, 246, and 512, arising from April 9, 2021 through the date of this order ("PAGA Released Claims").

15. Neither the distribution of Individual Settlement Payment checks to, nor the use or enjoyment of any Individual Settlement Payment checks by Other Aggrieved Employees shall constitute consideration offered or exchanged for the release of any Other Aggrieved Employees or private rights of action against any person.

16. This Stipulation of Settlement shall not operate as a waiver of any of Plaintiff's individual (i.e., non-PAGA) claims, which are to be resolved by a separate agreement.

17. WHEREAS, the sum of \$43,000 (the "Gross PAGA Settlement Sum") shall be allocated as follows:

- a. \$14,333, representing approximately 33 1/3% of the Gross PAGA Settlement Sum as attorneys' fees incurred for prosecution of the PAGA Claims;
- b. \$2,850, representing the costs of administration of this settlement, as conducted by Phoenix Settlement Administrators; and
- c. \$3,486.33 for costs of suit.

The Net PAGA Settlement Amount of \$22,330.67 will be further allocated as follows:

- e. \$5,582.67, or 25 percent (25%) of the Net PAGA Settlement Sum will be distributed by Defendant to Plaintiff and the Other Aggrieved Employees who worked during the PAGA Timeframe. Each employee will receive a proportional share of the net PAGA Settlement Sum based on the number of pay periods he/she was employed during the PAGA Timeframe. Any such employees still employed with or on behalf of Defendant will receive the appropriate credit apart from their regular pay. Phoenix Settlement Administrators will send each Other Aggrieved Employee their portion of the settlement by mail to the last known address. Settlement checks issued to the Other Aggrieved Employees pursuant to this Agreement shall expire 120 days from the date they are issued. Any unclaimed funds after 120 days shall be remitted to the unclaimed property for the State Controller's Office (SCO) of California.
- f. \$16,748, or 75 percent (75%) of the Net PAGA Settlement Sum shall be paid to the LWDA in accordance with Section 2699(i) of the California Labor Code.

18. In no event shall Defendant pay more than \$43,000.00 pursuant to this Stipulation of Settlement.

19. WHEREAS, on the condition that the Court approves this Stipulation and enters the attached Order: the PAGA Settlement Sum will be paid as follows:

- a. Within ten (10) calendar days after the Court enters the attached Order, Defendant shall pay the Gross PAGA Settlement Sum to Phoenix Settlement Administrators, and shall also provide to Phoenix Settlement Administrators the names and last-known addresses of all Other Aggrieved Employees who worked for Defendant during the PAGA timeframe. Within ten (10) calendar days after receiving the aforementioned sum and employee information, Phoenix Settlement Administrators shall (1) pay to Mayall Hurley P.C. attorney's fees in the amount of \$14,333 and costs in the amount of \$3,486.33; (2) pay \$16,748 to the LWDA; (3) pay the Individual Settlement Payments to the Other Aggrieved Employees; and (4) retain \$2,850 for administration costs.

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- b. With regard to the Other Aggrieved Employees with the exception of Plaintiff, their Individual Settlement Payments shall be sent by Defendant as follows. With respect to Other Aggrieved Employees who are no longer employed by Defendant, Defendant shall mail Individual Settlement Payments to those Other Aggrieved Employees by U.S. First Class mail to the Other Aggrieved Employee's last known address. A letter explaining this Settlement Agreement will be included in the mailing of each Other Aggrieved Employee's check. Plaintiff's payment will be sent with the other consideration provided for resolution of his individual claims. It will be conclusively presumed that any Other Aggrieved Employee's check was received if the payment check has not been returned within thirty (30) days after the original mailing of the payment check. With respect to Other Aggrieved Employees who are employed with Defendant, Defendant shall issue Individual Settlement Payments via direct deposit, with no withholdings therefrom. Those persons shall be provided with a letter explaining this Settlement Agreement, either via mail or personal delivery.
- c. Settlement checks shall remain valid and negotiable for one hundred twenty (120) calendar days from the date of their issuance. If there are uncashed checks following this period, Phoenix Settlement Administrators will ensure that uncashed funds shall be forwarded to the unclaimed property for the State Controller's Office (SCO) of California in the name of the Other Aggrieved Employee who did not cash his or her Individual Settlement Payment.
- d. The settlement payments set forth above will be reported on IRS Form 1099s. The Parties acknowledge and agree that all settlement payments set forth under this Agreement are attributable as penalties. None are attributable as wages. Accordingly, the parties acknowledge and agree that Defendant is not responsible for any employer-side taxes in connection with any PAGA settlement payments under this Agreement. Plaintiff, Mayall Hurley P.C., and the Other Aggrieved Employees shall be solely responsible for the reporting and payment of their share of any federal, state and/or municipal income or other taxes on payments made pursuant to this Agreement, and shall hold Defendant and Defendant's counsel free and harmless from any claims resulting from treatment of such payments as non-taxable, including the treatment of such payments as not subject to withholding or deduction for payroll and employment taxes. No party has made any representation to any of the other Parties as to the taxability of any payments pursuant to this Agreement, including the payments to Plaintiff and the Other Aggrieved Employees, the payments to Plaintiff's counsel, or otherwise as to the tax implications of any provision of this Agreement.

26 20. The Parties jointly request that the Court approve the penalties sought as part of the
27 PAGA Settlement and approve the dismissal of the PAGA Claims in the Complaint attendant

1 therewith.

2 21. This Stipulation is made for the sole purpose of settling this Action. This
3 Stipulation and the settlement it evidences are made in compromise of disputed claims. Because
4 this action was pleaded as a PAGA action, this Stipulation must receive approval by the Court.
5 Accordingly, the Parties enter into this Stipulation and associated settlement on a conditional basis.
6 If the Court does not enter an order granting approval of this Stipulation, this Stipulation shall be
7 deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred to or
8 utilized for any purpose whatsoever; and the negotiation, terms and entry of the Stipulation shall
9 remain subject to the provisions of California Evidence Code sections 1119 and 1152, Federal Rule
10 of Evidence 408, and any other analogous rules of evidence that may be applicable. If the Court
11 does enter an order granting approval of this Stipulation, and following payment of the PAGA
12 Settlement Sum as set forth in Section 20(a), *supra*, Plaintiff shall cause to be filed a Request for
13 Dismissal as to the Fifth Cause of Action, with prejudice.

14 22. The Parties and their counsel agree that they will not issue any press releases,
15 initiate any contact with the press, respond to any press inquiry or have any communication with
16 the press about the fact, amount or terms of this Stipulation. In addition, the Parties and their
17 counsel agree that they will not engage in any advertising or distribute any marketing materials
18 relating to this Stipulation or this action in any manner that identifies Defendant, including but not
19 limited to any postings on any websites maintained by Plaintiff's counsel. Neither Plaintiff nor
20 Plaintiff's Counsel will discuss the terms or the fact of this Agreement with third parties other than
21 (1) their immediate family members, or (2) their respective accountants or lawyers as necessary for
22 tax purposes. Plaintiff and Plaintiff's Counsel agree not to publish any of the terms or conditions
23 of this Stipulation in any manner that identifies Defendant.

24 23. Plaintiff's attorney has calculated the attorneys' fees as requested herein. The
25 Parties agree that if the Court approves an amount of attorneys' fees less than the amount
26 requested, the unapproved portion shall revert to the Net PAGA Settlement Amount to be
27 distributed between the Plaintiff, the Other Aggrieved Employees and the LWDA in the same

percentages as set forth herein.

IT IS SO STIPULATED.

PLAINTIFF AND PLAINTIFF'S COUNSEL

DATED: 8/9/2023

DocuSigned by:
Natasha Temple
555875A74A2F480
Plaintiff Natasha Temple

DATED: 8/9/2023

MAYALL HURLEY P.C.

By: John P. Briscoe
Attorneys for Plaintiff

DEFENDANT AND DEFENDANT'S COUNSEL

S & J Shelton, Inc.

DATED: _____

By: Jody Dee Shelton, Secretary

DATED: _____

REESE, SMALLEY, WISEMAN &
SCHWEITZER, LLP

By: Mark A Vegh
Attorneys for Defendant

1 percentages as set forth herein.

2 IT IS SO STIPULATED.

3 PLAINTIFF AND PLAINTIFF'S COUNSEL

4
5 DATED: _____

Plaintiff Natasha Temple

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8 DATED: _____

MAYALL HURLEY P.C.

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10 By: _____
11 John P. Briscoe
12 Attorneys for Plaintiff

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15 DEFENDANT AND DEFENDANT'S COUNSEL

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18 DATED: Aug 8, 2023

S & J Shelton, Inc.

19 By: Jody D. Shelton
Jody Dee Shelton, Secretary

20 DATED: August 8, 2023

REESE, SMALLEY, WISEMAN &
SCHWEITZER, LLP

21
22
23 By: Mark A. Vegh
24 Mark A Vegh
25 Attorneys for Defendant

ORDER

Upon review of the foregoing stipulation entered into by and between the parties in the above-referenced action, and good cause appearing therefor,

IT IS HEREBY ORDERED that the foregoing stipulation is hereby approved and the Court approves the Parties' PAGA Settlement pursuant to Labor Code § 2699(l). The parties are ordered to perform their respective duties as stipulated thereto.

DATED:

8/28/23

KAREN L. DIXON

Judge of the Superior Court