PAGA SETTLEMENT AND RELEASE AGREEMENT

This PAGA Settlement and Release Agreement (hereinafter "Settlement" or "Agreement") is made and entered into by and between Plaintiff Esmeralda Velasco (hereinafter "Plaintiff") on behalf of herself and as an authorized proxy and agent for the State of California and the Labor and Workforce Development Agency ("LWDA") pursuant the Labor Code Private Attorneys General Act of 2004, California Labor Code section 2698 *et seq.* ("PAGA"), on the one hand, and Defendant Kellermeyer Bergensons Services, LLC. ("Defendant" or "KBS"), on the other hand. Plaintiff and Defendant are collectively referred to herein as the "Parties." For purposes of clarity, Bright Matters, Inc. ("Bright Matters") and Alejandro Navarro ("Navarro") are not parties to this Agreement and the release included herein does not apply to Navarro or Bright Matters.

1. THE CONDITIONAL NATURE OF THIS AGREEMENT

1.1 This Agreement and all associated exhibit(s) or attachment(s) are made for the purpose of settling the Covered Claims, as described herein, in the Action. This Agreement and the settlement it evidences are made in compromise of disputed claims. The Parties enter into this Agreement on a conditional basis. If the Court does not enter the Approval Order and Final Judgment and/or the Effective Date does not occur, this Agreement shall be deemed null and void *ab initio*, it shall be of no force or effect whatsoever, it shall not be referred to or utilized for any purpose whatsoever, and the negotiation of the Agreement shall remain subject to the provisions of California Evidence Code section 1152 and any other analogous rules of evidence that are applicable.

1.2 Defendant denies all the allegations asserted in the Complaint and also denies any claims for relief, including claims for penalties, attorneys' fees, and costs of suit. Defendant has agreed to resolve Plaintiff's causes of action for violation of the PAGA via this Agreement, but to the extent this Agreement is not approved, or the Effective Date does not occur, Defendant does not waive, but rather expressly reserves, all rights to challenge Plaintiff's Complaint and letter VELASCO sent to the LWDA on May 3, 2022 (the "LWDA Letter") upon all procedural and factual grounds, as well as asserting any and all other potential defenses or privileges. Plaintiff and Defendant agree that Defendant retains and reserves these rights, and agree not to argue or present any argument, and hereby waive any argument that, based on this Agreement, Defendant cannot assert any and all potential defenses and privileges if this Action were to proceed. The Parties further agree that this Agreement does not constitute an initial violation of PAGA by Defendant.

2. NATURE OF ACTION

2.1 For purposes of this Settlement, the Aggrieved Employees or PAGA Members are defined as all current or former non-exempt/hourly paid employees who are or previously were misclassified as independent contractors employed by non-party Bright Matters, Inc. ("Bright Matters"), former subcontractor of Defendant, who performed work at KBS's customers in the State of California between May 3, 2021, and August 31, 2023, the date that Bright Matters no longer provided workers to KBS (the "PAGA Period"). For clarity purposes, a list of the Aggrieved Employees is attached herein as Exhibit A.

2.2 Through informal discovery, non-party Bright Matters provided KBS, Plaintiff, and PAGA Counsel with information about the total number of Pay Periods, estimated at 658 during the PAGA Period. The total number of PAGA Members employed by non-party Bright Matters who performed work at KBS's customers during the PAGA Period was estimated to be 56.

2.3 Non-Party Bright Matters was Plaintiff's employer and the employer for the Aggrieved Employees or PAGA Members whose PAGA claims against KBS are resolved through this Agreement. KBS subcontracted with Bright Matters to provide workers to perform work at and for KBS's customers. This Agreement resolves claims for penalties under PAGA for only the Aggrieved Employees or PAGA Members as defined herein who performed work at KBS's customers as well as all those entities and parties included in the definition of Released Parties.

3. DEFINITIONS

3.1 "Action" or "Lawsuit" means the civil action pending in the Superior Court of California, County of Santa Clara, Case No. 22CV401053 filed July 22, 2022 and entitled, *Esmeralda Velasco v. Bright Matters, Inc. et al.*

3.2 "Aggrieved Employee," "Aggrieved Employees," "PAGA Member" or "PAGA Members" mean all current or former non-exempt/hourly paid employees who are or previously were misclassified as independent contractors and were employed by non-party Bright Matters and performed work at KBS's customers, pursuant to the contract between Bright Matters and KBS, in the State of California during the PAGA Period.

3.3 "Aggrieved Employee Share" means each Aggrieved Employee's share of the 25% of PAGA penalties allocated to the Aggrieved Employees in accordance with Labor Code section 2699(i).

3.4 "Approval Date" means the date that the Court enters the Approval Order.

3.5 "Approval Motion" or the "Joint Stipulation and Proposed Order for Approval of Settlement" means the pleading that Plaintiff will submit to the Court identifying the key terms of this Agreement and requesting that the Court approve the Settlement.

3.6 "Approval Order" means an Order from the Court approving this PAGA Settlement and Release Agreement.

3.7 "Complaint" collectively means all complaints and amendments in the Action, including the complaint Plaintiff filed on July 22, 2022, Superior Court of California, County of Santa Clara, Case No. 22CV401053, initiating the Action, and any future amendments thereto.

3.8 "Court" means the Superior Court of California, County of Santa Clara.

3.9 "Counsel for Defendant" and "Defense Counsel" means Ongaro PC.

3.10 "Covered Claims" includes any and all PAGA claims or causes of action of whatever kind or nature which occurred during the PAGA Period that were alleged by Plaintiff, or that reasonably could have been alleged by Plaintiff, based on the facts alleged in the Action and Plaintiff's LWDA letter, regardless of theory of recovery.

3.11 "Defendant" means Kellermeyer Bergensons Services, LLC.

3.12 "Effective Date" means the date upon which both of the following have occurred: (i) final approval of the Settlement is granted by the Court, or other court assuming jurisdiction of the Action, and (ii) the Court's Judgment approving the Settlement becomes Final. "Final" shall mean the latest of: (i) if there is an appeal of the Court's Judgment, the date the Judgment is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for review to the California Supreme Court, or, (ii) if a petition for review is filed, the date of the California Supreme Court denies the petition for review or decides not to respond and take no action, or the date the Judgment is affirmed pursuant to such petition; or (iii) if no appeal is filed, the expiration date of the time for filing or noticing any appeal of the Judgment.

3.13 "Gross Settlement Amount" or "GSA" means $39,500.00 that Defendant is obligated to pay under the terms of the proposed settlement. The GSA is non-reversionary, such that the entire amount will be disbursed and none will revert to Defendant. The GSA includes the PAGA Penalties, as defined below; PAGA Counsel's attorneys' fees, up to 25% of the Gross Settlement Amount, which is currently estimated to be $9,875; and costs not to exceed $7,000.00. In no circumstance will Defendant be required to pay more than $39,500.00 as part of or in connection with this Agreement.

3.14 "LWDA Letter" means the notice that Plaintiff sent to the California Labor and Workforce Development Agency ("LWDA") relating to alleged violations against KBS and non-parties Bright Matters, Inc. and Alejandro Navarro on or about May 3, 3022, and any future amendments thereto.

3.15 "PAGA" means the California Labor Code Private Attorneys General Act of 2004, California Labor Code section 2698 *et seq*.

3.16 "PAGA Counsel" means Molteni Employment Law and The Byrne Law Group.

3.17 "PAGA Payment" means the portion of the Gross Settlement Amount, after excluding PAGA Counsel's fees and costs, that represents the amount payable in this settlement for PAGA Penalties, 75% of which will be paid to the LWDA and 25% of which will be paid to the PAGA Members. All PAGA Members will receive a monetary payment from the PAGA Penalties based on the number of Pay Periods they worked in California during the PAGA Period as a percentage of the total number of Pay Periods worked by all PAGA Members during the PAGA Period:

a. "Total Pay Periods" is the total number of Pay Periods worked by all PAGA Members as employees for Bright Matters Inc, performing work at KBS's customers, pursuant to the contract between Bright Matters and KBS, in California during the PAGA Period according to Bright Matters' business records. There are 658 Pay Periods according to Bright Matters' business records exchanged in preparation for mediation.

b. “Individual Pay Periods Worked” will be the total number of Pay Periods worked by an individual PAGA Member for Bright Matters, performing work at KBS’s customers, pursuant to the contract between Bright Matters and KBS, during the PAGA Period according to Bright Matters’ business records. For purposes of this Agreement, any part of a Pay Period worked by a PAGA Member within the PAGA Period shall be counted as one Pay Period.

c. Each PAGA Member’s “Individual PAGA Payment” will be calculated by dividing a PAGA Member’s Individual Pay Periods Worked by 658 (the Total Pay Periods) and multiplying this result by PAGA Penalties for Individual Pay Periods Worked determined by the Parties.

d. The Individual PAGA Payments will be allocated l00% as civil penalties. PAGA Members will be issued IRS Form 1099s for their respective shares of PAGA Penalties.

3.19 “PAGA Period” means the period from May 3, 3021 to August 31, 2023, the date that Bright Matters no longer provided workers to KBS.

3.20 “PAGA Representative” means Plaintiff Esmeralda Velasco.

3.21 “Qualified Settlement Fund” or “QSF” means a qualified settlement fund established by the Settlement Administrator for the purpose of administering the settlement.

3.23 “Released Parties” means KBS and all of its present and former parent companies, subsidiaries, affiliates, owners, investors, shareholders, officers, directors, employees, agents, servants, registered representatives, attorneys, insurers, successors, customers, and assigns. For purposes of clarity, Bright Matters, Inc. and Alejandro Navarro are not included in the definition of “Released Parties.”

3.24 “Settlement” and “Agreement” mean this PAGA Settlement and Release Agreement.

3.25 “Settlement Administrator” means Phoenix Settlement Administrators.

3.26 “Settlement Administration Costs” means the amount to be paid to the Settlement Administrator for the cost of administering this settlement, which are currently estimated to be approximately one thousand one hundred dollars ($1,100). The Settlement Administration Costs shall include: all costs of administering the Settlement, including, but not limited to, administering the Qualified Settlement Fund; all tax document preparation, custodial fees, and accounting fees incurred by the Settlement Administrator; all costs and fees associated with preparing, issuing and mailing any and all communications to PAGA Members; all costs and fees associated with issuing the individual payments to PAGA Members and the payments to the State of California LWDA; all costs and fees associated with issuing IRS Form 1099s (to the extent any are required by applicable law), relating to payments made under the settlement; and all costs and fees associated with preparing any tax returns and any other filings required by any governmental taxing authority or agency; all costs and fees associated with preparing any other notices, reports, or filings to be prepared in the course of administering the settlement, and any other costs and fees incurred and/or charged by the Settlement Administrator in connection with the execution of its duties under this Agreement.

4. REPRESENTATIONS

4.1 Plaintiff alleges civil penalties pursuant to PAGA, on behalf of the State of California, arising from alleged employment law violations that she and the other Aggrieved Employees had suffered including (1) willful misclassification as to independent contractor status; (2) failure to provide complete and accurate wage statements; and (3) failure to earned wages upon discharge. Plaintiff alleges that this underlying conduct gives rise to a claim pursuant to PAGA. Defendant KBS denies all of the allegations made by Plaintiff.

4.2 The Parties and Bright Matters exchanged meaningful information and documents through informal discovery for a mediation, including policies and practices, information about the number of Aggrieved Employees, Plaintiff's time and payroll records, and the number of Pay Periods at issue during the PAGA Period.

4.3 Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Lawsuit and denies any liability or intentional wrongdoing. Defendant contends, among other things, that it has complied at all times with the California Labor Code, the related California Wage Orders, and all other state and federal wage laws, and further contends that the Lawsuit is without merit and that Plaintiff cannot pursue claims, if any, against Defendant because, among other things, Defendant did not employ Plaintiff or other Aggrieved Employees. Defendant has denied and continues to deny each and every material factual allegation and alleged claim asserted against it in the Lawsuit. Defendant further contends that the imposition of any penalties would be unjust, arbitrary, oppressive, and confiscatory. Nevertheless, Defendant is willing to resolve this matter in accordance with the terms set forth herein.

4.4 The Parties recognize that the issues presented in the Lawsuit are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate to the potential benefits of litigation. The Parties have taken into account the risk and uncertainty of the outcome inherent in any litigation.

4.5 Plaintiff and PAGA Counsel contend that they have diligently pursued an investigation of the State of California's claims under PAGA against Defendant.

4.6 Based on their own independent investigations and evaluations, Plaintiff and PAGA Counsel are of the opinion that the settlement for the consideration and on the terms set forth in this Agreement is fair, reasonable, and adequate and is in the best interests of the Plaintiff, the Aggrieved Employees, and the State of California in light of all known facts and circumstances and the risks inherent in litigation, including the potential appellate issues. Further, PAGA Counsel believes that the settlement amount entered into is in the best interests of the Aggrieved Employees and the State of California and that the settlement is fair, reasonable, and adequate, given the inherent risk of litigation and the defenses Defendant has presented.

4.7 The purpose of this Settlement is to settle and compromise this Action only and all Covered Claims alleged in this Action only that Plaintiff, the State of California, and the Aggrieved Employees (as defined herein) have under PAGA against KBS and the Released Parties. Neither the existence of this Settlement nor anything contained in this Settlement shall be construed or deemed as an admission of liability, culpability, negligence, or wrongdoing on the part of KBS or the Released Parties. Nothing herein shall constitute an admission by KBS or the Released Parties that the Lawsuit was properly brought as a representative action other than for settlement purposes. Settlement of the Lawsuit, the negotiation and execution of this Settlement, and all acts performed or documents executed pursuant to or in furtherance of this Settlement or the settlement of the Lawsuit: (a) are not, shall not be deemed to be, and may not be used as an admission or evidence of any wrongdoing or liability on the part of KBS or the Released Parties or of the truth of any of the factual allegations in the operative Complaint in the Action; (b) are not, shall not be deemed to be, and may not be used as an admission or evidence of any fault or omissions on the part of KBS or the Released Parties in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal; (c) are not, shall not be deemed to be, and may not be used as an admission or evidence of the appropriateness of these or similar claims for representative treatment, or administration other than for purposes of administering this Settlement; and (d) shall not constitute or be deemed a waiver of KBS's or the Released Parties' right to compel arbitration of any dispute with an Aggrieved Employee.

4.8 This Settlement shall be binding on Plaintiff, the Aggrieved Employees she represents as defined herein, the LWDA, and on KBS and the Released Parties, subject to the terms and conditions hereof and the approval of the Court.

4.9 In order to comply with the requirements of Labor Code Section 2699, Plaintiff shall submit an Approval Motion identifying the key terms of this Agreement and requesting that the Court approve the Settlement. PAGA Counsel shall prepare the draft Approval Motion within a reasonable time after execution of this Agreement. The Settlement is contingent upon the approval by the Court. If the Court denies the Approval Motion due to concerns that the Parties cannot address through non-material modifications of this Agreement, (i) this Settlement shall be considered null and void; (ii) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect; and (iii) all Parties to this Agreement shall stand in the same position, without prejudice, as if this Settlement had been neither entered into nor filed with the Court. Invalidation of any material portion of this Settlement, except for the amount of attorneys' fees and costs, shall invalidate this Settlement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect. The Parties agree to abide by all of the terms of the Settlement in good faith and to support the Settlement fully and to use their best efforts to defend this Settlement from any legal challenge, whether by appeal or collateral attack. The Parties shall make all possible good faith efforts to resolve any issues raised by the Court during the approval process.

4.10 In the event that the Court does not grant the Approval Motion, the Parties will be restored to their respective positions. The Parties reserve all substantive and procedural arguments in the event that the Court does not approve this Settlement.

5. **TERMS OF SETTLEMENT**

The Parties to the Action agree as follows:

5.1 **Agreement to Settle Lawsuit and the Covered Claims.** In consideration of the mutual covenants, promises, and representations set forth in this Agreement, The LWDA, the

Plaintiff, on behalf of the State of California as Private Attorney General as well as the Aggrieved Employees, and KBS agree to settle and compromise the Lawsuit and the Covered Claims, subject to the terms and conditions set forth in this Agreement.

5.2 **Gross Settlement Amount ("GSA")**. As consideration for the Settlement described herein and the release contained in this Settlement, Defendant agrees to pay the GSA of $39,500 to resolve all claims against it in this Action. The GSA will be allocated as follows:

(a) PAGA Counsel's attorney fee request of 25% of the GSA or $9,875;

(b) PAGA Counsel's request for costs in the amount of up to $7,000;

(c) Settlement Administration Costs of $1,100 to be paid to the Settlement Administrator (administration costs shall not exceed the amount estimated by the bid submitted by the Settlement Administrator to administrate the Settlement); and,

(d) the remainder of the GSA after deducting the items (a) and (b) herein shall be designated as the PAGA Payment, which is estimated to be $21,525. The PAGA Payment will be allocated between the LWDA and the Aggrieved Employees pursuant to Labor Code section 2699(i) with 75%, or approximately $16,143.75, paid to the LWDA, and 25%, or approximately $5,381.25, paid to the Aggrieved Employees on a pro-rata basis.

5.3 **Allocation and Calculation of the PAGA Payment**. The anticipated total PAGA Payment will be approximately $21,525. Seventy-five percent (75%) of the PAGA Payment will be paid to the LWDA as required by Labor Code section 2699(i). The remaining 25% of the PAGA Payment will be distributed to Aggrieved Employees based on the number of individual pay periods each PAGA Member worked during the PAGA Period as a percentage of the total number of Total Pay Periods worked by all PAGA Members during the PAGA Period. Because the Aggrieved Employee Share payments are payments in compromise and settlement of a claim for alleged penalties, each Individual PAGA Payment will be treated as nonwage income with no tax withholdings and will be reported, if required, on an IRS Form 1099. Each Individual PAGA Payment of the PAGA Penalties represents the Aggrieved Employee's share of the 25% in PAGA penalties distributable to the Aggrieved Employees.

5.4 **PAGA Counsel's Fees and Costs**. As part of the Approval Motion, PAGA Counsel will request Court approval of 25% of the GSA, which is $9,875.00. In addition, PAGA Counsel will request cost reimbursement in an amount up to $7,000 for costs incurred by PAGA Counsel. Should the Court approve a lesser amount for attorneys' fees and costs, the difference shall be allocated to the PAGA Penalties and distributed accordingly. Any attorneys' fees and costs awarded to PAGA Counsel, hereinafter referred to as "PAGA Counsel Fees & Costs," shall fully compensate and reimburse PAGA Counsel for any and all of the work already performed in connection with the Lawsuit and all work remaining to be performed in fully and finally resolving the Lawsuit, including but not limited to securing Court approval of the settlement, appearing at any hearings, making sure that the settlement is fairly and properly administered, all other work that PAGA Counsel has performed or will perform, and all costs that PAGA Counsel has incurred or will incur. The Parties agree that the Court's approval of any request for attorneys' fees or litigation costs is not a condition of the Settlement Agreement and that an award of less than the amounts requested would not give rise to a basis to abrogate the Settlement Agreement, although PAGA Counsel reserve the right to appeal an award of attorneys' fees that is less than 25% of the GSA.

5.5 **PAGA Period Modification**. This Settlement is premised on the estimate that PAGA Members would have worked a total of approximately 658 Pay Periods during the PAGA Period. If the total number of Pay Periods worked by PAGA Members is greater than 658, then the PAGA Period will end on the date when the total number of Pay Periods worked by PAGA Members was not in excess of 658.

5.6 **Tax Treatment of Settlement Amounts**. With regard to settlement payments to Aggrieved Employees, IRS Form 1099s will be issued, if required. Nothing in this Settlement is intended to constitute legal advice regarding federal, state, and/or local tax obligations. Plaintiff acknowledges that she has obtained no tax advice from Defendant and that neither Defendant nor its attorneys have made any representation concerning the tax consequences, if any, of the GSA in this Agreement or any payment to be made pursuant to this Agreement. Plaintiff also acknowledges she has had an opportunity to consult with independent tax counsel. To the extent that this Settlement or any of its attachments is interpreted to contain or constitute advice regarding any state or federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code or the California Revenue and Taxation Code. Defendant is not responsible for any Aggrieved Employees' tax obligations regarding the allocation of the settlement payments. Payment of PAGA Counsel Fees & Costs will be reflected in a Form 1099 to PAGA Counsel who shall assume full responsibility and liability for the payment of taxes due on such payments. Aggrieved Employees' Aggrieved Employee Shares pursuant to this Agreement are not intended by the Parties to be compensation for purposes of determining eligibility for or benefit calculations of any health and welfare benefit plan, retirement benefit plan, vacation benefit plan, unemployment compensation, including, without limitation, all plans, subject to the Employee Retirement Income Security Act ("ERISA"). The Parties agree that the Aggrieved Employee Shares are not intended to represent any modification of any individual's previously credited hours of service or other eligibility criteria under any employee pension benefit plan, employee welfare benefit plan, or other program or policy.

5.7 **Release By Aggrieved Employees as Defined Herein**. Upon approval of the Settlement and funding of the GSA, and except as to the right to enforce the terms and conditions of the Settlement, Plaintiff, on behalf of herself and the Aggrieved Employees as defined herein, hereby fully releases their PAGA claims brought on behalf of the State of California and discharges KBS and all of its present and former parent companies, subsidiaries, affiliates, owners, investors, shareholders, officers, directors, employees, agents, servants, registered representatives, attorneys, insurers, successors, and assigns (the "Released Parties") from any and all claims or causes of action for PAGA penalties, of whatever kind or nature, which occurred during the PAGA period that were alleged, or that reasonably could have been alleged based on the facts alleged in the Action and Plaintiff's LWDA Letter, regardless of theory of recovery. For purposes of clarity, Plaintiff and the Aggrieved Employees as defined herein are not releasing claims that other Aggrieved Employees, the State of California and the LWDA might have against KBS and the Released Parties. Furthermore, for clarity purposes, neither Bright Matters Inc, nor Alejandro Navarro are included in the definition of "Released Parties" or is released hereby. The release thus includes PAGA claims or PAGA causes of action for violations of the Labor Code sections raised by Plaintiff's Action and Plaintiff's LWDA Letter against KBS, regardless of theory of recovery. The release as to the State of California and LWDA only covers the Covered Claims of Plaintiff and the Aggrieved Employees (as defined herein) that arise under PAGA, and does not cover an Aggrieved Employee's individual Labor Code claims. The release by the LWDA excludes claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, class claims, and PAGA claims that were not alleged by Plaintiff and Aggrieved Employees as defined herein. The preclusive effect of this release is strictly limited to the PAGA claims on behalf of the State of California brought in this case by Plaintiff and the Aggrieved Employees as defined herein.

5.8 **Approval of the Settlement**. As explained in Paragraph 4.9, in order to comply with the requirements of Labor Code Section 2699, Plaintiff shall file an Approval Motion identifying the key terms of this Settlement requesting that the Court approve the Settlement.

5.9 Administering the Settlement and Payment Plan.

a. Within twenty-one (21) days after the Effective Date, Defendant shall fund the GSA with the Settlement Administrator, on condition that the Effective Date has occurred.

b. The Settlement Administrator shall distribute each Aggrieved Employee Share to the Aggrieved Employees, and shall disburse the attorneys' fees and costs approved by the Court to PAGA Counsel, within 15 calendar days of receipt of the full amount of the GSA from Defendant and the list of Aggrieved Employees and their contact information.

c. The payment checks for each Aggrieved Employee Share shall be sent to each Aggrieved Employee by U.S. First Class mail to the Aggrieved Employee's address with directions to the Postmaster to forward the payment checks and return all undeliverable payment checks to the Settlement Administrator. A notice explaining this Settlement will be included in the mailing of each Aggrieved Employee's check and submitted to the Court for its review and approval ("Notice"). Should any of the Notices and payment checks be returned as undeliverable, the Settlement Administrator will conduct a search for a more current address, via skip trace or other reasonable method, and re-mail the Notice and payment check to the more current address, if any. It will be conclusively presumed that an Aggrieved Employee's Aggrieved Employee Share check was received if the payment check has not been returned within 30 days of the original mailing of the payment check. The date of the initial mailing of the payment check shall be conclusively determined according to the records of the Settlement Administrator.

d. The Settlement Administrator shall ensure that 75% of the PAGA Payment is paid to the LWDA within 30 calendar days of receipt of the GSA from Defendant.

e. Settlement checks shall remain valid and negotiable for 180 calendar days from the date of their issuance. If there are uncashed checks following this period, the Parties agree that uncashed funds shall be forwarded to the State of California's unclaimed property fund in the name of the respective PAGA Member.

f. Since this is not a settlement of a class action but a PAGA settlement on behalf of the State of California, no person can (a) object to the settlement after the Court's Approval Order is made, or (b) opt out from being covered by release of claims at any time before or after the Approval Order is made.

5.10 **Duties of the Parties Prior to Approval**- As set forth in this Agreement, Plaintiff will file the Approval Motion, as required by Labor Code section 2699, including a request for an Order from the Court approving the following:

a. Approving the terms of this PAGA Settlement and Release Agreement;

b. Approving the amount of PAGA Counsel Fees & Costs;

c. Appointing Phoenix Settlement Administrators as the Settlement Administrator and approving the amount of settlement administration costs;

d. Approving the Notice; and

e. Entering Final Judgment.

In conjunction with the Approval Motion as specified herein, the Parties will submit a proposed Approval Order granting the Approval Motion, which will include a Final Judgment consistent with the terms of this Agreement. The proposed Approval Order and Final Judgment will include a dismissal of Plaintiff's PAGA claims with prejudice, and a request pursuant to California Code of Civil Procedure section 664.6 that the Court retain continuing jurisdiction over this Action and over all Parties, to the fullest extent necessary to enforce and effectuate the terms and intent of this Agreement.

5.11 **Parties' Authorization**. The signatories hereto hereby represent that they are fully authorized to enter into this Settlement and bind the Parties hereto to the terms and conditions hereof.

5.12 **Mutual Full Cooperation**. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement, including, but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement. The Parties to this Settlement shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set forth herein. As soon as practicable after execution of this Settlement, PAGA Counsel shall, with the assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the approval of this Settlement from the Court. The Parties agree to work cooperatively to comply with the notice requirements to the LWDA pursuant to Labor Code section 2699.

5.13 **No Prior Assignments**. The Parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, or purported to assign, or transfer to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement, and shall not be construed to confer any right or to avail any remedy to any other person.

5.14 **No Admission**. Nothing contained herein is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the Released Parties. Each of the Parties hereto has entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expense. Defendant and the Released Parties deny that they have engaged in any unlawful activity, that they failed to comply with the law in any material respect, or that they have any liability to anyone under the claims asserted in the Lawsuit. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or shall be construed as an admission of liability or wrongdoing by Defendant or any of the Released Parties.

5.15 **Non-Evidentiary Use**. Whether or not the Effective Date occurs, neither this Agreement nor any of its terms nor the Settlement itself shall be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendant or any other of the Released Parties, including but not limited to, evidence of a presumption, concession, indication, or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further proceeding in the Lawsuit, or any other civil, criminal, or administrative action or proceeding except for the purposes of effectuating the Settlement pursuant to this Agreement or for Defendant or any of the Released Parties to establish that an Aggrieved Employee has resolved any of their claims released through this Agreement.

5.16 **Nullification**. If the Court should for any reason fail to approve this Settlement in the form agreed to by the Parties, except for the amount of attorneys' fees and costs or the Court's approval of this Settlement is reversed, modified, or declared or rendered void, then (a) this Agreement shall be considered null and void; (b) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect; and (c) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court. Invalidation of any material portion of this Agreement, except for the amount of attorneys' fees and costs and Individual Settlement Award, shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

5.17 **Attorneys' Fees. Costs, and Expenses**. None of the Parties shall be construed as the prevailing party in this matter. Except as specifically set forth herein, each party shall bear its/her own attorneys' fees, costs, and expenses, taxable or otherwise, incurred by it/her arising out of the Lawsuit, and shall not seek reimbursement thereof from any other party to this Agreement.

5.18 **Construction**. The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive, arms-length negotiations between the Parties and that this Agreement constitutes the entire agreement between Plaintiff, on behalf of herself, the State of California, and the Aggrieved Employees as defined herein, and KBS regarding actual or potential claims asserted by Plaintiff against KBS and the Released Parties. This Agreement supersedes all prior agreements, written or oral, between or among the Parties regarding those claims or potential claims and the resolution of those claims which are covered by this Agreement.

5.19 **Captions and Interpretations**. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision hereof. Each term of this Settlement is contractual and not merely a recital.

5.20 **Modifications**. This Settlement may not be amended, changed, altered, or modified, except in writing and signed by the Parties or their successors-in-interest hereto. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

6. MISCELLANEOUS

6.1 This Settlement contains the entire agreement between the Parties relating to the Settlement of the Covered Claims. No rights hereunder may be waived except in writing. The Parties have made such investigation of the facts and the law pertaining to the matters described herein and to this Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other Parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of making and executing this Agreement, or with respect to any such matters that would alter or change the terms of this Agreement. No representations, warranties, or inducements have been made to any party concerning this Agreement other than those expressly set forth or referred to herein.

6.2 This Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

6.3 This Settlement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all Parties. The counterparts may be transmitted electronically. Electronic signatures shall be deemed valid and binding upon the Parties. A signature made electronically or on a faxed or electronically mailed copy of the Agreement or a signature transmitted by facsimile or electronic mail shall have the same effect as the original signature.

6.4 This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California, irrespective of the State of California's choice-of-law principles.

6.5 The Parties have cooperated in the negotiation and preparation of this Agreement. This Agreement shall not be construed against any Party on the basis that the Party, or the Party's counsel, was the drafter or participated in the drafting of this Agreement.

6.6 The Superior Court of California, County of Santa Clara, shall retain jurisdiction to enforce this Agreement pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court 3.769(h). The Court shall retain continuing jurisdiction over this Lawsuit and over all Parties to the fullest extent to enforce and effectuate the terms and intent of this Agreement.

6. 7 This Agreement shall not be subject to collateral attack by any Aggrieved Employees. Such prohibited collateral attack shall include, but not be limited to, claims that the

Aggrieved Employees failed, for any reason, to timely receive his or her Aggrieved Employee Share.

[The rest of this page is intentionally left blank. Signature page follows.]

THE PARTIES HAVE READ THE FOREGOING AGREEMENT. THEY HAVE CONSULTED WITH LEGAL COUNSEL REGARDING THE FOREGOING AGREEMENT AND KNOW THE CONTENTS THEREOF AND SIGN THE SAME AS THEIR FREE, KNOWING, AND VOLUNTARY ACT AND DEED, BEING FULLY AWARE OF ITS CONSEQUENCES AND ITS FINAL AND BINDING EFFECT.

ESMERALDA VELASCO

Esmeralda Velasco (Oct 9, 2024 12:34 PDT)

Date: 10/09/24

KELLERMEYER BERGENSONS SERVICES, LLC

____

By:______________________________

Title:______________________________

Date:______________________________

THE PARTIES HAVE READ THE FOREGOING AGREEMENT. THEY HAVE CONSULTED WITH LEGAL COUNSEL REGARDING THE FOREGOING AGREEMENT AND KNOW THE CONTENTS THEREOF AND SIGN THE SAME AS THEIR FREE, KNOWING, AND VOLUNTARY ACT AND DEED, BEING FULLY AWARE OF ITS CONSEQUENCES AND ITS FINAL AND BINDING EFFECT.

ESMERALDA VELASCO

____

Date: ______________________________

KELLERMEYER BERGENSONS SERVICES, LLC

Jeff Madrzykowski

By: Jeff Madrzykowski

Title: Counsel

Date: January 8, 2025

EXHIBIT A

EE No.	Employee Name	Start Date	End Date	Pay Periods
1	[redacted]	7/15/2021	3/31/2022	17
2	[redacted]	10/1/2021	3/31/2022	10
3	[redacted]	9/1/2021	3/31/2022	14
4	[redacted]	5/16/2021	6/15/2021	2
5	[redacted]	5/1/2021	5/31/2021	2
6	[redacted]	5/16/2021	4/30/2022	22
7	[redacted]	5/1/2021	1/31/2022	17
8	[redacted]	5/1/2021	9/30/2021	10
9	[redacted]	5/1/2021	9/30/2021	10
10	[redacted]	5/1/2021	5/31/2021	1
11	[redacted]	5/1/2021	2/15/2022	19
12	[redacted]	10/1/2021	3/31/2022	11
13	[redacted]	4/1/2022	4/15/2022	1
14	[redacted]	10/1/2021	2/15/2022	9
15	[redacted]	6/16/2021	6/15/2022	24
16	[redacted]	6/16/2021	8/31/2021	5
17	[redacted]	5/1/2021	9/30/2021	7
18	[redacted]	2/4/2022	2/4/2022	1
19	[redacted]	5/1/2021	6/15/2022	3
20	[redacted]	5/1/2021	1/30/2022	18
21	[redacted]	5/1/2021	5/31/2021	2
22	[redacted]	9/16/2021	10/31/2021	3
23	[redacted]	5/1/2021	2/28/2022	20
24	[redacted]	5/1/2021	8/15/2022	31
25	[redacted]	5/1/2021	8/31/2022	32
26	[redacted]	5/1/2021	3/31/2022	20
27	[redacted]	5/1/2022	9/15/2022	9
28	[redacted]	5/1/2021	3/31/2022	22
29	[redacted]	10/15/2022	12/15/2022	3
30	[redacted]	5/1/2021	9/15/2021	7
31	[redacted]	5/1/2021	9/30/2021	8
32	[redacted]	1/16/2022	1/31/2022	1
33	[redacted]	9/1/2021	3/31/2022	12
34	[redacted]	11/16/2021	11/30/2021	1
35	[redacted]	1/1/2022	1/15/2022	1
36	[redacted]	5/1/2021	9/30/2021	8
37	[redacted]	7/1/2021	9/15/2021	4
38	[redacted]	5/1/2021	9/15/2022	9
39	[redacted]	9/16/2021	9/30/2021	1
40	[redacted]	8/31/2021	11/30/2021	5
41	[redacted]	5/16/2021	4/30/2022	22
42	[redacted]	5/1/2021	2/15/2022	18
43	[redacted]	5/1/2021	8/31/2022	30
44	[redacted]	5/1/2021	5/15/2022	24
45	[redacted]	5/1/2021	4/30/2022	24

EE No.	Employee Name	Start Date	End Date	Pay Periods
46	[redacted]	9/16/2021	3/31/2022	16
47	[redacted]	5/1/2021	8/15/2022	31
48	[redacted]	5/1/2021	4/30/2022	24
	[redacted]	10/15/2022	11/15/2022	2
49	[redacted]	5/1/2021	8/31/2021	4
50	[redacted]	9/1/2021	1/31/2022	8
51	[redacted]	10/16/2021	10/31/2021	1
52	[redacted]			
53	[redacted]	7/1/2021	9/15/2021	4
54	[redacted]	5/1/2021	2/15/2022	19
55	[redacted]	8/15/2021	3/31/2022	15
56	[redacted]	8/16/2021	3/31/2022	14