

PAGA SETTLEMENT AGREEMENT & RELEASE PRIVATE ATTORNEYS
GENERAL ACT SETTLEMENT AGREEMENT AND LIMITED RELEASE

This Private Attorneys General Act Settlement Agreement and Release (“Agreement”) is made by and between Niara Smiley-Mangum (“Plaintiff”), for herself and on behalf of the State of California, and Defendants Ad Astra LLC and Ron Mendoza (“Defendants”). Plaintiff and Defendants are collectively referred to herein as the “Parties” and may be individually referred to as a “Party.” This Agreement is made in consideration of the following facts:

A. WHEREAS, certain disputes have arisen between the Parties concerning Plaintiff’s relationship with Defendant Ad Astra LLC, including, but not limited to, the missed meal periods and rest periods of Plaintiff and all other non-exempt employees during the period of time beginning August 5, 2021, and the date that this Court grants approval of this settlement (the “PAGA Employees”).

B. WHEREAS, Plaintiff filed the action entitled *Niara Smiley-Mangum v. Ad Astra, LLC, et al.*, Monterey County Superior Court Case No. 22CV003428 which is currently pending in California Superior Court, County of Monterey and which is based upon the disputes described in Paragraph A above (the “Lawsuit”). In her Complaint, Plaintiff asserted eight (8) claims including: (i) Failure to Pay Minimum Wage – Cal. Labor Code 1197; (ii) Failure to Pay Overtime – Cal. Labor Code 510 and 1194; (iii) Inaccurate Wage Statements – Cal. Labor Code 226; (iv) Waiting Time Penalties – Cal. Labor Code 201-203; (v) Failure to Provide Rest Periods – Cal. Labor Code 226.7; (vi) Failure to Provide Meal Periods – Cal. Labor Code 226.7; and (vii) Failure to Reimburse – Cal. Labor Code 2802 (the “Individual Claims”). Plaintiff’s Eighth Cause of Action asserts a representative claim for civil penalties, underpaid wages and an award of reasonable attorneys’ fees and costs payable to Plaintiff, the State of California, and the PAGA Class for Defendants’ violations of California’s wage and hour laws pursuant to the California Private Attorney General Act (“PAGA”) set forth in California Labor Code §2698 *et. seq.* (“Representative PAGA Claim”). Defendants deny all of the allegations in the Lawsuit and deny that they have committed any misconduct, statutory or regulatory violation, wrongdoing, or any other actionable conduct.

C. WHEREAS, the Parties understand, acknowledge, and agree that this Agreement constitutes a compromise of Plaintiff’s and the PAGA Employees’ Representative PAGA Claim as well as Plaintiff’s Individual Claims, and that it is the desire and intention of the Parties to effect a final and complete resolution of the Representative PAGA Claim that Plaintiff and all the PAGA Employees have against Defendants or any persons or companies affiliated with Defendants. The Parties further acknowledge that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission by Defendants of liability.

D. WHEREAS, the Parties believe and agree that this Agreement provides for a fair, adequate, and reasonable resolution of the PAGA Representative Claim, and have arrived at the settlement in extensive, arms-length negotiations, taking into account all relevant factors, present and potential.

E. WHEREAS, under California Law, the State may assess and collect civil penalties from “employers” for violations of certain provisions of the Labor Code. See Cal. Lab. Code §§ 2699(a) *et seq.* Under PAGA, however, if an “aggrieved employee” “give[s] written notice by certified mail to the [State] and the employer of the specific provision of the [Labor Code] alleged to have been violated,” and the State thereafter decides not to investigate, or does investigate and determines that a citation against the employer should not be issued, the employee may, “as an alternative” to enforcement by the State, bring a civil action under PAGA to recover the civil penalties “on behalf of himself or herself and other current or former employees.” *Id.* “[C]ivil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the state and 25 percent to the aggrieved employees.” *Id.*

F. WHEREAS, California Labor Code section 2699(l) requires Court approval of any penalties sought as part of a proposed settlement agreement pursuant to PAGA. Pursuant to Labor Code section 2699(f)(2), the civil penalty for violations of the California Labor Code for which there is not a civil penalty otherwise specifically provided is \$100 for each “aggrieved employee” per pay period for the initial violation and \$200 for each “aggrieved employee” per pay period for each subsequent violation.

G. WHEREAS, the Parties mutually desire to settle and release Plaintiff’s Individual Claims by and through this Agreement through the payment of an award to Plaintiff and her execution of a general release of claims against Defendants.

Therefore, in consideration of the promises and agreements contained herein, the Parties agree and covenant as follows:

1. EFFECTIVE DATE: The effective date of the release of Plaintiff’s Individual Claims and the Representative PAGA Claim shall be the date the Court approves this Agreement and the PAGA Settlement (“Effective Date”).

2. RELEASE OF CLAIMS:

a. Upon the Effective Date, the California Labor & Workforce Development Agency (“LWDA”) and each member of the PAGA Employees, including Plaintiff, shall fully release and forever discharge Defendants and any parent, subsidiary, affiliate, predecessor, or successor, affiliated entities and all agents, employees, officers, directors, members, managers, attorneys thereof, and insurers (collectively the “Released Parties”) from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys’ fees, damages, and actions or causes of action contingent or accrued for, during the time period of August 5, 2021, and the Effective Date, arising out of the PAGA Claim asserted in the operative complaint and/or the LWDA letter offered based upon the following: 1) failure to pay minimum wage; 2) failure to pay overtime; 3) inaccurate wage statements; 4) waiting time penalties; 5) failure to provide rest periods; 6) failure to provide meal periods; 7) failure to reimburse; and 8) failure to pay all wages due and owing twice during each calendar month. This release shall include a release for PAGA claims under California Labor Code §§ 201-203, 226, 226.3, 226.7, 246, 510, 558.1, 1193.6, 1194, 1194.2, 1197, 1197.1, 2698, *et seq.*, and 2802.

b. General Release by Plaintiff for her Individual Claims: Upon the Effective Date, Plaintiff agrees to further release the Released Parties from any and all claims, demands, rights, liabilities, and/or causes of action, of any form whatsoever, arising under federal, state, or local wage-and-hour laws, rules, or regulations, whether known or unknown, unforeseen, unanticipated, unsuspected, or latent, that have been or could have been asserted by Plaintiff, or the heirs, successors, and/or assigns of Plaintiff, whether directly, indirectly, representatively, derivatively, or in any other capacity, arising at any time prior to the date that the Court grants approval of the settlement. As to Plaintiff's released claims only, Plaintiff expressly waives all rights and benefits under the terms of section 1542 of the California Civil Code. Section 1542 reads as follows:

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 releasing party.

Notwithstanding the provisions of section 1542, and for the purpose of implementing a full and complete release and discharge of all of Plaintiff's released claims, Plaintiff expressly acknowledges that the Agreement is intended to include in its effect, without limitation, all released claims that Plaintiff does not know or suspects to exist in her favor at the time of execution hereof, and that the settlement contemplates the extinguishment of all such released claims.

3. NOTICE AND PAYMENT TO PAGA CLASS MEMBERS CARRIERS:

a. No later than ten (10) calendar days after the Effective Date, Defendants shall: provide the settlement administrator, which shall be formatted as a Microsoft Excel spreadsheet or Microsoft Word Document, with the following information for each member of the PAGA Employees: his or her full name; social security number; last known address; last known telephone number; and number of pay periods. The Gross Settlement Amount (as defined in Section 4 of this Agreement) shall be paid in 5 installments. Each installment shall be provided in the amount of \$13,600 to the settlement administrator by the first of each month, beginning September 1, 2023, and continuing for 4 more consecutive months, with the fifth and final installment to be provided to the settlement administrator by January 1, 2024. Within fourteen (14) calendar days of receiving the final installment of the Gross Settlement Amount and this information, the settlement administrator will make all payments provided under this settlement including: (1) payment of attorneys' fees and costs to Plaintiff's counsel, (2) payment to Plaintiff, (3) payment to the LWDA for PAGA penalties, and (4) payment to the PAGA Employees. With respect to payments to the PAGA Employees, the settlement administrator shall send by first-class mail, at each's last known address, the Court-approved notice of this settlement and settlement payment. The settlement administrator will skip trace and re-mail all returned, undelivered mail within ten (10) days of becoming aware that a notice was undeliverable.

b. Should any of the notice of settlement be returned as undeliverable, the Claims Administrator will have until no later than forty-five (45) days after the Effective Date to

search for a more current address for the the PAGA Employee and to re-mail notices to traced addresses.

4. PAGA SETTLEMENT PAYMENT PROCEDURES:

a. In exchange for Plaintiff's and the PAGA Employees' release set forth in Section 2 of this Agreement, Defendants agree to pay, in accordance with the terms specified below, the total sum of \$68,000.00 (the "Gross Settlement Amount") to Plaintiff, the PAGA Employees, attorneys' fees and costs, and/or the LWDA, as apportioned below. This is the maximum amount that shall be paid under this Agreement. Defendants agree to be jointly and severally liable for the Gross Settlement Amount and further agree to fund the Gross Settlement Amount established by the settlement administrator no later than January 1, 2024. Defendants shall have no obligation or duty to fund the Gross Settlement Amount until after the Effective Date of the Agreement, but all installments of the Gross Settlement Amount shall be paid by January 1, 2024. If the Effective Date of the Agreement comes after September 1, 2023, Defendants shall provide each installment due and owing at that point as if the first installment was due by September 1, 2023. Under no circumstances shall Defendants be required to pay more than the Gross Settlement Amount (except to the extent they must pay the employer's share of payroll tax), and no amount of the Gross Settlement Amount will revert to Defendants under any circumstances.

b. Plaintiff's counsel requests that the Court approve an award of attorneys' fees in an amount not to exceed forty percent (40%) of the Gross Settlement Amount, as well as costs in an amount not to exceed seven hundred (\$700.00). Defendants do not oppose these requests. Plaintiff's counsel's attorneys' fees and costs will be paid out of the Gross Settlement Amount. To the extent that the Court approves less than the amounts of attorneys' fees or costs that Plaintiff's counsel requests, the difference between the requested and awarded amounts will be added to the Net Settlement Amount (as defined below) for distribution to the PAGA Employees. Likewise, Plaintiff requests Ten Thousand Dollars and Zero Cents (\$10,000) from the Gross Settlement Amount in exchange for her release of her Individual Claims, her execution of the general release contained herein, and her services to the PAGA Employees.

c. The Net Settlement Amount shall be the Gross Settlement Amount, less Court-approved settlement administration costs, attorneys' fees and costs, and the service award to Plaintiff. The Net Settlement Amount shall be allocated as follows: seventy-five percent (75%) will be paid to the LWDA and twenty-five percent (25%) will be paid to the PAGA Class. Each member of the PAGA Class shall be entitled, provisionally, to a share or shares of the Net Settlement Amount upon a fixed proportional amount of the Net Settlement Amount per pay period.

d. The settlement administrator shall distribute payment to the PAGA Class in accordance with the procedures specified in Section 3 by no later than January 15, 2023.

e. Settlement Checks issued to the PAGA Class pursuant to this Agreement will expire one hundred and eighty (180) days from the date they are issued by the settlement administrator. Any unclaimed funds after the 180-day period shall be remitted by the settlement administrator to the Legal Aid Society – Employment Law Center as a *cy pres* recipient.

5. ADMINISTRATION AND DISBURSEMENT COSTS: The cost of paying a settlement administrator, will come from the Gross Settlement Amount. The Parties will meet and confer to obtain quotes from and select a settlement administrator.

6. COURT APPROVAL: Should the Court not approve this Agreement, the Parties shall request leave and work jointly to attempt to remedy the PAGA settlement in order to obtain the Court's approval.

7. REPRESENTATIONS AND WARRANTIES: In further consideration for payment of the PAGA settlement amounts, Plaintiff represents and warrants that she has the right and exclusive authority to execute this Agreement. Each Party to this Agreement also represents and warrants to, and agrees with, each other Party hereto as follows:

a. Each Party has carefully read, and knows and understands the full contents of this Agreement and is voluntarily entering into this Agreement after having received independent legal advice from his, her, or its attorneys with respect to the advisability of making the settlement provided for herein and the advisability of executing this Agreement.

b. In executing this Agreement and in making the settlement provided for herein, no Party relies or has relied on any statement, representation, omission, inducement, or promise of any other Party (or any officer, agent, employee, representative, or attorney for any other Party), except as expressly stated in this Agreement.

c. Each Party to this Agreement has investigated the facts relevant to this settlement and this Agreement, and all matters pertaining thereto, to the full extent that each Party deems necessary.

d. Each separately-numbered term of this Agreement is contractual, not merely a recital.

e. Each of the Parties has participated in the drafting of all provisions of this Agreement, has had an adequate opportunity to read, review, and consider the effect of the language of this Agreement, and has agreed to its terms.

8. CHOICE OF LAW: The rights and obligations of the Parties and the PAGA Employees under this Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of California. California law shall govern the interpretation of this Agreement even if a choice of law analysis under state or federal law would dictate that another forum's law be applied.

9. COOPERATION: Each Party, on behalf of themselves, and their respective business entities, heirs, executors, and assigns, agrees that they will abide by this Agreement and will do all such acts, and prepare, execute, and deliver all such documents, as may be reasonably required to carry out the stated objectives of this Agreement.

10. SEVERANCE: If any provision of this Agreement is held to be invalid by a court of competent jurisdiction, that provision shall be deemed severed and deleted from this Agreement, and neither that provision nor its severance and deletion shall affect the validity of the remaining

provisions. Notwithstanding the foregoing, no portion of any release contained herein may be deemed severed or deleted from this Agreement, except upon waiver in writing by the applicable Released Party.

11. NON-ADMISSION OF WRONGDOING: The Parties agree that this Agreement does not constitute an admission by Defendants or any of the Released Parties of any of the matters alleged in the Lawsuit or of any violation by any of them of any federal, state or local law, ordinance or regulation, or of any violation of any policy or procedure, or of any liability or wrongdoing whatsoever. Neither this Agreement nor anything in this Agreement shall be construed to be or shall be admissible in any proceeding as evidence of liability or wrongdoing by Plaintiff, Defendants or any of Defendants' parents, subsidiaries, divisions, affiliated corporations, trustees, directors, officers, shareholders, agents, attorneys, insurers, or employees.

12. AGREEMENT NOT TO PUBLICIZE: Plaintiff and her counsel agree that they have not and will not publish the Agreement in any form of media, including but not limited to all forms of social media, and that the Agreement shall remain fully confidential until filed with the Court. In response to any inquiries prior to such time, Plaintiff will state that "the case was resolved." Plaintiff's counsel shall not (except as is necessary to fulfill their duties as counsel with respect to the Agreement) report the Agreement in any medium or in any publication, including but not limited to all forms of social media, shall not post or report anything regarding the claims of Plaintiff or the Agreement on their website, and shall not contact any reporters or media regarding the Agreement. However, Plaintiff's counsel may post a general description of a recovery for unspecified aggrieved employees and the amount thereof, so long as no information indicates Plaintiff or Defendants. Plaintiff's counsel is authorized to make disclosures to the Court and the LWDA for the purposes of obtaining approval of the Agreement. Disclosures will be limited to court filings, and neither Plaintiff nor her counsel or representatives are permitted to disseminate, publish, distribute, or discuss the information provided to the Court in those filings outside of the filings themselves and any hearing held on those filings, unless ordered otherwise by the Court. Notwithstanding the foregoing, Plaintiff's counsel may include the Agreement (and/or a summary of this settlement) in future declarations filed in support of Plaintiff's counsel's experience and/or adequacy to serve as counsel in an action. Nothing in this Paragraph is meant to limit or otherwise restrict the notices that are to be sent to the PAGA Employees under this Agreement.

13. COURT'S RETENTION OF JURISDICTION: The parties agree that pursuant to Code of Civil Procedure section 664.6, the Court shall retain jurisdiction to enforce this settlement agreement in the event that Defendants default on the payment schedule as outlined above in paragraph 3(a). The Parties agree that the Agreement shall constitute a stipulation in writing pursuant to section 664.6 and at the request of the Parties to the Agreement, the Court may enter judgment pursuant to the terms set forth in the Agreement upon Defendants' failure to make a timely payment, and after Plaintiff has given five-days' notice to Defendants' counsel of record, Mr. Zach Streiff, Esq., but only if Defendants fail to cure any default within 5 days of delivery of the notice. If the Court requires that either party to file additional documents or pleadings or otherwise engage in additional acts in order to enter Judgment in the event of a default, Defendants

shall cooperate with Plaintiff in good faith to conduct any further acts necessary to enter the judgment. Said judgment shall be for all amounts then outstanding under the payment plan described in this Agreement, and Defendants shall be credited for all installment payments already made against the Gross Settlement Amount.

14. DISMISSAL OF DEFENDANTS WITH PREJUDICE: Plaintiff will dismiss Defendants from the Action, with prejudice, within five (5) court days of court approval of the Settlement Agreement. In seeking approval from the Court of the Settlement Agreement, Plaintiff will request that Defendants be dismissed with prejudice. Notwithstanding this dismissal, Defendants expressly recognize that they remain jointly and severally liable for the payment of the Gross Settlement Amount as stated in this Agreement.

15. ADDITIONAL TERMS:

a. This Agreement is binding upon, and shall inure to the benefit of, the Parties hereto and their respective agents, employees, representatives, officers, directors, parents, subsidiaries, assigns, heirs, executors, administrators, insurers, and successors in interest.

b. Given that all Parties hereto had the opportunity to draft, review, and edit the language of this Agreement, no presumption for or against any Party arising out of drafting all or any part of this Agreement may be applied in any action relating to, connected to, or involving this Agreement. Accordingly, the Parties hereby waive the benefit of any legal principle or rule providing that, in cases of uncertainty, the language of a contract should be interpreted against the Party who caused the uncertainty to exist.

c. This Agreement may be executed in counterparts. A signature by way of electronic signature or facsimile shall serve as an original for all purposes.

d. Headings in this Agreement are included solely for convenience and shall not control the meaning or interpretation of any provision of this Agreement.

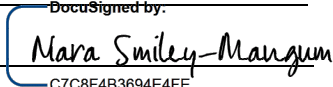
16. ENTIRE AGREEMENT: This Agreement sets forth the entire agreement between the Parties hereto and fully supersedes any and all prior and/or supplemental understandings, whether written or oral, between the Parties concerning the subject matter of this Agreement. Plaintiff acknowledges that she has not relied on any representations, promises or agreements of any kind made to her in connection with her decision to accept the terms of this Agreement, except for the representations, promises and agreements herein. Any modification to this Agreement must be in writing and signed by Plaintiff and an authorized officer of Defendants.

IN WITNESS WHEREOF, the Parties knowingly and voluntarily executed this Private Attorneys General Act Settlement Agreement and Release as of the date set forth below.

Agreed to by Plaintiff:

Dated: 9/8/2023 _____

Name: Niara Smiley-Mangum _____

Signature:  _____
C7C8F4B3694E4FE...

Agreed to by Ad Astra LLC:

Dated: Sep 12, 2023

Name: ron mendoza

Signature:  ron mendoza (Sep 12, 2023 11:46 PDT)

Agreed to by Defendant Ron Mendoza:

Dated: Sep 12, 2023

Name: ron mendoza

Signature:  ron mendoza (Sep 12, 2023 11:46 PDT)

Approved as to form by Counsel for Plaintiff:

Dated: September 8, 2023

Name: Prescott W. Littlefield
Andrew J. Kearney
Kearney Littlefield, LLP

Signature: 

Approved as to form by Counsel for Defendants:

Dated: September 12, 2023

Name: Jon Giffen
Zach Streiff
Kennedy, Archer & Giffen, Inc.

Signature: Zachary A. Streiff