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6 Attorneys for Plaintiff(s),

7 AMBER ASHLEY DAMAS, and all others similarly situated

(Additional attorneys for parties on following page)

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF SAN JOAQUIN**

10 **(UNLIMITED JURISDICTION)**

11
12 AMBER ASHLEY DAMAS, on behalf of herself
13 and all others similarly situated, and as an
14 “aggrieved employee” on behalf of other
“aggrieved employees” under the Labor Code
Private Attorneys General Act of 2004,

15 *Plaintiff(s),*

16 vs.

17 JUST WINGIN' IT, INC., a California
18 corporation; and DOES 1–50, inclusive,

19 *Defendant(s).*
20

Case No. STK-CV-UOE-2022-0007989

PAGA SETTLEMENT AGREEMENT

Action filed: September 12, 2022

Dept: 10B, Hon. Blanca Banuelos

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ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

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Attorneys for Defendant(s),
JUST WINGIN' IT, INC.

1 This PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff
2 Amber Ashley Damas (“Plaintiff”) and defendant Just Wingin' It, Inc. (“Defendant”). The
3 Agreement refers to Plaintiff and Defendant collectively as the “Parties,” or individually as
4 “Party.”

5 **1. DEFINITIONS.**

6 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against
7 Just Wingin' It, Inc. captioned “Amber Ashley Damas, on behalf of herself, and all others
8 similarly situated, and as an ‘aggrieved employee’ on behalf of other ‘aggrieved employees’ under
9 the Labor Code Private Attorneys General Act of 2004, *Plaintiff(s)*, vs. Just Wingin' It, Inc., a
10 California corporation; and DOES 1 through 50, inclusive, *Defendant(s)*,” Case No. STK-CV-
11 UOE-2022-0007989 initiated on September 12, 2022 and pending in Superior Court of the State
of California, County of San Joaquin.

12 1.2. “Administrator” means Simpluris, Inc.’s the neutral entity the Parties have agreed
13 to appoint to administer the Settlement.

14 1.3. “Administration Expenses Payment” means the amount the Administrator will be
15 paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in
16 accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection
with approval of the Settlement.

17 1.4. “Aggrieved Employee” means a person employed by Defendant in California and
18 classified as a non-exempt hourly employee who worked for Defendant during the PAGA Period.

19 1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information
20 in Defendant’s possession including the Aggrieved Employee’s name, last-known mailing
21 address, Social Security number, and number of PAGA Pay Periods.

22 1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation
23 and search for current Aggrieved Employee mailing addresses using all reasonably available
24 sources, methods and means including, but not limited to, the National Change of Address
database, skip traces, and direct contact by the Administrator with Aggrieved Employees.

25 1.7. “Court” means the Superior Court of California, County of San Joaquin.

26 1.8. “Defense Counsel” means Michael J. O'Connor, Jr. and Sarkis A. Atoyan of
27 Atkinson, Andelson, Loya, Ruud & Romo.

1.9. "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. The Judgment is final on the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

1.10. "Gross Settlement Amount" means \$235,000.00 which is the total, all-in amount Defendant agrees to pay under the Settlement, except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator's Expenses Payment.

1.11. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.

1.12. "Judgment" means the judgment entered by the Court based upon the Court's approval of the Settlement.

1.13. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

1.14. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1.15. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.

1.16. "PAGA Counsel" means David Glenn Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law Group, the attorneys representing the Plaintiff in the Action.

1.17. "PAGA Counsel Fees Payment" and "PAGA Counsel Litigation Expenses Payment" mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.

1.18. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.

1.19. "PAGA Period" means the period from September 12, 2021 to either the date the Court grants approval of the settlement or the date the total number of PAGA Pay Periods totals 4,632, whichever is first. Defendant represents that as of December 19, 2023, there were 364 Aggrieved Employees that worked a total of approximately 4,320 PAGA Pay Periods during the PAGA Period.

1.20. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

1.21. "PAGA Notice" means Plaintiff's September 12, 2022 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.22. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$33,291.75) and the 75% to LWDA (\$99,875.25) in settlement of PAGA claims.

1.23. "Plaintiff means Amber Ashley Damas, the named plaintiff in the Action.

1.24. "Approval Order" means the proposed Court Order Granting Approval of PAGA Settlement.

1.25. "Released PAGA Claims" means all claims that were, or reasonably could have been alleged, based on the facts and allegations set forth in the operative complaint, and also the PAGA notice to the California Labor and Workforce Development Agency, that arose during the PAGA Period, including but not limited to claims for: (1) unpaid minimum, regular and overtime wages; (2) meal period violations; (3) rest period violations; (4) noncompliant wage statements; (5) untimely payment of final wages; (6) unreimbursed business expenses; (7) unfair competition; (8) off the clock work; and (9) all claims for liquidated damages, penalties, interest, fees, and costs based on the foregoing.

1.26. "Released Parties" means: Defendant and all of Defendant's shareholders, members, owners, officers, directors, managers, operators, employees, representatives, agents, predecessors, successors, assigns, current and former subsidiaries, parents, affiliates, franchisors, franchisees, joint venturers, co-owners, co-employers, joint employers, payroll providers, attorneys, insurers, and reinsurers.

1.27. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

1.28. "Defendant" means named Defendant Just Wingin' It, Inc.

1 **2. RECITALS.**

2 2.1. On September 12, 2022, Plaintiff commenced this Action by filing a Complaint
3 alleging causes of action against Defendant for various wage and hour claims and alleged Labor
4 Code violations, including failure to pay wages, failure to provide meal periods, failure to
5 authorize and permit rest periods, failure to indemnify for business expenses, failure to issue
6 proper wage statements, failure to timely pay wages, failure to maintain required payroll records,
7 and related claims. On March 23, 2023, Plaintiff filed a First Amended Complaint alleging causes
8 of action against Defendant for failure to pay wages, failure to provide meal periods, failure to
9 authorize and permit rest periods, failure to indemnify for business expenses, failure to issue
10 proper wage statements, failure to timely pay wages, failure to maintain required payroll records,
11 and related allegations. The First Amended Complaint is the operative complaint in the Action
12 (the “Operative Complaint.”) Defendant denies the allegations in the Operative Complaint,
denies any failure to comply with the laws identified in the Operative Complaint, and denies any
and all liability for the causes of action alleged.

13 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written
14 notice to Defendant and the LWDA by sending the PAGA Notice.

15 2.3. On December 19, 2023, the Parties participated in an all-day mediation presided
16 over by the Honorable John Leo Wagner, then continued to dialogue and work with him for
17 several months thereafter, which led to this Agreement to settle the Action.

18 2.4. Prior to negotiating the Settlement, Plaintiff obtained, through informal
19 discovery, the number of comparable employees, the number of pay periods, average rates of pay,
sample time records, sample payroll records, written policies, and related information.

20 2.5. The Parties, PAGA Counsel and Defense Counsel represent that they are not
21 aware of any other pending matter or action asserting claims that will be extinguished or affected
22 by the Settlement.

23 **3. MONETARY TERMS.**

24 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below,
25 Defendant promises to pay the total amount of \$235,000.00, and no more, as the Gross Settlement
26 Amount. Defendant has no obligation to pay the Gross Settlement Amount prior to the deadline
27 stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross

1 Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a
2 condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3 3.2. Payments from the Gross Settlement Amount. The Administrator will make and
4 deduct the following payments from the Gross Settlement Amount, in the amounts specified by
5 the Court in the Court's Approval order:

6 3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than
7 33.33%, which is currently estimated to be \$78,333.00 and a PAGA Counsel Litigation Expenses
8 Payment of not more than \$16,000.00. Defendant will not oppose requests for these payments
9 provided they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an
10 application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment.
11 If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation
12 Expenses Payment less than the amounts requested, the Administrator will allocate the remainder
13 to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any
14 other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment
15 and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA
16 Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099
17 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA
18 Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendant
19 harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or
20 sharing of any of these Payments.

21 3.2.2. To the Administrator: An Administrator Expenses Payment not to exceed
22 \$7,500.00 except for a showing of good cause and as approved by the Court. To the extent the
23 Administration Expenses are less or the Court approves payment less than \$7,500.00, the
24 Administrator will retain the remainder in the Net Settlement Amount.

25 3.2.3. To the LWDA and Aggrieved Employees: PAGA Penalties in the
26 amount of \$133,167.00 to be paid from the Gross Settlement Amount, with 75% (\$99,875.25)
27 allocated to the LWDA PAGA Payment and 25% (\$33,291.75) allocated to the Individual PAGA
28 Payments.

3.2.3.1. The Administrator will calculate each Individual PAGA Payment
by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties
(\$33,291.75) by the total number of PAGA Period Pay Periods worked by all Aggrieved

1 Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's
2 PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any
3 taxes owed on their Individual PAGA Payment.

4 3.2.3.2. If the Court approves PAGA Penalties of less than the amount
5 requested, the Administrator will allocate the remainder to the Net Settlement Amount. The
6 Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

7 **4. SETTLEMENT FUNDING AND PAYMENTS.**

8 4.1. Aggrieved Employee Pay Periods. Based on a review of its records to date,
9 Defendant estimates there are 364 Aggrieved Employees who worked a total 4,320 PAGA Pay
10 Periods as of December 19, 2023.

11 4.2. Aggrieved Employee Data. Within 15 days after approval of the Settlement by
12 the Court, Defendant will deliver the Aggrieved Employee Data to the Administrator, and only to
13 the Administrator, in the form of a Microsoft Excel spreadsheet, to be used on a confidential basis
14 and for Court-approved Settlement purposes only, though the Administrator will report to PAGA
15 Counsel the number of employees and pay periods states in the spreadsheet. In turn, to protect
16 Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee
17 Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and
18 for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator
19 employees who need access to the Aggrieved Employee Data to effect and perform under this
20 Agreement. Defendant has a continuing duty to immediately notify PAGA Counsel if it discovers
21 that the Aggrieved Employee Data omitted employee identifying information and to provide
22 corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any
23 extension of the deadline by which Defendant must send the Aggrieved Employee Data to the
24 Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to
25 reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee
26 Data.

27 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross
28 Settlement Amount by transmitting the funds to the Administrator no later than 14 days after the
Effective Date.

4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant

1 funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA
2 Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA
3 Counsel Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment
4 shall not precede disbursement of Individual PAGA Payments.

5 4.4.1. The Administrator will issue checks for the Individual PAGA Payments
6 and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face
7 of each check shall prominently state the date (not less than 180 days after the date of mailing)
8 when the check will be voided. The Administrator will cancel all checks not cashed by the void
9 date. Before mailing any checks, the Administrator must update the recipients' mailing addresses
10 using the National Change of Address Database.

11 4.4.2. The Administrator must conduct an Aggrieved Employee Address Search
12 for all other Aggrieved Employees whose checks are returned undelivered without USPS
13 forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail
14 checks to the USPS forwarding address provided or to an address ascertained through the
15 Aggrieved Employee Address Search. The Administrator need not take further steps to deliver
16 checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The
17 Administrator shall promptly send a replacement check to any Aggrieved Employee whose
18 original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

19 4.4.3. For any Aggrieved Employee whose Individual PAGA Payment check is
20 uncashed and cancelled after the void date, the Administrator shall transmit the funds represented
21 by such check to the California Controller's Unclaimed Property Fund in the name of the
22 Aggrieved Employee.

23 4.4.4. The payment of Individual PAGA Payments shall not obligate Defendant
24 to confer any additional benefits or make any additional payments to Aggrieved Employees (such
25 as 401(k) contributions or bonuses) beyond those specified in this Agreement.

26 **5. RELEASES OF CLAIMS.** Effective on the date when Defendant fully funds the entire
27 Gross Settlement Amount Plaintiff, Aggrieved Employees, and PAGA Counsel will release
28 claims against all Released Parties as follows:

5.1. Plaintiff's Release. Plaintiff and her respective former and present spouses,
representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors,

1 and assigns generally, release and discharge Released Parties from all claims, transactions, or
2 occurrences [that occurred during the PAGA Period], including, but not limited to: (a) all claims
3 that were, or reasonably could have been, alleged, based on the facts contained in the Operative
4 Complaint and the PAGA Notice (“Plaintiff’s Release”). Plaintiff’s Release does not extend to
5 any claims or actions to enforce this Agreement, or to any claims for vested benefits,
6 unemployment benefits, disability benefits, social security benefits, workers’ compensation
7 benefits that arose at any time, or based on occurrences outside the PAGA Period. It also does
8 not extend to the individual non-PAGA claims in Plaintiff’s arbitration demand submitted to
9 Judicate West of February 16, 2024 (which individual non-PAGA claims are subject to a separate
10 confidential settlement agreement between the Parties). Plaintiff acknowledges that Plaintiff may
11 discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or
12 believes to be true but agrees, nonetheless, that Plaintiff’s Release shall be and remain effective
13 in all respects, notwithstanding such different or additional facts or Plaintiff’s discovery of them.

14 5.1.1. Plaintiff’s Waiver of Rights Under California Civil Code Section 1542.

15 Further, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of
16 and pursuant to section 1542 of the California Civil Code, which reads:

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

21 5.2. Release by Aggrieved Employees: All Aggrieved Employees are deemed to
22 release, on behalf of themselves and their respective former and present representatives, agents,
23 attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for
24 PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA
25 Period facts stated in the Operative Complaint and the PAGA Notice. This includes all claims
26 that were, or reasonably could have been alleged, based on the facts and allegations set forth in
27 the Operative Complaint, and also the PAGA notice to the California Labor and Workforce
28 Development Agency that arose during the PAGA Period, including but not limited to claims for:
(1) unpaid minimum, regular and overtime wages; (2) meal period violations; (3) rest period
violations; (4) noncompliant wage statements; (5) untimely payment of final wages; (6)
unreimbursed business expenses; (7) unfair competition; (8) off the clock work; and (9) all claims

1 for liquidated damages, penalties, interest, fees, and costs based on the foregoing.

2 5.3. Release by PAGA Counsel: PAGA Counsel release on behalf of their present and
3 former attorneys, employees, agents, successors and assigns the Released Parties from all claims
4 for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts
5 stated in the Operative Complaint and the PAGA Notice.

6 **6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT.** The Parties
7 agree to jointly prepare and file an application or motion for approval of this Settlement.

8 6.1 Plaintiff's Responsibilities. Plaintiff will prepare, and five days prior to the filing
9 deadline deliver to Defense Counsel, all documents necessary for obtaining approval of this
10 Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Order
11 Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator
12 attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness
13 to serve; competency; operative procedures for protecting the security of Aggrieved Employee
14 Data; amounts of insurance coverage for any data breach, defalcation of funds or other
15 misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved
16 Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff,
17 PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting
18 to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of
19 violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section
20 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (iv) a redlined version
21 of the parties' Agreement showing all modifications made to the Model Agreement ready for
22 filing with the Court; and (v) all facts relevant to any actual or potential conflict of interest with
23 Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA shall
24 aver that they are not aware of any other pending matter or action asserting claims that will be
25 extinguished or adversely affected by the Settlement.

26 6.2 Responsibilities of Counsel. PAGA Counsel and Defense Counsel are jointly
27 responsible for coordinating to expeditiously finalize and support the filing of Plaintiff's
28 application or motion for approval of this Settlement, within no later than 30 days after the full
execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion
and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for

1 delivering the Court's Approval to the Administrator.

2 6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed
3 application or motion for approval of this Settlement and/or the supporting declarations and
4 documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of
5 the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement
6 and obtaining the support and input of their mediator, Hon. John Leo Wagner, (Ret.), if needed.
7 If the Court does not grant the motion for approval of this Settlement or conditions its approval
8 on any material change to this Agreement, PAGA Counsel and Defense Counsel will
9 expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in
10 good faith, to modify the Agreement and otherwise satisfy the Court's concerns and obtaining the
11 support and input of their mediator, Hon. John Leo Wagner (Ret.), if needed.

11 **7. SETTLEMENT ADMINISTRATION.**

12 7.1 Selection of Administrator. The Parties have jointly selected Simpluris, Inc.'s to
13 serve as the Administrator and verified that, as a condition of appointment, Simpluris, Inc.'s
14 agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this
15 Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel
16 represent that they have no interest or relationship, financial or otherwise, with the Administrator
17 other than a professional relationship arising out of prior experiences administering settlements.

18 7.2 Employer Identification Number. The Administrator shall have and use its own
19 Employer Identification Number for purposes of calculating payroll tax withholdings and
20 providing reports state and federal tax authorities.

21 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund
22 that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury
23 Regulation section 468B-1.

24 7.4 Administrator Duties. The Administrator has a duty to perform or observe all
25 tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

26 **8. ESTIMATES OF NUMBERS OF AGGRIEVED EMPLOYEES AND PAGA PAY**
27 **PERIODS.** Based on its records, Defendant estimates that, as of December 19, 2023, there are
28 364 Aggrieved Employees who worked 4,320 Pay Periods during the PAGA Period.

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2 **9. CONTINUING JURISDICTION OF THE COURT.** The Parties agree that, after entry
3 of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely
4 for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
5 administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

6 9.1 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms
7 and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and
8 PAGA Counsel Litigation Expenses Payment, the Parties, their respective counsel waive all rights
9 to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the
10 right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals.
11 The waiver of appeal does not include any waiver of the right to oppose such motions, writs or
12 appeals. If another party appeals the Judgment, the Parties' obligations to perform under this
13 Agreement will be suspended until such time as the appeal is finally resolved and the Judgment
14 becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

15 **10. ADDITIONAL PROVISIONS.**

16 10.1 No Admission of Liability or Representative Manageability for Other Purposes.
17 This Agreement represents a compromise and settlement of highly disputed claims. Nothing in
18 this Agreement is intended or should be construed as an admission by Defendant that any of the
19 allegations in the Operative Complaint have merit or that Defendant has any liability for any
20 claims asserted; nor should it be intended or construed as an admission by Plaintiff that
21 Defendant's defenses in the Action have merit. The Parties agree that representative treatment is
22 for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement,
23 Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the
24 right to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to
25 settle the Action will have no bearing on, and will not be admissible in connection with, any
26 litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

27 10.2 Integrated Agreement. Upon execution by all Parties and their counsel, this
28 Agreement together with its attached exhibits shall constitute the entire agreement between the
Parties relating to the Settlement, superseding any and all oral representations, warranties,
covenants, or inducements made to or by any Party.

1 10.3 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant
2 and represent that they are authorized by Plaintiff and Defendant, respectively, to take all
3 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
4 to effectuate its terms, and to execute any other documents reasonably required to effectuate the
5 terms of this Agreement including any amendments to this Agreement.

6 10.4 Cooperation. The Parties and their counsel will cooperate with each other and
7 use their best efforts, in good faith, to implement the Settlement by, among other things,
8 modifying the Settlement Agreement, submitting supplemental evidence and supplementing
9 points and authorities as requested by the Court. In the event the Parties are unable to agree upon
10 the form or content of any document necessary to implement the Settlement, or on any
11 modification of the Agreement that may become necessary to implement the Settlement, the
12 Parties will seek the assistance of a mediator and/or the Court for resolution.

13 10.5 No Prior Assignments. The Parties separately represent and warrant that they
14 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,
15 or encumber to any person or entity and portion of any liability, claim, demand, action, cause of
16 action, or right released and discharged by the Party in this Settlement.

17 10.6 No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendant nor Defense
18 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
19 Settlement be relied upon as such within the meaning of United States Treasury Department
20 Circular 230 (31 CFR Part 10, as amended) or otherwise.

21 10.7 Modification of Agreement. This Agreement, and all parts of it, may be
22 amended, modified, changed, or waived only by an express written instrument signed by all
23 Parties or their representatives, and approved by the Court.

24 10.8 Agreement Binding on Successors. This Agreement will be binding upon, and
25 inure to the benefit of, the successors of each of the Parties.

26 10.9 Applicable Law. All terms and conditions of this Agreement and its exhibits will
27 be governed by and interpreted according to the internal laws of the state of California, without
28 regard to conflict of law principles.

 10.10 Cooperation in Drafting. The Parties have cooperated in the drafting and
preparation of this Agreement. This Agreement will not be construed against any Party on the
basis that the Party was the drafter or participated in the drafting.

1 10.11 Confidentiality. To the extent permitted by law, all agreements made, and orders
2 entered during Action and in this Agreement relating to the confidentiality of information shall
3 survive the execution of this Agreement.

4 10.12 Use and Return of Defendant Documents and Information. Information provided
5 to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA
6 Data provided to PAGA Counsel by Defendant in connection with the mediation, other settlement
7 negotiations, or in connection with the Settlement, may be used only with respect to this
8 Settlement, and no other purpose, and may not be used in any way that violates any existing
9 contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator
10 discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and
11 electronic versions of documents and information received from Defendant unless, prior to the
Administrator's payment of all Settlement Funds, Defendant makes a written request to PAGA

12 10.13 Headings. The descriptive heading of any section or paragraph of this Agreement
13 is inserted for convenience of reference only and does not constitute a part of this Agreement.

14 10.14 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement
15 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
16 weekend or federal legal holiday, such date or deadline shall be on the first business day
thereafter.

17 10.15 Notice. All notices, demands or other communications between the Parties in
18 connection with this Agreement will be in writing and deemed to have been duly given as of the
19 third business day after mailing by United States mail, or the day sent by email or messenger,
20 addressed as follows:

21 To Plaintiff:
22 David Glenn Spivak, Esq.
23 The Spivak Law Firm
24 8605 Santa Monica Bl
25 PMB 42554
26 West Hollywood, CA 90069
27 david@spivaklaw.com

28 To Defendant:
Michael J. O'Connor, Jr., Esq.

1 Sarkis A. Atoyan, Esq.
2 Atkinson, Andelson, Loya, Ruud & Romo
3 4275 Executive Square, Suite 700
4 La Jolla, CA 92037
5 michael.oconnor@aalrr.com
6 sarkis.atoyan@aalrr.com

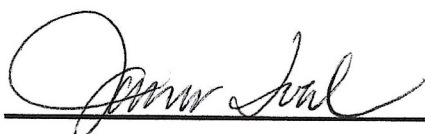
7 10.16 Execution in Counterparts. This Agreement may be executed in one or more
8 counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this
9 Agreement shall be accepted as an original. All executed counterparts and each of them will be
10 deemed to be one and the same instrument if counsel for the Parties will exchange between
11 themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove
12 the existence and contents of this Agreement.

13 10.17 Stay of Litigation. The Parties agree that upon the execution of this Agreement
14 the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
15 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the
16 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
17 process.

18 10 / 28 / 2024
19 Dated: _____, 2024

20 By: 
21 AMBER ASHLEY DAMAS

22 Dated: 10/7, 2024

23 By: 

24 Just Wingin' It, Inc.

25 10 / 28 / 2024
26 Dated: _____, 2024

27 THE SPIVAK LAW FIRM

28 By: 
DAVID GLENN SPIVAK, Attorneys
for Plaintiff, AMBER ASHLEY
DAMAS, and all others similarly
situated

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UNITED EMPLOYEES LAW GROUP

Dated: _____, 2024

By: _____
WALTER L. HAINES, Attorneys for
Plaintiff, AMBER ASHLEY DAMAS,
and all others similarly situated

ATKINSON, ANDELSON, LOYA, RUUD &
ROMO

Dated: October 22, 2024

By:  _____
MICHAEL J. O'CONNOR
SARKIS A. ATOYAN, Attorneys for
Defendant, JUST WINGIN' IT, INC.

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UNITED EMPLOYEES LAW GROUP

Dated: October 24, 2024

By: 
WALTER L. HAINES, Attorneys for
Plaintiff, AMBER ASHLEY DAMAS,
and all others similarly situated

ATKINSON, ANDELSON, LOYA, RUUD &
ROMO

Dated: _____, 2024

By: _____
MICHAEL J. O'CONNOR
SARKIS A. ATOYAN, Attorneys for
Defendant, JUST WINGIN' IT, INC.

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EXHIBIT A

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1 By Order dated <<court approval order date>>, the Superior Court of the State of
2 California, San Joaquin County approved the Settlement of the PAGA claims.

3 According to the Defendant's records, you are an Aggrieved Employee and therefore
4 entitled to an Individual PAGA Payment, a share of the settlement based upon the Court approved
5 allocation. Enclosed with this Notice is your check for your Individual PAGA Payment. The
6 settlement check shall remain valid for 180 days. Thereafter, all uncashed checks shall be
7 distributed to California State Controller's Office Unclaimed Property Fund with an
8 identification of the amount of unclaimed funds attributable to each Aggrieved Employee.

9 Please Note: One hundred percent (100%) of your individual PAGA payment under this
10 Settlement will be considered penalties and may be subject to local, state, or federal tax
11 withholdings and will be reported to the IRS and state tax authorities. You should rely on your
12 own tax advisors as to the tax consequences of your individual PAGA Payment. Neither Plaintiff
13 nor Defendant have made any representations or warranties regarding the taxation of your
14 individual PAGA payment. Nothing within this notice or any other communication shall
15 constitute or be construed or relied upon as tax advice within the meaning of United States
16 Treasury Department Circular 230 (31 C.F.R. Part 10, as amended). Enclosed are the appropriate
17 tax forms pertaining to your payment.

18 Do not call or write the Court or Office of the Clerk to ask questions about the settlement
19 or to ask questions about the claims process. If you have any questions, you may call or write to
20 Simpluris, Inc.'s (the Administrator) using the contact information at the top of this
21 correspondence.
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EXHIBIT A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN
(UNLIMITED JURISDICTION)

AMBER ASHLEY DAMAS, on behalf of herself
and all others similarly situated, and as an
“aggrieved employee” on behalf of other
“aggrieved employees” under the Labor Code
Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

JUST WINGIN' IT, INC., a California
corporation; and DOES 1–50, inclusive,

Defendant(s).

Case No. STK-CV-UOE-2022-0007989

**[PROPOSED] ORDER AND
JUDGMENT APPROVING PAGA
SETTLEMENT AGREEMENT**

Action filed: September 12, 2022
Dept: 10B, Hon. Blanca Banuelos

Having considered the Parties’ PAGA Settlement Agreement (“Agreement” or “PAGA
Settlement”), IT IS HEREBY ORDERED THAT:

1. To the extent required by Labor Code § 2699(l), the Settlement and its terms
represent a reasonable and adequate settlement of highly disputed claims to Plaintiff Amber

1 Ashley Damas (“Plaintiff”), the “Aggrieved Employees” (as the term is defined in the PAGA
2 Settlement), the State of California, Plaintiff’s counsel, and Defendant JUST WINGIN’ IT, INC.
3 (“Defendant”), and is approved.

4 2. Defendant shall pay the all-in “Gross Settlement Amount” (as the term defined in
5 the Settlement) in the total amount of \$235,000.00. The Gross Settlement Amount includes: (a)
6 the PAGA Counsel Fees Payment in the amount of \$78,333.00 and PAGA Counsel Litigation
7 Expenses Payment of \$16,000.00 to David Glenn Spivak of The Spivak Law Firm and Walter L.
8 Haines of United Employees Law Group, PAGA Counsel; (b) “PAGA Penalties” (as the term
9 defined in the PAGA Settlement) payable to the Aggrieved Employees and the Labor and
10 Workforce Development Agency (“LWDA”); and (c) Administration Expenses Payment of up
11 to \$7,500.00 to Simpluris, Inc.’s to Administer the Settlement, in accordance with the procedure
12 as mentioned in the Settlement.

13 3. The allocation of the Settlement payment among the Plaintiff, the Aggrieved
14 Employees, the State of California, the Settlement Administrator and Plaintiff’s counsel is fair,
15 just, reasonable, adequate, and equitable to all concerned, and is approved to the extent required
16 under Labor Code§ 2699(l).

17 4. The settlement is approved on the terms stated in the Agreement.

18 5. Judgment in this matter is entered in accordance with, and incorporates by
19 reference, the terms and conditions of the Settlement. Instead of filing a request for dismissal to
20 terminate this action, this judgment will terminate the action.

21 6. The PAGA Settlement is not an admission by Defendant, or any of the “Released
22 Parties” (as the term is defined in the Settlement), nor is this judgment a finding of the validity
23 of any allegations or of any wrongdoing by Defendant or the Released Parties. Neither this
24 judgment, the Agreement, nor any document referred to therein, nor any action taken to carry out
25 the PAGA Settlement, may be construed as, or may be used as, an admission of any fault,
26 wrongdoing, omission, concession, or liability whatsoever by or against Defendant or the
27 Released Parties.

28 7. The PAGA Settlement shall be binding on Plaintiff, all Aggrieved Employees,
and the State of California, who are hereby barred from re-litigating any of the claims released
by the Settlement.

8. Pursuant to Code of Civil Procedure section 664.6 the Court shall retain exclusive and continuing jurisdiction over the above-captioned action and the parties for purposes of enforcing the terms of the PAGA Settlement.

IT IS SO ORDERED, ADJUDGED AND DECREED.

DATE _____

HON. BLANCA BANUELOS
JUDGE