

MEMORANDUM OF UNDERSTANDING RE CLASS ACTION/PAGA SETTLEMENT***Latrice Jonae Harris and Rainyia Champagne Hart v. OnPoint Testing, Inc., et al.*****San Mateo County Superior Court, Case No. 22-CIV-04669*****Laura Mozqueda v. OnPoint Testing, Inc.*****Alameda County Superior Court, Case No. 22CV009928**

This Memorandum of Understanding (“MOU”) is entered into by and between Plaintiffs Laura Mozqueda, Latrice Jonae Harris, and Rainyia Champagne Hart (“Plaintiffs”), on behalf of themselves and other similarly situated individuals, and OnPoint Testing, Inc., Paul Rogers, and Sherif Mohamed (“Defendants”). Plaintiffs and Defendants are collectively referred to herein as the “Parties” and agree to settle the Actions (as defined below).

1. **The Actions:** On April 15, 2022 Plaintiff Mozqueda filed a putative class action in Alameda County Superior Court, Case No. 22CV009928, alleging the following claims: (1) failure to pay all minimum wages, (2) failure to pay all overtime wages, (3) failure to provide rest periods and pay missed rest period premiums, (4) failure to provide meal periods and pay missed meal period premiums, (5) failure to maintain accurate employment records, (6) failure to pay wages timely during employment, (7) failure to pay all wages earned and unpaid at separation, (8) failure to indemnify all necessary business expenditures, (9) failure to furnish accurate itemized wage statements, and (10) Violations of Unfair Competition Law (Bus. & Prof. Code, 17200-17210). On June 20, 2022, Plaintiff Mozqueda filed a First Amended Complaint to add a cause of action under California’s Private Attorneys General Act (“PAGA”). On July 20, 2023, Plaintiff Mozqueda filed amendments to the First Amended Complaint purporting to name as Doe defendants “Paul Reed”, “Zoe Reed”, and “Sherif Mohamed”.

2. On November 8, 2022 Plaintiffs Latrice Jonae Harris and Rainyia Champagne Hart filed a putative class action in San Mateo County Superior Court, Case No. 22-CIV-04669, alleging the following claims: (1) failure to pay wages for all hours worked; (2) failure to pay overtime wages; (3) failure to provide mandatory meal and rest breaks; (4) failure to pay business expenses (for use of cell phones and electronic devices for work); (5) failure to provide accurate wage statements (including failure to list COVID supplemental pay on wage statements); (6) violation of California’s unfair competition law; (7) violation of California’s WARN Act; and (8) civil penalties under PAGA. On or about January 13, 2023, Plaintiffs Harris and Hart filed a First Amended Complaint alleging the same causes of action but adding Plaintiff Hart to the PAGA cause of action. On or about August 7, 2023, Plaintiffs Harris and Hart filed amendments to the First Amended Complaint naming as Doe defendants “Sherif Mohamed” and “Paul Rogers”.

3. **Mediation:** On November 7, 2023, the Parties mediated Plaintiffs’ class action and PAGA claims contained in Plaintiffs’ First Amended Complaints (“the Actions”) with mediator Judge Mitchel R. Goldberg and were able to reach a global agreement, which subject to

entry of final approval and judgment by the Court, is intended to be a full and final resolution of the Actions and all of the Class Released Claims and PAGA Released Claims, as detailed below.

4. **Class Certification:** The Parties agree to certification of the putative class claims that are alleged in the Actions for purposes of settlement only. Defendants agree to certification of the putative class claims only to the extent necessary to effectuate this settlement. If the settlement is not finally and fully approved, then Defendants reserve all, and does not waive any and all, rights and defenses regarding any claims.

5. **Settlement Class:** The settlement class is defined as all hourly non-exempt employees of OnPoint Testing, Inc. in California at any time from April 15, 2018 through the date of preliminary approval of the settlement. April 15, 2018 through the date of preliminary approval of the settlement is the “Class Period”. Defendants represent that through the date of this MOU, there are at least two hundred and forty-three (243) employees in the settlement class.

6. **The Aggrieved Employee Group:** The aggrieved employee group is defined as all non-exempt hourly employees of OnPoint Testing Inc. in California at any time from February 9, 2021 through the date of preliminary approval of the settlement (“Aggrieved Employees”). February 9, 2021 through the date of preliminary approval of the settlement is the “PAGA Period”.

7. **Participating Settlement Class Member:** A participating settlement class member is a member of the Settlement Class who does not opt out of the Settlement (“Participating Settlement Class Member”).

8. **Gross Settlement Amount (GSA):** The GSA that Defendants shall be required to pay is one hundred and eighty thousand dollars (\$180,000.00), which is an all-in amount, inclusive of employer-side payroll taxes, and is non-reversionary. The first installment of the GSA shall be thirty thousand dollars (\$30,000), which shall be paid by Defendants (to a Qualified Settlement Fund (“QSF”) opened by the agreed settlement administrator) within thirty (30) days after the long form settlement agreement is fully executed. The remainder of the GSA shall be paid in three separate installments of fifty thousand dollars (\$50,000) each, payable quarterly no later than May 30, 2024, August 30, 2024, and November 30, 2024 into the same QSF. In no event shall Defendants be required to pay more than the GSA, other than as provided herein.

9. **Net Settlement Amount (NSA):** The NSA shall be available for distribution to the Participating Settlement Class Members, Aggrieved Employees, and Labor & Workforce Development Agency (“LWDA.”) Plaintiffs’ attorneys’ fees and costs, the class representatives’ enhancement awards, and employer-side payroll taxes, and settlement administration costs will be deducted from the GSA to calculate the NSA to be distributed to Participating Settlement Class Members, Aggrieved Employees, and LWDA.

10. **Settlement Distribution to Aggrieved Employees:** The Parties will allocate \$10,000 of the NSA to the PAGA claim (“PAGA Settlement Amount”). The remainder of the NSA will be allocated to the Class claims (“Class Settlement Amount”). 75% of the PAGA Settlement Amount shall be distributed to the LWDA as required by statute. The remaining 25% shall be distributed as Individual PAGA Payments. Each Aggrieved Employee will receive a pro rata share of the 25% of the PAGA Settlement Amount based on the number of pay periods that the Aggrieved Employee worked during the PAGA Period in California (their “individual PAGA payment”). All Aggrieved Employees will receive a portion of the employee portion of the PAGA Settlement Amount, regardless of whether such Aggrieved Employees exclude themselves or opts-out of the Settlement Class.

11. **Settlement Distribution to Participating Settlement Class Members:** Participating Settlement Class Members will receive a pro rata share of the Class Settlement Amount, less applicable withholdings, based on total workweeks worked during the Settlement Class Period as expressed in the following formula: Participating Settlement Class Member Payment = Class Settlement Amount multiplied by Participating Settlement Class Member workweeks divided by all workweeks worked by all Settlement Class Members.

12. **Escalator Clause:** This Settlement is premised on the settlement class size consisting of 243 Settlement Class Members. If the actual number of Settlement Class Members at issue exceeds 243 by more than 10% as of the date of preliminary approval of the settlement, either the GSA will increase by the same percentage above 10% by which the total number of Settlement class Members exceeds 243 (e.g., if the actual total number of settlement class members as of the date of preliminary approval exceeds 267 by 2%, the GSA would increase by 2%), or, at Defendants’ option, the Class Period and PAGA Period will end as of the date the total number of settlement class members exceeded 243.

13. **No Admission:** Neither this MOU, nor final form of the Settlement (memorialized in the written long-form Settlement Agreement), shall constitute an admission on behalf of Defendants of any form of liability or the accuracy of any allegation made by Plaintiffs or their counsel.

14. **No Reversion, No Claims Made:** There will be no reversion to Defendants and no claims process for Settlement Class Members to receive payment.

15. **Opt Out Procedure:** Following preliminary approval, Settlement Class Members shall receive notice of the Settlement and be provided 30 days in which to object or opt out of the Settlement. In the event that more than 10% of Settlement Class Members opt out of the Settlement, Defendants shall have the right, but not the obligation, exercised in its sole discretion, to void the settlement, whereupon the definition of the class will be vacated and the litigation will proceed without prejudice with respect to any party’s position regarding class certification or any other issue. If Defendants exercise their option to terminate this Settlement, Defendants shall be responsible for the Settlement Administration Costs incurred up to the date

of termination. The Parties and their respective counsel agree not to encourage any Settlement Class Member to object to or opt out of the Settlement.

16. **Second Amended Complaint:** Within 10 days of executing the long-form settlement agreement that will follow this MOU, Plaintiff Mozqueda agrees to send notice of an amended PAGA claim to California's LWDA naming all Defendants as recipients to the notice, and adding a claim for failure to pay wages for accrued paid sick days at the regular rate of pay pursuant to California Labor Code section 246. Following the required waiting period, the Harris Plaintiffs will promptly file a Second Amended Complaint adding Plaintiff Mozqueda, adding the newly amended PAGA allegations as well as adding any additional class claims or basis for such claims asserted in the Mozqueda Action and a class claim failure to pay wages for accrued paid sick days at the regular rate of pay pursuant to California Labor Code section 246. Defendants agree to stipulate to the filing of the Second Amended Complaint and Defendants' counsel will accept service on behalf of all three Defendants. Within 15 days after preliminary approval is granted in the Harris/Hart Action, Plaintiff Mozqueda shall file a request for dismissal of the Mozqueda Action. Plaintiffs and Defendants further agree that the Defendants need not answer the Second Amended Complaint at this time and an answer will not be due, if at all, until 30 days after a final denial of settlement approval.

17. **Settlement Class Release:** The claims to be released by the Participating Settlement Class Members are all claims under state, federal, or local law, based on the facts, claims or theories expressly pleaded in the Second Amended Complaint of the Harris Action, or any prior complaints in either of the Actions; facts, claims or theories expressly raised in either of the Actions or any of the notices to the LWDA submitted by any of the Plaintiffs regarding Defendants ("LWDA Notice"), or any of the facts, claims or theories arising under any applicable Wage Order raised by any of the Plaintiffs including but not limited to claims for: (1) failure to provide required meal breaks; (2) failure to provide required rest breaks; (3) failure to pay overtime wages; (4) failure to pay minimum wages; (5) failure to timely pay wages during employment; (6) failure to timely pay wages upon termination; (7) failure to maintain required payroll records; (8) failure to provide accurate, itemized wage statements; (9) failure to reimburse necessary business expenses; (10) violation of California WARN Act; (11) violation of California's unfair competition law ("Class Released Claims"); (12) failure to comply with COVID supplemental sick leave laws; and (13) failure to pay wages for accrued paid sick days at the regular rate of pay pursuant to California Labor Code section 246. Plaintiffs expressly agree to release, as set forth herein, Defendants OnPoint Testing, Inc, Paul Rogers, and Sherif Mohamed, together with any of their current and former owners, officers, directors, managers, employees, and agents("Released Parties").

18. **General Release by Plaintiffs.** The named Plaintiffs will sign a general release and Civil Code 1542 waiver against the Released Parties.

19. **Settlement PAGA Release:** All alleged Aggrieved Employees will be bound by a release of all claims under PAGA based on the facts, claims and theories expressly pleaded in the Second Amended Complaint of the Harris Action, or any prior complaints in either of the Actions; facts, claims or theories expressly raised in either of the Actions or any of the notices to the LWDA submitted by any of the Plaintiffs regarding Defendants (“LWDA Notice”), or any of the facts, claims or theories arising under any applicable Wage Order raised by any of the Plaintiffs including but not limited to claims for: (1) failure to provide required meal breaks; (2) failure to provide required rest breaks; (3) failure to pay overtime wages; (4) failure to pay minimum wages; (5) failure to timely pay wages during employment; (6) failure to timely pay wages upon termination; (7) failure to maintain required payroll records; (8) failure to provide accurate, itemized wage statements; (9) violation of California WARN Act; (10) failure to reimburse necessary business expenses; and (11) failure to comply with COVID supplemental sick leave laws; and (12) failure to pay wages for accrued paid sick days at the regular rate of pay pursuant to California Labor Code section 246. (“PAGA Released Claims”).

20. **Characterization of Settlement Payments to Class:** 20% wages (with legally required tax withholding) and 80% penalties, expenses and interest.

21. **Enhancement Award:** Defendants shall not oppose a request for up to \$7,500 to each Plaintiff, as an Enhancement Award. Any portion of the Enhancement Award allocation not approved by the Court will revert to the NSA.

22. **Employer’s Share of Payroll Taxes:** Defendants’ share of payroll taxes will be included in the GSA.

23. **Uncashed or Returned Checks:** Funds from uncashed or returned checks will be distributed to a cy pres recipient.

24. **Settlement Administrator:** The Parties shall mutually agree on selection of the administrator.

25. **Settlement Administration Costs:** Defendants will not oppose a request for reimbursement for the settlement administrator’s costs, which will be paid from the GSA. Any unused funds of this cost allocation will revert to NSA.

26. **Attorneys’ Fees:** Defendants will not oppose a request for attorneys’ fees of up to one-third of the GSA. Any portion of the fee allocation not approved by the Court will revert to the NSA.

27. **Costs:** Defendants will not oppose a request for reimbursement for Plaintiffs’ litigation costs, which will be paid from the GSA. Any unused funds of this cost allocation will revert to the NSA.

28. **Enforceability:** The Parties intend to enter into a more formal “long form” agreement not inconsistent with the terms of this MOU within thirty (30) days of the date of

execution of this MOU, but if they fail to execute a more formal agreement, this MOU will be final, binding and enforceable pursuant to California Code of Civil Procedure section 664.6.

29. **Drafting of Long-Form Settlement Agreement and Preliminary Approval**

Papers: Counsel for Plaintiffs will draft the long-form settlement agreement. Counsel for Plaintiffs will draft the class notice, motion for preliminary approval, and motion for final approval and circulate said papers to counsel for Defendants for review at least five (5) business days prior to filing. Plaintiffs' motion for preliminary approval of the settlement will be filed and served no later than 60 days after execution of the long-form settlement agreement.

30. **Effective Date:** The "Effective Date" of this Settlement shall be the later of (a) if there are no objections to the Settlement, the sixty-first (61st) day after service of notice of entry of the Judgment entered by the Court; (b) if there are objections to the Settlement, and if an appeal, review or writ is not sought from the Judgment, the sixty-first (61st) day after the date after service of notice of entry of the Judgment; or (c) if an appeal, review or writ is sought from the Judgment, the date upon which all appellate and/or other proceedings resulting from the appeal, review or writ have been finally terminated in such a manner as to permit the Judgment to take effect in substantially the form described herein.

31. **Class Notice:** The Parties agree that within fifteen (15) calendar days of the date the court grants preliminary approval of the Settlement, Defendants will provide the last known contact information, number of workweeks during the Class Release Period, and number of pay periods during the PAGA Release Period for each Settlement Class Member and/or Aggrieved Employee to the settlement administrator in the form(s) requested by the settlement administrator. Using the provided information and after making any updates as necessary, within ten (10) calendar days of the date Defendants provide the information of Settlement Class Members and the Aggrieved Employee Group to the settlement administrator, the settlement administrator will mail the class notice, which will include an explanation of the process for opting out of or objecting to the Settlement. The Settlement Class Members will have thirty (30) days in which to postmark objections and/or requests for exclusion from the Settlement Class. The claims administrator will search using the social security numbers of the class members for more current addresses if notice packets are returned. If an address is not found, no further action is required. Aggrieved Employees shall not have an opportunity to opt out of the Aggrieved Employee Group.

32. **Settlement Administration:** The settlement administrator will issue the payments to pay the obligations to the LWDA, Participating Settlement Class Members and Aggrieved Employees, attorneys' fees and costs, cost of administration, and any Enhancement Payment due to the named Plaintiffs as well as pay the required employer's side taxes.

33. **Court Approval:** The Settlement shall be subject to (1) dismissal of the Mozqueda action as addressed above and (2) the Court in the Harris/Hart Action granting preliminary approval and final approval. If the Court enters a final order denying either preliminary or final approval, the Parties shall be restored to their positions at the time of the

execution of this MOU, with the exception that if any settlement administration costs are due and payable, the Parties agree to split those costs.

34. **Dispute Resolution:** Any dispute as to the agreed terms of this settlement or this MOU shall be resolved by mediator Judge Mitchel R. Goldberg.

Dated: January ____, 2024

Laura Mozqueda
Plaintiff

Dated: January 26, 2024

Latrice Harris
Latrice Jonae Harris
Plaintiff

Dated: January ____, 2024

Rainyia Champagne Hart
Plaintiff

Dated: February ^{6.00} ____, 2024

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Sherif Mohamed
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Sherif Mohamed
Individually and on behalf of OnPoint Testing, Inc.

Dated: February ^{5.00} ____, 2024

DocuSigned by:
Paul Rogers
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Paul Rogers
Individually and on behalf of OnPoint Testing, Inc.

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Dated: January ____, 2024

Laura Mozqueda
Plaintiff

Dated: January ____, 2024

Latrice Jonae Harris
Plaintiff

Dated: January 29, 2024



Rainyia Champagne Hart
Plaintiff

Dated: February 6.00, 2024

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Sherif Mohamed
Individually and on behalf of OnPoint Testing, Inc.

Dated: February 5.00, 2024

DocuSigned by:


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Paul Rogers
Individually and on behalf of OnPoint Testing, Inc.

APPROVED AS TO CONTENT AND FORM:

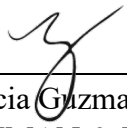
Dated: January ____, 2024

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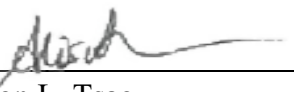
Dated: January 30, 2024

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Champagne Hart

Dated: January 29, 2024


Marcia Guzman, Esq.
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Champagne Hart

Dated: February 7, 2024

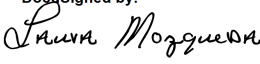

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Attorneys for Defendants

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Dated: January ²⁶____, 2024

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Laura Mozqueda
Plaintiff

Dated: November ____, 2023

Latrice Jonae Harris
Plaintiff

Dated: November ____, 2023

Rainyia Champagne Hart
Plaintiff

Dated: November ____, 2023

Sherif Mohamed
Individually and on behalf of OnPoint Testing, Inc.

Dated: November ____, 2023

Paul Rogers
Individually and on behalf of OnPoint Testing, Inc.

APPROVED AS TO CONTENT AND FORM:

Dated: January 19, 2024



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Dated: November ____, 2023

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Dated: November ____, 2023

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Dated: November ____, 2023

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