PAGA SETTLEMENT AND RELEASE AGREEMENT

This Settlement Agreement ("Agreement") is made by and between Plaintiff Samir Jimenez ("Plaintiff") and Defendants Peggy S. Lane, Inc., dba Cultured Marble Products; Walking Liberty PSL Holdings, LLC; and Matthew Clementz (collectively "Defendants" or "PSL"). The Agreement refers to Plaintiff and PSL collectively as "Parties," or individually as "Party."

1. DEFINITIONS

1.1. "Action" means the Plaintiff's PAGA claims alleging wage and hour violations against PSL captioned *Samir Jimenez v. Alvarado Stone Slab Fabrication, Inc., et al.*, Superior Court of the State of California, Merced County, Case No. 22CV-01932. Plaintiff has entered a separate settlement agreement for his individual claims against PSL.

1.2. "Administrator" means ILYM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3. "Administration Expenses Payment" means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator's "not to exceed" bid submitted to the Court in connection with approval of this Settlement.

1.4. "Aggrieved Employee(s)" means all past or present non-exempt hourly employees of PSL who were paid on a piece rate basis and worked at any time in California during the PAGA Period.

1.5. "Aggrieved Employee Data" means Aggrieved Employees' identifying information in PSL's possession including each Aggrieved Employee's full name, last-known mailing address and telephone number, Social Security number, and number of PAGA Pay Periods.

1.6. "Aggrieved Employee Address Search" means the Administrator's investigation and search for current Aggrieved Employee mailing addresses using all reasonably available 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.

1.7. "Court" means the Superior Court of California, Merced County.

1.8. "Defense Counsel" means Gordon Rees Scully Mansukhani, LLP.

1.9. "Effective Date" means the earliest date, following entry by the Court of the Judgment, upon which one of the following has occurred: (i) expiration of all potential appeal periods without a filing of a notice of appeal of the Judgment; (ii) final affirmance of the Judgment by an appellate court as a result of any appeal(s); or (iii) final dismissal or denial of all such appeals (including any petitions for review, rehearing, certiorari, etc.) such that the Judgment is no longer subject to further judicial review.

1.10. "Final Approval" means the upon the occurrences of all of the following events:

1.10.1. Submission of this Agreement to the Court for approval pursuant to Labor Code §2699(1)(2) via joint stipulation ("Joint Stipulation for Settlement Approval").

1.10,2 Submission of the Joint Stipulation for Settlement Approval and this Settlement Agreement to the LWDA pursuant to Labor Code §2699(1)(2).

1.10.3 Entry of an order by the Court approving the settlement documented by this Settlement Agreement. If the Court does not grant approval of the Settlement, or if the Court's final approval of the Settlement is reversed or materially modified on appellate review, then the Settlement will become null and void. A modification of amounts payable in attorneys' fees shall not be deemed a material modification of the Settlement.

1.10.4 Occurrence of the Effective Date.

1.11. "Gross Settlement Amount" means $50,000.00, which is the total amount PSL agrees to pay under this Settlement, which will be used to pay the LWDA PAGA Payment, Aggrieved Employees' Individual PAGA Payments, the Administration Expenses Payment, and PAGA Counsel's Fees Payment.

1.12. "Individual PAGA Payment" means each Aggrieved Employee's share of 25% of the PAGA Penalties, calculated by multiplying 25% of the PAGA Penalties by the percentage determined by dividing the number of PAGA Pay Periods each Aggrieved Employee worked by the total number of all Aggrieved Employees' PAGA Pay Periods.

1.13. "Judgment" means the judgment entered by the Court of its approval of the Joint Stipulation for Settlement Approval.

1.14. "LWDA" means the California Labor and Workforce Development Agency, the agency responsible for administering, and collecting civil penalties under PAGA, as described under California Labor Code section 2699(i) and (j).

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

1.16. "PSL" means Defendants Peggy S. Lane, Inc., dba Cultured Marble Products; Walking Liberty PSL Holdings, LLC; and Matthew Clementz.

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

1.18 "PAGA Counsel" means the Law Office of Steven Elster and Yeremian Law, the law firms representing the Aggrieved Employees in the Action.

1.19. "PAGA Counsel's Fees Payment" means up to $16,666.67 (based on 1/3 of the Gross Settlement Amount of $50,000), allocated to PAGA Counsel for reimbursement of reasonable attorneys' fees incurred to prosecute the Action, as approved by the Court.

1.20. "PAGA Pay Period" means any pay period during which an Aggrieved Employee worked for PSL in California for at least one day during the PAGA Period.

1.21. "PAGA Period" means the period from February 13, 2022 through the date of approval of the Settlement.

1.22. "PAGA Notice" means Plaintiff's February 11, 2023 letter to PSL and the LWDA providing notice pursuant to Labor Code section 2699.3.

1.23. "PAGA Penalties" means the total amount of PAGA civil penalties remaining in the Gross Settlement Amount after subtracting: PAGA Counsel's Fees Payment and Administration Expenses Payment. This is amount is expected to total approximately $30,333. PAGA Penalties will be allocated 75% to the LWDA (approximately $22,750) and 25% to the Aggrieved Employees (approximately $7,583) in settlement of PAGA claims.

1.24. "Plaintiff" means Samir Jimenez, the named plaintiff in the Action.

1.25. "Released PAGA Claims" means the claims being released by the Plaintiff as described in Paragraph 5 below.

1.26. "Released Parties" means PSL and each of their respective current and former, direct and indirect owners, parents, subsidiaries, brother-sister companies, and all other affiliates and related entities, and their current and former partners, officers, directors, employees, attorneys, agents, and other related parties but does not include the Alvarados.

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

2. RECITALS

2.1. On June 24, 2022, Plaintiff filed a complaint against Alvarado Stone Slab Fabrication, Inc., Juan Alvarado Jr. and Juan Alvarado Sr. (collectively "the Alvarados") alleging various wage and hour claims on an individual basis only. On August 22, 2022, the Alvarados filed an answer to Plaintiff's complaint and the Alvarados separately filed a cross-complaint against Peggy S. Lane, Inc., dba Cultured Marble Products and Walking Liberty PSL Holdings, LLC. On February 11, 2023, Plaintiff submitted the PAGA Notice to the LWDA and certified mailed copies to PSL. On March 22, 2023, Plaintiff filed a first amended complaint adding PSL as defendants for the various wage and hour claims he alleged on an individual basis.

On June 1, 2023, pursuant to a stipulation between Plaintiff, PSL, and the Alvarados, Plaintiff filed a Second Amended Complaint ("SAC") adding PAGA claims against PSL and the Alvarados in addition to Plaintiff's individual wage and hour claims against them.[1] As predicates

[1] Labor Code § 2699(g) states:

> "Nothing in this part shall operate to limit an employee's right to pursue or recover other remedies available under state or federal law, either separately or concurrently with a [PAGA] action under this part."

to the PAGA claims against PSL, Plaintiff alleged against PSL's violations of California Labor Code sections 201, 202, 203, 204, 210, 226(a), 226.3, 226.7, 226.8, 510, 512, 558, 558.1, 1174(d), 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, and 1199, and Wage Order 16-2001, including for failing to pay employees for all hours worked and violations derivative thereof. The SAC is the operative complaint in the Action (the "Operative Complaint."). PSL denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action and PAGA claims alleged.

2.2. Pursuant to Labor Code section 2699.3, Plaintiff gave timely written notice to PSL and the LWDA by sending the PAGA Notice by certified mail.

2.3. On January 11, 2024, Plaintiff, PSL, and the Alvarados engaged in an unsuccessful mediation before Craig J. Ackermann, Esq. of Employment Mediation Corp. Subsequently, Plaintiff and PSL continued to negotiate and then engaged in a second mediation just between them on March 25, 2024, which resulted in an agreement to settle all claims in the Action as to PSL alone for a Gross Settlement Amount of $50,000 for the LWDA PAGA Payment, Aggrieved Employees' Individual PAGA Payments, the Administration Expenses Payment, and PAGA Counsel's Fees Payment, as approved by the Court.

2.4. Prior to mediating and negotiating the Settlement, Plaintiff obtained, through formal and informal discovery over thousand pages of documents, including regarding PSL's relevant pay practices and policies and extensive time records and payroll records regarding a sample of Aggrieved Employees. PAGA Counsel spent an extensive amount of time analyzing and evaluating these data and spreadsheets and reviewing documents from PSL.

3. MONETARY TERMS

3.1. <u>Gross Settlement Amount</u>. Except if Plaintiff withdraws from the Settlement as provided by Paragraph 8 below, PSL promises to pay $50,000 as the Gross Settlement Amount. PSL has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to PSL.

3.2 <u>Payments from the Gross Settlement Amount</u>. Subject to Court approval of the Joint Stipulation for Settlement Approval, the Administrator will make the following payments from the Gross Settlement Amount:

3.2.1. <u>To PAGA Counsel</u>: PAGA Counsel's Fees Payment of up to $16,666.67, consisting of a payment to the Law Firm of Steven Elster of $14,166.67 and a payment of $2,500.00 to Yeremian Law. PSL will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. If the Court approves PAGA Counsel's Fees Payment less than the amounts requested, the Administrator will allocate the remainder to the PAGA Penalties. The Administrator will pay the PAGA Counsel's Fees Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel's Fees Payment.

3.2.2. To the Administrator: An Administration Expenses Payment not to exceed $3,000 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than $3,000, the Administrator will allocate the remainder to the PAGA Penalties.

3.2.3. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of approximately $30,333 to be paid from the Gross Settlement Amount, with 75% (approximately $22,750) allocated to the LWDA PAGA Payment and 25% (approximately $7,583) allocated to the Individual PAGA Payments.

3.2.3.1 The Administrator will calculate each Aggrieved Employee's Individual PAGA Payment by multiplying 25% of the PAGA Penalties by the percentage determined by dividing the number of PAGA Pay Periods each Aggrieved Employee worked by the total number of all Aggrieved Employees' PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.3.2. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS

4.1 Aggrieved Employee Pay Periods. Based on a review of its records to date, PSL estimated that as of March 25, 2024, there are 30 Aggrieved Employees who worked a total of 1,914 PAGA Pay Periods.

4.2 Aggrieved Employee Data. Within thirty (30) days of the Effective Date, PSL will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employees' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. If any Aggrieved Employees request assistance from counsel, or have questions that the Administrator cannot readily answer, the Administrator shall refer them to PAGA Counsel and provide PAGA Counsel with the substance of that individual's inquiry and their contact information. PSL has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which PSL must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

4.3. Funding of Gross Settlement Amount. The Administrator will provide PSL with wire transfer information within five (5) days after Final Approval. PSL will transfer the Gross Settlement Amount to the Administrator via wire transfer(s) within ten (10) days after the Administrator provides PSL with wire transfer information

4.4. Payments from the Gross Settlement Amount. The LWDA PAGA Payment, the Aggrieved Employees' Individual PAGA Payments, PAGA Counsel's Fees Payment, and the Administration Expenses Payment will be paid within twenty (20) days after PSL transfers the Gross Settlement Amount to the Administrator.

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

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

4.4.3. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks by *cy pres* to Legal Aid at Work.

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

5. RELEASE OF CLAIMS. Upon the approval by the Court of this Settlement Agreement, the PAGA Representative, on behalf of himself, the State of California, the LWDA and the Aggrieved Employees, fully releases and discharges PSL and the Released Parties from any and all claims for relief under PAGA, of whatever kind or nature, whether known or unknown, arising during the PAGA Period, based on the facts alleged by Plaintiff in the Action and Plaintiff's PAGA Notice to the LWDA including, but not limited to, Labor Code sections 201, 202, 203, 204, 210, 226(a), 226.3, 226.7, 226.8, 510, 512, 558, 558.1, 1174(d), 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1199, 2699, and IWC Wage Order 16-2001, and any resulting claim for attorneys' fees and costs under PAGA (the "Released PAGA Claims").

6. PROCESS FOR PAGA COURT APPROVAL

6.1. The Parties will cooperate in seeking approval of the Settlement, including by drafting and filing the Joint Stipulation for Settlement Approval. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents reasonably necessary to be prepared or filed and shall take all steps that may be requested by the Court relating to the approval and implementation of the Settlement. If the Parties disagree on any aspect of the proposed Joint Stipulation for Settlement Approval and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement.

6.2. If the Court does not enter an order approving the settlement under the specific terms requested, the Parties agree to meet and confer to address the Court's concerns and determine whether resolution of the Action can be obtained in a manner consistent with the Court's concerns.

6.3. The Parties agree there is no statutory right for any Settlement Group Member to object, opt out or otherwise exclude himself or herself from the Settlement. The Parties further agree there is no right or opportunity for any Settlement Group Member to appeal the approval of the Settlement by the Court, with the exception of Plaintiff.

6.4. Plaintiff shall submit a copy of the Judgment in this Action and a copy of any other order providing for or denying an award of civil penalties within ten (10) days after entry of the Judgment and/or order, in compliance with section 2699(l)(3) of the California Labor Code. If Plaintiff fails to satisfy this condition in strict compliance with section 2699(l)(3) of the California Labor Code, the Settlement shall be voidable at Defendants' option.

6.5. The Parties will cooperate in seeking good faith settlement approval of this Settlement under Cal. Code Civ. Proc. § 877.6. The Parties further agree to fully cooperate in the drafting and/or filing of any documents reasonably necessary to be prepared or filed and shall take all steps that may be requested by the Court relating to the approval and implementation of the Settlement under Cal. Code Civ. Proc. § 877.6.

7. SETTLEMENT ADMINISTRATION.

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

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

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

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

8. ESCALATOR CLAUSE. Based on a review of its records to date, PSL estimates that as of March 25, 2024, there are 30 Aggrieved Employees who worked a total of 1,914 PAGA Pay Periods. If it is determined that the PAGA Pay Periods exceed 2,106 (1,914 plus 10% of 1,914) as of the date the Court approves this Settlement, Plaintiff may exercise the option to withdraw from the settlement, in which case this MOU is entirely void.

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

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

10. ADDITIONAL PROVISIONS

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

10.2. Integrated Agreement. Upon execution by all Parties and their counsel, this 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.

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

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

10.5. Fair, Adequate, and Reasonable Settlement. The parties agree that the Settlement is fair and reasonable and will so represent to the Court.

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

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

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

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

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

10.11. 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.

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

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

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

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

6/29/2024

Dated: June ___, 2024

SAMIR JIMENEZ

DocuSigned by:

Samir H Jimenez

BY 3C68F2AF42C5493

Plaintiff

Dated: ~~June~~ July 25, 2024

PEGGY S. LANE, INC., DBA CULTURED MARBLE PRODUCTS; WALKING LIBERTY PSL HOLDINGS, LLC; AND MATTHEW CLEMENTZ

BY ______________________________

Representative for Peggy S. Lane, Inc., dba Cultured Marble Products; Walking Liberty PSL Holdings, LLC; and Matthew Clementz