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EBONE HENDERSON, on behalf of herself and
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WESTERN MANAGEMENT, LLC
13

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF SACRAMENTO**

16 EBONE HENDERSON, on behalf of herself and
all others similarly situated,
17

18 Plaintiff,
19

20 v.
21

22 WESTERN MANAGEMENT, LLC, a California
limited liability company; DOES 1 through 100,
Inclusive,
23

24 Defendants.
25
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27
28

CASE NO. 34-2023-00336596

[Assigned for all purposes to Hon. Jill H.
Talley – Dept. “23”]

**JOINT STIPULATION OF THE PAGA
REPRESENTATIVE ACTION
SETTLEMENT AND RELEASE**

1 This Joint Stipulation of the California Private Attorneys General Act ("PAGA") Representative
2 Action Settlement and Release ("Settlement Agreement" or "Agreement") is made and entered into
3 between Plaintiff EBONE HENDERSON ("Plaintiff"), on behalf of herself and the California Labor and
4 Workforce Development Agency ("LWDA") through Plaintiff as an authorized representative under the
5 PAGA of Aggrieved Employees, and Defendant WESTERN MANAGEMENT, LLC ("Defendant"). This
6 Agreement is subject to the terms and conditions set forth below and the approval of the Court.

7 **1. DEFINITIONS**

8 The following terms, when used in this Agreement, have the following meanings:

9 1.1 "Action" means the above stated lawsuit, *Ebone Henderson v. Western Management, LLC*,
10 Sacramento County Superior Court, Case No. 34-2023-00336596 filed on March 21, 2023.

11 1.2 "Aggrieved Employee(s)" means the estimated 117 hourly non-exempt persons employed
12 by Defendant in California during the PAGA Period. It is estimated that Aggrieved Employees worked a
13 total of 4,072 pay periods during the PAGA Period.

14 1.3 "Agreement" or "Settlement" or "Settlement Agreement" means this Stipulation of the
15 PAGA Representative Action Settlement and Release.

16 1.4 "Approval Date" means the date on which a signed order granting approval of this PAGA
17 Settlement Agreement is entered by the Court.

18 1.5 "Claim Amount" means an individual Aggrieved Employee's allocation of the Net PAGA
19 Settlement.

20 1.6 "Complaint" means the operative Complaint filed in the Action with the Court.

21 1.7 "Defendant" means Western Management, LLC.

22 1.8 "Defendant's Counsel" means Laura C. McHugh and Katie A. Collins of Duggan McHugh
23 Law Corporation.

24 1.9 "Effective Date" means the date on which the following two actions have occurred, even
25 if they occur separately: (i) Court enters an order approving the PAGA Settlement; and (2) the Court enters
26 final judgment.

1 1.10 “Enhancement Payment” means the amount requested and to be approved by the Court to
2 be paid to the PAGA Representative, Ebone Henderson, in recognition of the time and effort expended on
3 behalf of Aggrieved Employees, which is in addition to any amount paid to Ebone Henderson as an
4 Aggrieved Employee.

5 1.11 “Plaintiff’s Counsel” refers to Michael Nourmand and James A. De Sario of The
6 Nourmand Law Firm, APC.

7 1.12 “Gross PAGA Settlement Amount” is the sum of One Hundred Thirty Two Thousand
8 Three Hundred Forty Dollars and No Cents (\$132,340).

9 1.13 “LWDA” means the California Labor and Workforce Development Agency.

10 1.14 “Net PAGA Settlement Amount” is the portion of the Gross PAGA Settlement Amount
11 available for distribution to the LWDA and Aggrieved Employees, including Plaintiff, as described in this
12 Agreement, after deduction of Plaintiff’s attorneys’ fees, Plaintiff’s litigation costs, Settlement
13 Administrator Costs, and the Enhancement Payment to Plaintiff. From the Net PAGA Settlement Amount
14 75% will allocated to the LWDA and 25% will be allocated to Aggrieved Employees on a pro rata basis.

15 1.15 “PAGA” means Private Attorneys General Act of 2004, California Labor Code §§ 2698,
16 *et seq.*

17 1.16 “PAGA Period” is defined as March 21, 2022 through August 17, 2024.

18 1.17 “PAGA Settlement” means the settlement of the representative claims of this Action.

19 1.18 “Parties” mean Defendant and Plaintiff.

20 1.19 “Plaintiff” means Ebone Henderson.

21 1.20 “Plaintiff’s Individual Settlement Release Payment” is the amount to be paid to Plaintiff,
22 in the amount of Twenty Five Thousand Dollars and No Cents (\$25,000.00), in exchange for a general
23 release of all claims, including Plaintiff’s individual wage claims. Plaintiff’s Individual Settlement
24 Release Payment is dependent on the Court’s approval of the PAGA settlement.

25 1.21 “QSF” means a Qualified Settlement Fund set up by the Settlement Administrator and from
26 which the payments under this Settlement Agreement shall be made.
27

1 1.22 “Qualifying Pay Period(s)” are the pay periods worked by all Aggrieved Employees during
2 the PAGA Period in California. The calculation of an Aggrieved Employee’s pay periods and a
3 determination as to whether an Aggrieved Employee was actively employed in California in a particular
4 pay period shall be construed from Defendant’s time and payroll records.

5 1.23 “Released PAGA Claims” refers to Plaintiff’s claims asserted in Plaintiff’s PAGA notice
6 to the LWDA, dated March 21, 2023, and the operative Complaint alleging representative claims for
7 PAGA civil penalties, and the theories on which the PAGA claims are premised or claims that could have
8 been reasonably pled based on the factual allegations pled in Plaintiff’s PAGA notice and operative
9 complaint for: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to pay sick
10 leave at the regular rate of pay; (4) failure to provide meal periods or compensation in lieu thereof; (5)
11 failure to provide rest periods or compensation in lieu thereof; (6) failure to pay all wages upon
12 termination; and (7) failure to provide accurate wage statements. Aggrieved Employees cannot opt-out
13 of the Released PAGA Claims. The Released PAGA Claims exclude claims for workers’ compensation
14 or unemployment insurance benefits and Plaintiff’s individual wage and hour claims for unpaid wages,
15 interest, liquidated damages, statutory penalties, etc.

16 1.24 “Released Parties” means Defendant, and any other person or entity that is or could be
17 claimed to be an employer of any Aggrieved Employee with respect to the Released PAGA Claims for
18 work performed for or through Defendant, and each of their past, present and future officers, owners,
19 directors, partners, employees, shareholders, agents, trustees, representatives, attorneys, insurers,
20 reinsurers, customers, parent companies, investors, members, direct and indirect equity holders and
21 control persons, subsidiaries, divisions, affiliates, predecessors, successors, assigns, and their respective
22 heirs, estates, executors, administrators, successors and assigns, as well as any individual or entity that
23 could be alleged to be jointly liable with Defendant.

24 1.25 “Settlement Administrator” means and refers to Phoenix Class Action Administration
25 Solutions, the third-party entity that will administer the Agreement as outlined in Sections 4 and 6, or any
26 other third-party settlement administrator agreed to by the Parties and approved by the Court for the
27 purposes of administering this Settlement Agreement. The Parties each represent that they do not have

any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

2. DESCRIPTION OF THE LITIGATION

2.1 On or about March 21, 2023, Plaintiff provided notice to the LWDA and Defendant (“PAGA Notice”) of the alleged wage and hour Labor Code violations to exhaust administrative remedies under the PAGA. The PAGA Notice provided the facts and the alleged theories on which the PAGA claim is premised: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to pay sick leave at the regular rate of pay; (4) failure to provide meal periods or compensation in lieu thereof; (5) failure to provide rest periods or compensation in lieu thereof; (6) failure to pay all wages upon termination; and (7) failure to provide accurate wage statements.

2.2 On March 21, 2023, Plaintiff also filed a putative wage and hour class action Complaint (“Complaint”) alleging cause of action for (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to pay sick leave at the regular rate of pay; (4) failure to provide meal periods or compensation in lieu thereof; (5) failure to provide rest periods or compensation in lieu thereof; (6) failure to pay all wages upon termination; (7) failure to provide accurate wage statements; and (8) unfair competition.

2.3 Since the LWDA did not respond to the PAGA Notice, on about May 26, 2023, Plaintiff filed a First Amended Complaint (“FAC”), which added a cause of action under the PAGA for the asserted Labor Code violations.

2.4 Based on an arbitration agreement with a class action waiver provision, that was allegedly entered into between Plaintiff and Defendant, Plaintiff sought to dismiss her class claims from the FAC without prejudice, and proceed with the PAGA representative claims. On or about December 14, 2023, the Court Ordered: the class claims dismissed, without prejudice; Plaintiff’s individual Labor Code claims were ordered to arbitration; and the representative PAGA action was to proceed in State Court.

2.5 On June 18, 2024, the Parties engaged in a private mediation with Marc Feder, Esq., an experienced class and PAGA action mediator, which ultimately resulted in a settlement of Plaintiff’s PAGA representative and individual claims. At all times, the Parties’ settlement negotiations have been

1 non-collusive, adversarial, and at arm's length. Moreover, the Parties' negotiations were guided by a
2 highly experienced private mediator.

3 2.6 Discussions between counsel for the Parties, document productions, extensive legal
4 analysis, the production of information by Defendant to Plaintiff's Counsel and the detailed analysis of
5 the records, have permitted the Parties to assess the relative merits of the theories advanced by Plaintiff in
6 support of her PAGA claims and Defendant's defenses to those theories of liability.

7 2.7 Plaintiff and Defendant acknowledge the expense and time associated with protracted
8 litigation necessary to litigate the Action through trial and through any possible appeal. Plaintiff also has
9 taken into account the uncertainty and risks of the outcome of further litigation, and the difficulties and
10 delays inherent in such litigation. The Parties' counsel are also aware of the burdens of proof necessary
11 to establish liability for the claims asserted in the Action, both generally and in response to Defendant's
12 defenses thereto, and the difficulties in establishing underlying liability, which only then triggers penalties
13 under PAGA in some instances. The Parties also acknowledge that Defendant's agreement to settle
14 confers benefits to the LWDA, on behalf of the State of California, and Aggrieved Employees. Based on
15 the foregoing, Plaintiff and Defendant have determined that the Settlement set forth in this Settlement
16 Agreement is fair, adequate, and reasonable, and is in the best interests of all Aggrieved Employees and
17 Plaintiff.

18 2.8 Defendant has concluded that any further defense of this litigation would be protracted and
19 expensive for all Parties. Substantial amounts of Defendant's time and resources have been, and unless
20 this Settlement is completed, will continue to be devoted to the defense against Plaintiff's claims.
21 Defendant has also taken into account the risks of further litigation in reaching its decision to enter into
22 this Settlement Agreement. Even though Defendant continues to contend that it is not liable, it has agreed,
23 nonetheless, to settle in the manner and upon the terms set forth in this Agreement to put to rest the claims
24 in this Action. Defendant has claimed and continues to claim that the Released PAGA Claims have no
25 merit and do not give rise to liability. This Settlement Agreement is a compromise of disputed claims.
26 Nothing contained in this Settlement Agreement, no documents referred to herein, and no action taken to
27 carry out this Settlement Agreement, may be construed or used as an admission by or against Defendant

as to the merits or lack thereof of the claims asserted in the Action. Defendant contends that it has complied with all applicable state, federal, and local laws.

2.9 The Parties agree that the above-described investigation and evaluation, as well as discovery and the information exchanged to date, are more than sufficient to assess the merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis. The Parties wish to settle the Action in a manner and upon such terms and conditions set forth herein in order to avoid further expense, inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the Parties potentially face in the Action. Therefore, the Parties desire to resolve the claims in the Action. The Parties and their counsel are of the opinion that the Agreement is a fair, reasonable, and adequate compromise of the disputed claims in light of all known facts and circumstances and warrants approval by the Court.

3. SCOPE OF THE REPRESENTATIVE ACTION

3.1 The scope of the Action encompassed under the Settlement Agreement, who are entitled to recover under this Agreement and are subject to all obligations and duties required under the Agreement, shall include the Plaintiff and Aggrieved Employees as defined in Section 1.2 and 1.19.

4. TERMS OF THE SETTLEMENT

The Parties agree as follows:

4.1 Gross PAGA Settlement Amount: In consideration and exchange for the Release of Claims by Aggrieved Employees described in Section 5.1, Defendant shall pay the Gross PAGA Settlement Amount of \$132,340, subject to any and all reductions as set forth in this Settlement Agreement. Funding of the Gross PAGA Settlement Amount shall occur within fourteen (14) calendar days of the Effective Date and shall be held in trust in the QSF by the Settlement Administrator. The Gross PAGA Settlement Amount includes all attorneys' fees, litigation expenses related to the Action incurred to date, Settlement Administrator Costs, the Enhancement Payment requested by Plaintiff and the 75% allocation to the LWDA and the 25% allocation to the Aggrieved Employees.

4.2 Attorneys' Fees and Costs: Plaintiff's Counsel will apply to the Court for attorney's fees of 35% of the Gross PAGA Settlement Amount or Forty Six Thousand Three Hundred Nineteen Dollars

1 and Zero Cents (\$46,319), which shall be paid from the Gross PAGA Settlement Amount. Defendant has
2 agreed to not oppose Plaintiff's Counsel's application for attorneys' fees. Plaintiff's Counsel will also be
3 entitled to reimbursement for advanced litigation expenses not to exceed Twenty Five Thousand Dollars
4 and No Cents (\$25,000.00), which shall be paid from the Gross PAGA Settlement Amount. Defendant
5 has agreed to not oppose Plaintiff's Counsel's request for reimbursement for litigation costs so long as
6 they do not exceed the \$25,000 threshold. The Settlement Administrator will issue Plaintiff's Counsel an
7 IRS Form 1099 for the attorneys' fees and costs paid under this Agreement. In the event that the Court
8 awards less than the requested attorneys' fees and/or costs, the portion of the requested amounts not
9 awarded to Plaintiff's Counsel shall be added to the Net PAGA Settlement Amount to be distributed to
10 the LWDA and Aggrieved Employees.

11 4.3 Settlement Administrator Costs: The Settlement Administrator Costs shall be paid from
12 the Gross PAGA Settlement Amount and shall not exceed \$2,850. In the event that the Court awards less
13 than the Settlement Administration Costs requested here, then any portion of the requested amount not
14 awarded to the Settlement Administration Costs shall be added to the Net PAGA Settlement Amount to
15 be distributed to the LWDA and Aggrieved Employees.

16 4.4 Enhancement Payment: Plaintiff's Counsel, on behalf of Plaintiff, shall apply to the Court
17 for an Enhancement Payment to the Plaintiff in an amount not to exceed Two Thousand Five Hundred
18 Dollars and No Cents (\$2,500.00) to compensate for the risks, time, and expense of her involvement in
19 the Action and securing the benefits of this Settlement Agreement for Aggrieved Employees. The
20 Enhancement Payment is in addition to the Claim Amount Plaintiff would otherwise be due under the
21 Settlement Agreement as an Aggrieved Employee. Defendant has agreed to not oppose Plaintiff's request
22 for an Enhancement Payment to Plaintiff so long as it does not exceed the amount stated herein. The
23 Enhancement Payment will be designated as a non-wage payment and reported on an IRS Form 1099. In
24 the event that the Court awards less than the Enhancement Payment amount requested, then any portion
25 of the requested amount not awarded to the Plaintiff shall be added to the Net PAGA Settlement Amount
26 to be distributed to the LWDA and Aggrieved Employees.

1 4.5 PAGA Payment to the LWDA: Seventy-Five percent (75%) of the Net PAGA Settlement
2 Amount will then be paid to the LWDA. Although highly unlikely, any amount not approved by the Court
3 for the allocated PAGA Payment to the LWDA shall be added to the Net PAGA Settlement Amount to be
4 distributed to Aggrieved Employees on a pro rata basis.

5 4.6 Net PAGA Settlement Amount: The balance of the Gross PAGA Settlement Amount after
6 the payment of Plaintiff's Counsel's Attorneys' Fees, Plaintiff's Counsel's Litigation Costs, the
7 Enhancement Payment to Plaintiff, and the Settlement Administrator's Expenses, have been subtracted.
8 The Parties estimate the Net PAGA Settlement Amount as follows:

9 Gross PAGA Settlement Amount:	\$132,340.00
10 Plaintiff's Counsel's Attorneys' Fees	-\$ 46,319.00
11 Plaintiff's Counsel's Litigation Costs	-\$ 25,000.00
12 Enhancement Payment to Plaintiff	-\$ 2,500.00
13 Settlement Administration Costs	-\$ 2,850.00
14 Net PAGA Settlement Amount (estimated)	\$ 55,671.00

15 From the Net PAGA Settlement Amount, 75% will be paid to the LWDA and 25% will be paid to
16 Aggrieved Employees, including Plaintiff, on a *pro rata* basis as described below in Section 4.8.

17 4.7 No Additional Benefits Contributions: All Claim Amounts paid to Aggrieved Employees
18 shall be deemed to be non-taxable penalties for which they will receive IRS Form 1099. It is expressly
19 understood and agreed that the receipt of such Claim Amounts will not entitle any Aggrieved Employee
20 to any new or additional compensation or benefits under any company bonus or other compensation or
21 benefit plan or agreement in place during the period covered by the Agreement, nor will it entitle any
22 Aggrieved Employee to any increased retirement benefits or matching benefits, or deferred compensation
23 benefits. It is the intent of this Agreement that the Claim Amounts provided for in this Agreement are the
24 sole payments to be made by Defendant to the Aggrieved Employees in connection with this Agreement
25 (notwithstanding any contrary language or agreement in any benefit or compensation plan document that
26 might have been in effect during the period covered by this Agreement).

1 4.8 Pro Rata Distribution Formula: Payment to Aggrieved Employees of their Claim Amount
2 will not require the submission of a claim form. A Net PAGA Settlement Amount will be determined by
3 subtracting from the Gross PAGA Settlement Amount any amounts for approved attorneys' fees, litigation
4 costs, any Enhancement Payment to the Plaintiff, and the Settlement Administrator Costs. From the Net
5 PAGA Settlement Amount, 75% will be allocated to the LWDA and 25% to the Aggrieved Employees on
6 a pro rata basis. To the extent an Aggrieved Employee's short duration of employment resulted in a
7 Qualifying Pay Period that is some fraction less than one (1) total Qualifying Pay Period, their Qualifying
8 Pay Period number shall be rounded up to equal one (1) Qualifying Pay Period. From the 25% allocation
9 of the Net PAGA Settlement Amount to Aggrieved Employees, each Aggrieved Employee's pro rata share
10 will be determined by dividing their total Qualifying Pay Periods within the PAGA Period by the total
11 Qualifying Pay Periods of all Aggrieved Employees within the PAGA Period. That fraction will then be
12 multiplied by the remaining 25% of the Net PAGA Settlement Amount allocation to Aggrieved
13 Employees to arrive at the Aggrieved Employee's individual share of the Net PAGA Settlement Amount.

14 4.9 No Tax Withholdings: The entirety (100%) of each Aggrieved Employee's share of the
15 Net PAGA Settlement Amount shall be allocated for payment of disputed civil penalties, and no amount
16 shall be deducted for any taxes. This portion of the Claim Amount consists of other income, not wages,
17 for which the Aggrieved Employees shall receive an IRS Form 1099-MISC. Defendant shall not be liable
18 for the payment of employer taxes for any portion of the Net PAGA Settlement Amount.

19 4.10 No Additional Contribution by Defendant: Defendant's monetary obligation under this
20 Agreement is limited to the Gross PAGA Settlement Amount. All other costs and expenses arising out of
21 or in connection with the performance of this Settlement Agreement shall be paid from the Gross PAGA
22 Settlement Amount. However, in the event this Settlement Agreement is deemed null and void because
23 the Court, in its independent determination, finds that the Settlement Agreement does not meet the
24 standards for settlement approval under the PAGA, the Parties shall be jointly responsible for the costs of
25 the Settlement Administrator incurred between the date the Settlement Agreement was executed and the
26 date of such event.
27

1 4.11 In consideration and exchange for the Release by Plaintiff described in Section 5.2,
2 Defendant shall pay Plaintiff's Individual Settlement Release Payment in the amount of \$25,000.00.
3 Funding of Plaintiff's Individual Settlement Release Payment shall occur within fourteen (14) calendar
4 days of the Effective Date and shall be held in trust in the QSF by the Settlement Administrator.

5 **5. RELEASE**

6 5.1 Release of Claims by Aggrieved Employees: Upon the Effective Date and Defendant
7 funding the Gross PAGA Settlement Amount, all Aggrieved Employees, including Plaintiff, will be
8 deemed to fully, finally and forever release their Released PAGA Claims as to all Released Parties. In
9 addition, on the Effective Date, all Aggrieved Employees and their successors in interest will be
10 permanently enjoined and forever barred from prosecuting any of the Released PAGA Claims against any
11 of the Released Parties.

12 5.2 Release by Plaintiff: Upon the Effective Date and Defendant funding Plaintiff's Individual
13 Settlement Release Payment, Plaintiff agrees to release all claims known or unknown, accrued or
14 unaccrued, she has or may have against Defendant and the Released Parties, including execution of a
15 California *Civil Code* section 1542 release and waiver. In consideration of Plaintiff's Individual
16 Settlement Release Payment, the Plaintiff fully releases and forever discharges the Released Parties from
17 any and all actions, causes of action, claims, charges, complaints, liabilities, obligations, promises,
18 agreements, controversies, damages, actions, suits, rights, demands, liens, costs, losses, debts, penalties,
19 fines, wages, liquidated damages, restitutionary amounts, attorneys' fees and costs, interest, punitive
20 damages and expenses (including, without limitation, back wages, penalties, liquidated damages, and
21 attorneys' fees and costs actually incurred) or liabilities of any kind which have been or could have been
22 asserted against the Released Parties arising out of or relating to Plaintiff's employment with Defendant,
23 and/or any other occurrence taking place on or before the effective date of this Agreement, known or
24 unknown, suspected or unsuspected, including but not limited to claims arising out of, based upon, or
25 relating to Plaintiff's employment with the Defendant, or the remuneration for such employment, and the
26 matters referred to herein, whether or not known or suspected to exist, and whether or not specifically or
27 particularly described herein. Without limiting the generality of the foregoing, Plaintiff expressly releases
all claims or rights that exist at the time of the execution of this Settlement Agreement arising out of

1 alleged violations of any contracts, express or implied (including but not limited to any contract of
2 employment); any contract or covenant of good faith or fair dealing (express or implied); any tort,
3 including, without limitation, negligence, fraud, misrepresentation under California *Labor Code* § 970,
4 negligent infliction of emotional distress, intentional infliction of emotional distress, slander and
5 defamation; wrongful or constructive termination; any “retaliation” claims; any claims relating to any
6 breach of public policy; any legal restrictions on Defendant’s right to discharge employees or refuse to
7 hire applicants; and any federal, state, or other governmental statute, regulation, order or ordinance.

8 Further, Plaintiff expressly waives and relinquishes all rights and benefits afforded by section 1542
9 of the *Civil Code* of the State of California and does so understanding and acknowledging the significance
10 of such specific waiver of section 1542. Specifically, Plaintiff waives her rights under Section 1542 of
11 the *Civil Code*, which states:

12 **A general release does not extend to claims that the creditor or**
13 **releasing party does not know or suspect to exist in his or her favor at**
14 **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
released party.

15 PLAINTIFF acknowledges that she has read the Civil Code section in paragraph 5 of this Agreement,
16 and that she fully understands the Civil Code section. PLAINTIFF waives any benefits and rights
17 granted to her pursuant to Civil Code section 1542.

18 **6. SETTLEMENT ADMINISTRATION**

19 **6.1 Cooperation and Court’s Approval of Settlement:** The Parties will cooperate in obtaining
20 through written stipulation and/or unopposed motion, an Order from the Court approving the PAGA
21 Settlement and entering final judgment for the payment of the Gross PAGA Settlement Amount (the
22 “Order”). The Parties will seek the Court’s approval of the PAGA Settlement and the payment of penalties
23 as described in this Settlement Agreement by way of a stipulation and/or unopposed motion to be filed by
24 Plaintiff’s counsel or as directed by the Court. Plaintiff’s counsel will file this Settlement Agreement with
25 the Court for its approval, along with a Proposed Order Granting PAGA Settlement and Proposed
26 Judgment.
27

1 6.2 Duties of Settlement Administrator: The Settlement Administrator shall be responsible
2 for: 1) receiving Aggrieved Employee pay period information and contact information, as well as
3 confirming addresses are valid, as provided for herein; 2) calculating and/or confirming estimated Claim
4 Amounts; 3) taking appropriate steps to trace and locate any Aggrieved Employee whose address or
5 contact information as provided to the Settlement Administrator is inaccurate or outdated and mailing the
6 Notice of Settlement to Aggrieved Employees along with their Claim Amounts; 4) maintaining a QSF; 5)
7 determining and paying the final Claim Amounts due to be paid to Aggrieved Employees under this
8 Agreement; 6) reporting to Plaintiff's Counsel and Defendant's Counsel regarding the statistics of the
9 administration, including (a) the number of Notice of PAGA Settlements and corresponding settlement
10 checks mailed to Aggrieved Employees; (b) the number of forwarded or re-mailed mailings; (c) the
11 number of total undeliverable mailings; (d) the number of address traces performed for undeliverable
12 mailings; (e) the number of mailings undeliverable from traced addresses; and (f) carrying out other related
13 tasks as necessary to effectuate the terms of this Settlement Agreement and any Order of the Court.

14 6.3 Aggrieved Employee Data to Settlement Administrator: No later than seven (7) calendar
15 days after the Effective Date, Defendant shall provide the Settlement Administrator with a list of all
16 Aggrieved Employees ("Aggrieved Employee Data"). The Aggrieved Employee Data shall state the first
17 name and last name in separate columns for each Aggrieved Employee; the last known home address for
18 each Aggrieved Employee; each Aggrieved Employee's social security number; and the number of pay
19 periods during which each Aggrieved Employee worked for Defendant during the PAGA Period. The
20 Aggrieved Employee Data contains confidential and/or private information and will be transmitted via
21 password protected means. The Settlement Administrator shall keep the Aggrieved Employee Data strictly
22 confidential and shall not disclose the information to any other person or entity.

23 6.4 Payments to Settlement Administrator, Plaintiff's Counsel for Attorneys' Fees, Plaintiff's
24 counsel for Litigation Costs, Plaintiff's Enhancement Payment, and to Payment to the LWDA: No later
25 than fourteen (14) calendar days after receipt of the Gross PAGA Settlement Amount from Defendant, the
26 Settlement Administrator shall: (1) withdraw the amount allocated to the Settlement Administrator for the
27 Settlement Administrator's costs; (2) deliver payment of Plaintiff's Counsels' attorneys' fees; (3) deliver
payment of Plaintiff's Counsel's litigation costs; (4) deliver payment of the Enhancement Payment

1 payable to Plaintiff; and (5) then, 75% of the Net PAGA Settlement Amount shall be paid to the LWDA.
2 The Settlement Administrator shall send, via UPS or other similar overnight carrier that allows for tracking
3 of delivery, a check for the Court-approved attorneys' fees and litigation expenses to Plaintiff's Counsel,
4 along with a check for the Court-approved Enhancement Payment for the Plaintiff, care of Plaintiff's
5 Counsel, unless another mailing method is requested by Plaintiff's Counsel.

6 6.5 Settlement Administrator's Mailing of Notice of PAGA Settlement and Settlement Check
7 to Aggrieved Employees: No later than fourteen (14) calendar days after receipt of the Gross PAGA
8 Settlement Amount from Defendant, the Settlement Administrator shall run a National Change of Address
9 update and shall mail the Notice of PAGA Settlement (in the form attached hereto as **Exhibit "A"**)
10 together with the Aggrieved Employee's respective settlement check consisting of the Claim Amount to
11 Plaintiff and all Aggrieved Employees by first-class United States mail, postage prepaid, to the last known
12 address of each recipient with directions to the Postmaster to forward the Notice of PAGA Settlement and
13 settlement checks and return all undeliverable Notices of PAGA Settlement and settlement checks to the
14 Settlement Administrator. The Notice of PAGA Settlement shall be prepared in English and Spanish to
15 be translated by the Settlement Administrator and approved by Counsel. For each Notice of PAGA
16 Settlement and corresponding settlement check that is returned as undeliverable, the Settlement
17 Administrator shall promptly attempt to locate the Aggrieved Employee by using standard skip-tracing
18 methods such as the use of the NCOA database and/or address refresher database to obtain forwarding
19 addresses of the Aggrieved Employee and then re-mail the Notice of PAGA Settlement and the settlement
20 check to the Aggrieved Employee at the newly located address.

21 6.6 Settlement Check Expiration and Uncashed Checks: The settlement checks issued to
22 Aggrieved Employees shall remain valid for one hundred eighty (180) days from the date they are mailed.
23 Thereafter, the checks shall become null and void, and any uncashed checks or funds represented by
24 settlement checks returned as undeliverable shall be distributed to the Controller of the State of California
25 to be held pursuant to the Unclaimed Property Law, California Civil Code §1500 et seq. for the benefit of
26 those Aggrieved Employees who did not cash their checks until such time that they claim their property.

27 6.7 Settlement Administrator's Payment of Plaintiff's Individual Settlement Release Payment:
No later than fourteen (14) calendar days after receipt of Plaintiff's Individual Settlement Release

1 Payment from Defendant, the Settlement Administrator shall send, via UPS or other similar overnight
2 carrier that allows for tracking of delivery, a check for Plaintiff's Individual Settlement Release Payment
3 to Plaintiff's Counsel, unless another mailing method is requested by Plaintiff's Counsel.

4 **7. MISCELLANEOUS TERMS**

5 7.1 Circular 230 Disclaimer: Each party to this Agreement (for purposes of this section, the
6 "Acknowledging Party"; and each party to this Agreement other than the Acknowledging Party, an "Other
7 Party") acknowledges and agrees that: (1) no provision of this Agreement, and no written communication
8 or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be,
9 nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice
10 within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended);
11 (2) the Acknowledging Party (a) has relied exclusively upon his, her, or its own, independent legal and
12 tax advisers for advice (including tax advice) in connection with this Agreement, (b) has not entered into
13 this Agreement based upon the recommendation of any other party or any attorney or advisor to any other
14 party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to
15 any other party to avoid any tax penalty that may be imposed on the Acknowledging Party; and (3) no
16 attorney or adviser to any other party has imposed any limitation that protects the confidentiality of any
17 such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon
18 disclosure by the Acknowledging Party of the tax treatment or tax structure of any transaction, including
19 any transaction contemplated by this Agreement.

20 7.2 No Admission of Liability. Defendant denies liability for any claims alleged by Plaintiff
21 on her own behalf, on behalf of Aggrieved Employees, and on behalf of California agencies, including
22 but not limited to the Department of Industrial Relations, Division of Labor Standards Enforcement, and
23 LWDA, including the claims alleged in the Action. This Agreement does not constitute, and is not
24 intended to constitute, an admission by any Defendant as to the merits, validity, or accuracy of any of the
25 allegations or claims made against it in the Action. Nothing in this Agreement, nor any action taken in
26 implementation thereof, nor any statements, discussions or communications, nor any materials prepared,
27 exchanged, issued or used during the course of the negotiations leading to this Agreement, is intended by
the Parties to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible

1 in any way in this case or any other judicial, arbitral, administrative, investigative or other forum or
2 proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation,
3 rule or executive order, or any obligation or duty at law or in equity. The Parties themselves agree not to
4 introduce, use, or admit this Agreement, directly or indirectly, in this case or any other judicial, arbitral,
5 administrative, investigative or other forum or proceeding, as purported evidence of any violation of any
6 federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty
7 at law or in equity, or for any other purpose. Notwithstanding the foregoing, this Agreement may be used
8 in any proceeding before the Court that has as its purpose the interpretation, implementation, or
9 enforcement of this Agreement or any orders or judgments of the Court entered in connection with the
10 Agreement. None of the documents produced or created by Plaintiff or the Aggrieved Employees in
11 connection with the litigation and settlement of this Action constitute, and they are not intended to
12 constitute, an admission by Defendant of any violation of any federal, state, or local law, statute,
13 ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.

14 7.3 Nullification: If the Court should for any reason refuse to approve the PAGA Settlement,
15 including the payment of PAGA penalties or the release of claims as described in this Agreement, then
16 (a) this Agreement shall be considered null and void, (b) all Parties to this Agreement shall stand in the
17 same position, without prejudice, as if the Agreement had been neither entered into nor filed with the
18 Court. Invalidation of any material provision of this Agreement by the Court shall invalidate this
19 Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining
20 provisions shall remain in full force and effect or shall be modified. For the avoidance of doubt,
21 modification by the Court of the amount of approved Attorneys' Fees or Litigation Costs as described in
22 Section 3.01 above shall not constitute invalidation of any provision of this Agreement for purposes of
23 this Section.

24 7.4 No Prior Assignments: The Parties represent, covenant, and warrant that they have not
25 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
26 any person or entity any portion of any liability, claim, demand, action, cause of action or right released
27 and discharged in this Agreement.

1 7.5 Waiver of Appeal: To the extent permitted by applicable law, by signing this Agreement
2 Defendant is waiving any rights to appeal from the Court's approval of the settlement unless the Court
3 materially modifies the settlement.

4 7.6 Judgment and Retention of Jurisdiction to Enforce: Upon the Effective Date, judgment
5 will be entered according to this Agreement, with the Court to retain jurisdiction over the Parties to enforce
6 the terms therein.

7 7.7 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish
8 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to,
9 execution of such other documents and the taking of such other action as may reasonably be necessary to
10 fulfill the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including
11 all efforts contemplated by this Agreement and any other efforts that may become necessary by Court
12 order, or otherwise, to effectuate this Agreement and the terms set forth herein.

13 7.8 Mutual Drafting of Agreement: The Parties hereto agree that the terms and conditions of
14 this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that
15 this Agreement shall not be construed in favor of or against any party by reason of the extent to which any
16 party or its counsel participated in the drafting of this Agreement.

17 7.9 Binding Effect of Agreement: The Parties, by signing this Agreement, are bound by the
18 terms herein. The Parties waive their rights to file an appeal, writ, or any challenge whatsoever to the
19 terms of this Agreement. This Stipulation shall be binding upon and inure to the benefit of the Parties
20 hereto and their respective heirs, trustees, executors, Settlement Administrators, successors, and assigns.

21 7.10 No Modifications: This Agreement may be amended or modified only by a written
22 instrument signed by counsel for all Parties or their successors-in-interest. This Agreement may not be
23 discharged except by performance in accordance with its terms.

24 7.11 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and
25 represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement
26 and to take all appropriate action required or permitted to be taken by such Parties pursuant to this
27 Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of
this Agreement.

1 7.12 Counterparts: This Agreement shall become effective upon its execution by all of the
2 undersigned. Plaintiff, Plaintiff's Counsel, Defendant, and Defendant's Counsel may execute this
3 Agreement in counterparts, and execution of counterparts shall have the same force and effect as if each
4 had signed the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the
5 same force and effect of originals.

6 7.13 Choice of Law: The Agreement and any exhibits hereto shall be considered to have been
7 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and
8 the rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance
9 with, and governed by, the substantive laws of the State of California without giving effect to that State's
10 choice of law principles.

11 7.14 Headings and Captions: Section titles or captions contained in the Agreement are inserted
12 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of
13 this Agreement, or any provision thereof.

14 7.15 Integrated Agreement: This Agreement sets forth the entire understanding between the
15 Parties and supersedes any and all prior agreements, oral or written, pertaining to the subject matter hereof.
16 Each party acknowledges that there is no representation, inducement, promise or agreement which has
17 been made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement,
18 which is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent
19 that the terms of this Agreement are fully understood and voluntarily accepted by the Parties.

20 7.16 Binding on Successors and Assigns: This Agreement will be binding upon, and inure to
21 the benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.

22 7.17 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the
23 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
24 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

25 7.18 Waiver of Compliance: No waiver of any condition or covenant contained in this
26 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
27 or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

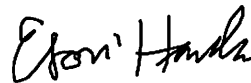
1 7.19 Confidentiality: Plaintiff and Plaintiff's Counsel agree that they have not and will not
2 publish the Agreement with the media. In response to any questions, Plaintiff will state that "the case was
3 resolved." Plaintiff's Counsel shall not report the Agreement or its content in any medium or in any
4 publication, shall not post or report anything regarding Plaintiff's claims or those of the Aggrieved
5 Employees on their website, and shall not contact any reporters or media regarding the Agreement or its
6 content. However, Plaintiff's Counsel is authorized to make all reasonably necessary disclosures to the
7 Court, the Aggrieved Employees and the LWDA.

8 7.20 Escalator Provision: Defendant has represented that there are 4,072 pay period worked by
9 Aggrieved Employees during the PAGA Period. If the total number of pay periods by the end of the
10 PAGA Period exceeds 10% of 4,072 (i.e., more than 4,479), Defendant shall increase the Net PAGA
11 Settlement Amount proportionately based on the number of additional pay period over 4,479, multiplied
12 by the pay period value or, in the alternative, Defendant may opt to change the end date of the PAGA
13 Period to a date which results in no more than 4,479 pay periods. However, if Defendant elects to change
14 the PAGA end date, then Defendant must make the election at least 10 days prior to Plaintiff filing the
15 approval motion.

16 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized
17 attorneys, as of the day and year herein set forth.

18 **For Plaintiff:**

19 Date: 08/02/2024



Ebone Henderson

21 **For Defendant:**

22 Date: 08 / 05 / 2024



By: Doug Evans
For Western Management, LLC

1 APPROVED AS TO FORM

THE NOURMAND LAW FIRM, APC

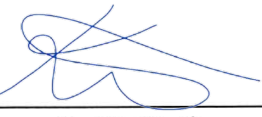
2
3 Dated: 8/2/2024

By: 
Michael Nourmand
James A. De Sario
Attorney for Plaintiff and Aggrieved
Employees

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7 APPROVED AS TO FORM

DUGGAN McHUGH LAW CORPORATION

8
9 Dated: 8/05/2024

By: 
Laura C. McHugh
Katie A. Collins
Attorney for Defendant

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