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Attorneys for Plaintiff DESIREE ASHLEY HERNANDEZ, in a Representative capacity only, and on behalf of other members of the general public similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF IMPERIAL

DESIREE ASHLEY HERNANDEZ, in a
Representative capacity only, and on behalf
of other members of the general public
similarly situated

Plaintiff

v.

WESTWIND MANAGEMENT, INC., a
Florida Corporation; WESTWIND
ENTERPRISES, a California Corporation;
and WESTWIND ENTERPRISES, LTD dba
RIO BEND RV & GOLF RESORT, a
California Limited Partnership ; and DOES
1-10, inclusive,

Defendants

CASE NO. ECU003008

**DECLARATION OF ERIC K. YAECKEL
IN SUPPORT OF PLAINTIFF'S *EX PARTE*
APPLICATION RE: UNOPPOSED PAGA
APPROVAL**

Date: June 12, 2024

Time: 8:30 a.m.

Dept.: 5

Judge: Hon. Jeffrey B. Jones

1 I, Eric K. Yaeckel declare as follows:

- 2 1. I am an attorney licensed to practice law before all the courts of the State of California, and am
3 employed with the law firm of SULLIVAN & YAECKEL LAW GROUP, APC, attorneys of
4 record for Plaintiff DESIREE ASHLEY HERNANDEZ, in a Representative capacity only,
5 and on behalf of other members of the general public similarly situated in this matter.
- 6 2. I make this declaration in support of Plaintiff's Unopposed *Ex Parte* Application Re: PAGA
7 Settlement Approval. I am personally familiar with the facts set forth in this declaration and,
8 if called to testify, could and would do so.
- 9 3. As this is a "PAGA" action only, the Limitations Period begins on May 2, 2022. There are
10 approximately **45** PAGA Members at issue.
- 11 4. Following the exchange of discovery, analysis of numerous sets of time and wage data, and
12 direct settlement negotiations between the Parties, the Parties reached a proposed settlement
13 that includes a payment of penalties to the LWDA.
- 14 5. On **May 15, 2024** Plaintiff's counsel uploaded via the LWDA's electronic filing portal the
15 Plaintiff's proposed settlement terms. To date, Plaintiff's counsel has not received notice that
16 the LWDA would intervene.
- 17 6. Attached hereto as **Exhibit 1** is a true and correct copy of the Settlement Agreement.
- 18 7. On June 5, 2024, Plaintiff's counsel uploaded via the LWDA's electronic filing portal copies
19 of this entire *ex parte* application, including the Notice, this supporting Memorandum,
20 Declaration, and Proposed Order & Judgment.
- 21 8. The Total Value of the proposed Settlement is **\$35,000.00** which is broken down as follows:
- 22 * **\$11,666.67** Attorneys' Fees (1/3 of total settlement value);
- 23 * **\$2,000** Costs of Litigation;
- 24 * **\$15,000.00** (\$5,000 for Plaintiff's Representative Enhancement Bonus &
25 \$10,000 for additional Individual section 1542 Release);
- 26 * Sub-Total of **\$6,333.33**. 75% (**\$4,750.00**) shall be assigned/paid to the LWDA
27 as penalties;
- 28 * The remaining 25% (**\$1,583.33**) in cash will be disbursed among all employees

Declaration of Eric K. Yaeckel

based on work weeks employed during the PAGA period.

Given the above, the average payment to each individual employee will be approximately **\$35.19**.

9. There are no restrictions for any of the **45** employees to file individual actions, as the settlement agreement only covers PAGA claims. **Exhibit 1**: “Released Claims” § III.6, p. 4)
10. The instant *Ex Parte* request is based on the fact that **(1)** the PAGA period “cutoff date” is contingent on Court approval, any delay diminishes the amounts received by the impacted employees; **(2)** Notice to certain ex-employees may be adversely impacted by further delay (*i.e.* ex-employees may change their mailing address without filing a proper “forwarding address”).
11. An expedient approval of this settlement will provide a direct benefit to the impacted employees at issue. The “fixes” provide a guarantee of future Labor Code compliance, and an immediate monetary benefit. It also allows Defendants the opportunity to move on, and focus on future business.
12. Plaintiff alleges that she - and other employees - received “interrupted,” “short,” “late,” or “missing” Meal Periods, including those documented within Defendant’s Time Records. Plaintiff also challenged whether Defendant maintained lawful meal and rest periods. Plaintiff alleged she- and other employees -were not properly compensated due to Defendant’s failure to maintain accurate time records. Finally, Plaintiff also challenged whether Defendant maintained lawful meal and rest period policies.
13. The catalyst of this litigation concerned allegations that Ms. Hernandez was denied legally compliant meal and rest periods, and was not paid for all Overtime hours worked.
14. Investigations completed by Plaintiff’s counsel revealed that Defendant’s timekeeping policies and employee records were not in compliance with California law. However, these investigations also revealed that the “rate of violation” by Defendant was significantly less than 100%. On many of those occasions, it appears that Defendant did, in fact, comply with the law.
15. Based on the above, the maximum liability in a case of this type would be in the range of **\$40,000.00 to \$50,000.00**. However, without revealing settlement protected communications,

1 it was highly unlikely Plaintiff could ever recover anything approaching a maximum
2 judgment. However, Plaintiff recognizes there was a risk that a maximum judgment could
3 impact the business's ability to remain viable. Because the employer was willing to "step up"
4 and address the alleged violations, Plaintiff (and counsel) did not want to seek an amount that
5 could jeopardize the business' ability to continue to offer employment to the impacted
6 employees.

7 16. Moreover, Plaintiff's counsel is aware of the Court's discretion to mitigate penalties pursuant
8 to California Labor Code section 2699(e)(2). To confirm, Plaintiff's counsel experienced the
9 mitigation of "PAGA" penalties in *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504.
10 In *Carrington*, Judge Bacal significantly mitigated PAGA penalties (\$5 per violation), due to
11 the efforts made by the employer to comply with the law.

12 17. Plaintiff's counsel agrees with the decision, and with the provision of the Labor Code, that
13 penalties *should* be mitigated where violations are minimal (or rare), or where the employer
14 makes significant efforts to comply with the Labor Code.

15 18. As the above factors exist in this case, it is the opinion of Plaintiff's counsel that the settlement
16 is fair, adequate, and reasonable. Specifically, Plaintiff's counsel's understanding is that
17 Defendant has agreed to make changes to its policies, and amend them to the extent they do
18 not comply with California law.

19 19. Plaintiffs' counsel, William B. Sullivan has approximately 28 years of experience in "class
20 action" litigation, both as plaintiff and defense counsel. Plaintiff's counsel, Eric K. Yaeckel,
21 has over 12 years of experience prosecuting class and representative action claims under the
22 California Labor Code. Plaintiff's counsel, Eric K. Yaeckel and William B. Sullivan, are the
23 attorneys of record in a matter that was recently heard (and favorably decided) before the
24 California Supreme Court titled *Donohue v. AMN Servs., LLC* (2021) 11 Cal.5th 58. The
25 *Donohue* matter was a certified class and PAGA action.

26 20. Plaintiff's counsel were lead counsel on approximately 40 employment "wage and hour"
27 claims with class action, or representative action allegations. Based on said experience, it is
28 the opinion of Plaintiff's counsel that this settlement represents a fair and adequate payment.

1 21. Here, the parties seek to allocate **\$6,333.33** of the total settlement to the Total Value of the
2 PAGA Fund. Of this amount, the value of additional measures taken to address and effectuate
3 Labor Code compliance attributed towards LWDA penalties is **\$4,750.00**, which is 75% of the
4 PAGA fund. The remaining (25%) **\$1,583.33** will be allocated and distributed among the
5 current or ex-employees within the PAGA representation period.

6 22. The parties contend the settlement agreement amount is fair, adequate, and reasonable. The
7 release only applies to the PAGA claims for penalties, based upon the allegations in Plaintiff's
8 operative Complaint.

9 23. To date, Plaintiff has not received a response from the LWDA regarding the proposed
10 settlement. If the LWDA contacts Plaintiff's counsel at any time prior to the hearing, Plaintiff's
11 counsel will provide an updated declaration to the Court.

12 24. I gave notice of this ex parte application on June 5, 2024. Defendant's counsel indicated they
13 will not oppose the request.

14 I declare under penalty of perjury under the laws of the State of California that the foregoing
15 is true and correct. Executed this 11th day of June, 2024 at San Diego, California.

16 *Eric Yaeckel*

17 Eric K. Yaeckel

EXHIBIT 1

SETTLEMENT AND RELEASE AGREEMENT (PAGA)

This Confidential Settlement and Release Agreement ("Agreement") is made and entered into between Plaintiff Desiree Ashley Hernandez, individually and acting in a private attorney general capacity on the one hand, and Defendants Westwind Management, Inc.; Westwind Enterprises; and Westwind Enterprises, Ltd. dba Rio Bend RV & Golf Resort on the other hand.

I. DEFINITIONS

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

1. "Action" means the matter titled *Desiree Ashley Hernandez v. Westwind Management, Inc. et al*, Imperial County Superior Court Case No. ECU003008, and as set forth in Plaintiff's correspondence to the California Labor and Workforce Development Agency ("LWDA Letter") dated May 2, 2023.

2. "Aggrieved Employees" consist of all current and former non-exempt employees who worked at least one pay period for Defendants in California at any time during the PAGA Period. The number of Aggrieved Employees, including Plaintiff, is estimated to be 45 individuals.

3. "WMI" or "Defendants" means collectively Westwind Management, Inc.; Westwind Enterprises; Westwind Enterprises, Ltd. dba Rio Bend RV & Golf Resort.

4. "Settlement Administrator" means Phoenix Class Action Administration Solutions.

5. "Complaint" means the Complaint filed in the action on July 10, 2023, described below.

6. "Court" means the Superior Court of California for the County of Imperial.

7. "Individual PAGA Payment" means the amount to be paid to each Aggrieved Employee based on the formula described herein.

8. "LWDA" means the California Labor and Workforce Development Agency.

9. "Gross Settlement Amount" is the non-reversionary sum of Thirty Five Thousand Dollars (\$35,000.00), which represents the total and only amount payable under this Settlement Agreement by Defendants, including, without limitation, payments to all Aggrieved Employees, payment to the LWDA, payment of Plaintiff's attorneys' fees and costs, and payment of Plaintiff's Section 1542 Release., Defendants will separately and directly pay the Settlement Administrator for administration costs.

10. "Net Settlement Amount" is the amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts, if approved by the Court, are subtracted from the Gross Settlement Amount: (a) Plaintiff's attorneys' fees of \$11,666.67; (b) Plaintiff's costs up to \$2,000; and (c) Plaintiff's separate section 1542 Release payment of \$15,000.00. After these contingent costs are subtracted from the settlement, there will be Net Settlement Amount of

6,333.33. 75% of the Net Settlement Amount will be allocated to the LWDA as penalties and the remaining 25% will be distributed to the Aggrieved Employees.

11. "PAGA" means the California Labor Code Private Attorneys General Act, California Labor Code § 2698, *et seq.*

12. "PAGA Period" means the time period from May 2, 2022, through the Date of Settlement Approval.

13. "PAGA Released Claims" means all claims under the PAGA which arose during the PAGA Period and (i) were asserted in Plaintiff's May 2, 2023, PAGA letter to LWDA, (ii) were asserted in Plaintiff's Complaint or (iii) could have been asserted in the Action based upon the facts alleged in Plaintiff's Complaint. The PAGA Released Claims include, but are not limited to, claims under the PAGA for civil penalties for alleged violations of Labor Code §§ 201-203, 218, 226, 226.7, 510, 512, 558, 1194, 1197, 1198, 2802 and 2698 *et seq.*; and claims for attorneys' fees, costs, or interest resulting therefrom. The release of the PAGA Released Claims shall extend for the duration of the PAGA Period.

14. "Parties" means, collectively, Plaintiff and Defendants.

15. "Plaintiff's Counsel" means Eric Yaeckel and Ryan Kuhn of Sullivan & Yaeckel Law Group, APC.

16. "Released Parties" means Westwind Management, Inc., Westwind Enterprises and Westwind Enterprises, Ltd. dba Rio Bend RV & Golf Resort and their present and former officers, directors, members, managers, owners, employees, shareholders, agents, trustees, representatives, attorneys, insurers, reinsurers, parent companies, subsidiaries, divisions, affiliates, predecessors, successors, assigns, as well as any individual or entity that could be alleged to be jointly liable with Defendants.

17. "Effective Date" means the date the PAGA Agreement is approved by the Court.

II. RECITALS

1. Plaintiff alleges that she performed work for Defendants in California during the PAGA Period and is therefore an Aggrieved Employee.

2. On May 2, 2023, Plaintiff provided written notice to the LWDA and Defendant asserting claims for civil penalties pursuant to PAGA stemming from alleged violations of various Labor Code sections and her intent to file a civil lawsuit under the PAGA.

3. On July 10, 2023, Plaintiff filed an action entitled *Desiree Ashley Hernandez v. Westwind Management, Inc., et al.* Imperial County Superior Court Case No. ECU003008. In her Complaint, Plaintiff sued in a representative capacity only seeking civil penalties pursuant to PAGA. Plaintiff alleged the following causes of action: (i) meal and rest period violations, (ii) minimum wage violations, (iii) overtime violations, wage statement violations, (iv) failure to reimburse, and (v) failure to pay wages upon termination.

4. In response to Plaintiff's Counsel's formal and informal discovery requests, Defendants provided Plaintiff's Counsel with detailed information and documents pertaining to Plaintiff and other Aggrieved Employees (including timekeeping and payroll records) in order for Plaintiff's Counsel to investigate Plaintiff's allegations and value the claims for purposes of settlement.

5. After substantive arm's length settlement negotiations, the Parties agreed to fully and finally resolve the PAGA Released Claims as to Plaintiff and Aggrieved Employees, as well as Plaintiff's individual claims against Defendants.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. **Non-Admission.** Nothing in this Settlement Agreement shall be construed to be an admission by Plaintiff that her claims do not have merit or by Defendants of any liability or wrongdoing as to Plaintiff, Aggrieved Employees or any other person, and Defendants specifically disclaims any such liability or wrongdoing. The Parties have entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses and risks. This Settlement Agreement and any related court documents or orders are not and may not be cited or admitted as evidence of liability.

2. **Gross Settlement Amount.** Defendants shall pay \$35,000.00 as the non-reversionary Gross Settlement Amount. Defendants will not pay more than the Gross Settlement Amount. Defendants shall deposit the Gross Settlement Amount into a Qualified Settlement Account within 10 calendar days after Court Approval. The Settlement Administrator shall provide to Defendants complete wiring instructions, including without limitation, the name of the account, name of the bank, routing number and bank account number. Defendants shall be deemed to have fully met their payment obligations upon payment to the Settlement Administrator and shall assume no responsibility for the security or distribution of settlement funds following payment to the Settlement Administrator.

The Gross Settlement Amount shall be used to pay: (1) Amounts distributable to the LWDA and Aggrieved Employees; (2) Plaintiff's attorneys fees and costs; and (3) Plaintiff's Individual Section 1542 Release. Defendants will pay directly to Settlement Administrator the Settlement administration costs, quoted as not to exceed \$2,750.

4. **Net Settlement Amount.** The Parties agree that the following amounts should be subtracted from the Gross Settlement Amount, if approved by the Court, resulting in a Net Settlement Amount to distribute to the LWDA and Aggrieved Employees:

a. **Plaintiff's Attorneys' Fees and Costs.** Defendant will not oppose Plaintiff's request for attorneys' fees in the amount of \$11,666.67.00 and costs of litigation not to exceed \$2,000.00 incurred in prosecuting this Action. In the event the Court approves less than these amounts, the difference will be added to the Net Settlement Amount (although Plaintiff may appeal an order granting less than the full amount sought for attorneys' fees and costs so long as she does not seek any additional amount that would result in a greater Gross Settlement Amount). Defendants, via the Settlement Administrator, will report these payments on IRS Form 1099 issued to Plaintiff's Counsel.

b. **Plaintiff's Individual/Enhancement Payment.** Plaintiff shall receive a payment in the amount of \$15,000 as consideration for her individual claims and as an enhancement for being the PAGA representative.

c. **Administration Costs.** Defendants will pay directly the Settlement Administrator's costs in the amount up to \$2,750.00 for administering the settlement. Such Settlement Administration Costs shall not be included in the Gross Settlement Amount of Net Settlement Amount.

5. **Allocation of Net Settlement Amount.** One hundred percent (100%) of the Net Settlement Amount shall be designated as "civil penalties" and shall be distributed 75% to the LWDA and 25% to Aggrieved Employees, pursuant to Lab. Code § 2699(i). The 25% portion to be paid to Aggrieved Employees shall be paid to all Aggrieved Employees pro rata based on the number of pay periods worked by each Aggrieved Employee during the PAGA Period. The parties agree that should the Court deny approval of the Settlement based on the allocation of the Gross Settlement Amount or the Net Settlement Amount, the parties agree to re-negotiate the entire settlement in good faith in an effort to obtain approval of the Settlement with the agreement that Defendants shall not be required to pay any more than \$35,000.00 for the settlement inclusive of attorneys' fees costs and Plaintiff's individual payment.

6. **PAGA Released Claims.** Plaintiff agrees that upon entry of an Order approving the Settlement, and upon the Settlement being fully funded, Plaintiff and all Aggrieved Employees will have fully and finally released the PAGA Released Claims against the Released Parties that arose during the PAGA Period. Upon entry of the Order approving the settlement, Plaintiff and all Aggrieved Employees will be forever barred from pursuing any and all of the PAGA Released Claims that arose during the PAGA Period against the Released Parties.

7. **Number of Affected Employees:** Defendants WMI represent that there are approximately 45 Aggrieved Employees as of November 8, 2023.

8. **Covenants and Representations by Plaintiff and Plaintiff's Counsel.**

a. Plaintiff represents and warrants that she has not assigned or transferred or purported to assign or transfer to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Settlement Agreement.

b. Plaintiff acknowledges that she has read this Settlement Agreement, that she fully understands her rights, privileges and duties under the Settlement Agreement, and enters into this Settlement Agreement freely and voluntarily. Plaintiff further acknowledges that she has had the opportunity to consult with her attorneys to explain the terms of this Settlement Agreement and the consequences of signing this Settlement Agreement.

9. **Covenants and Representations by Defendants and Defendants' Counsel**

Ability to Fund Settlement. Defendants represent that their business is solvent, and Defendants are able to pay the Settlement Amount within the time frame set forth herein. Specifically, Defendants have reviewed their financial status in contemplation of this Settlement Agreement and Defendants have determined they are able to comply with the Settlement. Defendants agree that the failure to review its financial status before entering this Settlement

Agreement shall be deemed an intentional misrepresentation. Defendants further affirm that they has not consulted or retained bankruptcy counsel or have contemplated a bankruptcy filing as of the date of this Settlement.

10. General Release of all Claims by Plaintiff

General Release: In exchange for the Settlement Amount, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Plaintiff, for herself and her heirs, assigns, executors, administrators, agents and successors, past and present (collectively, the "**Affiliates**"), hereby fully, and without limitation, release, covenants not to sue and forever discharges Defendants, their owners, subsidiaries, parent companies, divisions, affiliated corporations, affiliated partnerships, owners, trustees, directors, officers, shareholders, members, managers, partners, agents, employees, consultants, insurance carriers, attorneys, assigns, administrators, heirs, predecessors, and successors, past and present (collectively the "**Releasees**"), both individually and collectively, from any and all rights, claims, demands, liabilities, actions and causes of action whether in law or in equity, suits, damages, losses, attorneys' fees, costs, and expenses, of whatever nature whatsoever, known or unknown, fixed or contingent, suspected or unsuspected (collectively, the "**Claims**"), that Plaintiff or the Affiliates now have, or may ever have, against any of the Releasees for any acts or omissions by Defendants or any of the other Releasees or Released Parties occurring on or before the Effective Date of this Agreement. Notwithstanding the foregoing, the Parties specifically exclude from this release any claims that cannot be waived as a matter of law.

Plaintiff and Affiliates acknowledge that they are aware of and familiar with the provisions of Section 1542 of the California Civil Code, which provides as follows:

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

Plaintiff and Affiliates hereby waive and relinquish all rights and benefits that they have under Section 1542 of the California Civil Code, or the law of any other country, territory, state or jurisdiction, or common law principle, to the same or similar effect.

11. Confidentiality, Non-Involvement, & Non-Disparagement

a. Except as provided below to the extent necessary to effectuate the settlement or as required by court or legal process, Plaintiff and Plaintiff's Counsel will keep the facts relating to the existence of this Agreement, the negotiations leading to the execution of this Agreement, the terms of this Agreement, and the alleged factual basis for her claims, if any, confidential. Neither Plaintiff nor Plaintiff's Counsel shall issue a press release, hold a press conference, publish information about the settlement on any website or through any social media or otherwise publicize the settlement or communicate its terms in public or in private, unless ordered by the Court. However, for the limited purpose of establishing adequacy of counsel in future actions, Plaintiff's counsel may reference the Action only by name and case number in a declaration establishing adequacy as class or representative counsel.

b. Plaintiff agrees that she will not criticize, disparage, defame, or in any way comment negatively to anyone about Defendants, or knowingly do or say anything that could harm the interests or reputation of Defendants.

c. Plaintiff agrees, covenants, and represents that she shall not voluntarily aid, assist, cooperate with or encourage anyone in connection with the pursuit of any claim or dispute against Defendants or any of the Releasees, unless properly compelled by deposition or other legal process. Plaintiff further agrees not to voluntarily involve herself or participate in any action in which Defendants or any of the Releasees is a party without first obtaining the advance written permission of Defendants. Plaintiff further agrees, covenants, and represents that she shall provide advance written notice to Defendants in the event that she is subpoenaed to testify, or provide documents at deposition or at trial, relating to (i) any actual, possible, or perceived violation by Defendants or any other Releasee of any federal, state, local, or administrative law, rule, or regulation; (ii) the negotiations relating to and the terms of, this Agreement; and (iii) any acts or omissions by Defendants or any of the other Releasees occurring prior to the Effective Date of this Agreement. This Section is intended to preclude the voluntary aid or involvement as described above, and nothing in this Section is intended to interfere with any protected right to file charges, testify, assist, or participate in any manner in an EEOC investigation, hearing, or proceeding, and nothing in this Section is intended to influence the substance of any aid or involvement which is properly compelled by legal process.

d. Plaintiff agrees that in the event that she breaches any of the provisions of this Section III.10, it would be impractical or extremely difficult to fix actual damages. Therefore, Plaintiff agrees that in the event of such a breach, she shall pay as liquidated damages, and not as penalty, the sum of ONE THOUSAND DOLLARS AND ZERO CENTS (\$1,000.00), per proven breach which represents reasonable compensation to Defendants for the loss incurred because of such a breach. In any action to enforce this Section, Defendants shall be awarded reasonable attorneys' fees and costs.

12. To permit judicial review and approval of the Settlement, as required by Labor Code section 2698, *et seq.*, Plaintiff's Counsel will file the Settlement Agreement with the Court and submit the Settlement to the LWDA as part of the parties' seeking Court approval of the Settlement, per Labor Code § 2699(1)(2).

13. **Filing of Request for Approval of PAGA Settlement by Plaintiff's Counsel.** Plaintiff's Counsel shall be responsible for preparing an *ex parte* application for approval of the PAGA Settlement and agrees to submit a draft to counsel for Defendants in advance of filing.

14. **Termination of Settlement Agreement.** If the Court does not approve the settlement, if the Court does not enter judgment as provided for in this Settlement Agreement, or if appellate review is sought and, on such review, the Court's decision is materially modified or reversed, or if one or more of the material terms of the Settlement Agreement is not approved or is materially modified or reversed or found to be invalid, then either of the Parties shall have the right within 10 days of written notice thereof to elect to terminate the Settlement Agreement and the Parties' entire settlement, in which case the Settlement Agreement shall have no force or effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Settlement Agreement.

15. **Judgment.** As part of the *ex parte* application for approval of the Settlement, the Court shall retain jurisdiction over the Action under Cal. Code Civ. Proc. § 664.6 for the purpose of enforcing the terms of the Settlement Agreement, including all terms therein, following approval of the Settlement, and permanently enjoins and bars the prosecution of any of the PAGA Released Claims against any of the Released Parties upon the judgment being entered and the Settlement being fully funded. This Settlement Agreement is expressly conditioned upon the Court entering judgment as set forth herein or in a materially similar judgment. The judgment will not release or bar any claims other than the PAGA Released Claims as to the Aggrieved Employees.

IV. ADMINISTRATION OF SETTLEMENT

1. **Settlement Administrator.** The Parties agree to engage Phoenix Class Action Administration Solutions to handle the administration of this settlement. As defined above, costs for the services of Phoenix Class Action Administration Solutions and any other administrative costs shall be paid by Defendants directly.

2. **Provision of Information for Aggrieved Employees.** Within five (5) calendar days after notice of entry of an order approving the settlement, Defendants shall provide the Settlement Administrator with information for Aggrieved Employees. Defendants will in good faith compile from its records a list of Aggrieved Employees that will be in a computer-readable format, such as a Microsoft Excel spreadsheet, and shall include each Aggrieved Employee's full name, last known mailing address, number of Affected Pay Periods worked during the PAGA Period, and Social Security numbers to the extent available from Defendant's records. Because Social Security numbers are included in the list, the Settlement Administrator will maintain the list in confidence, and access shall be limited to those with a need to use the list as part of the administration of the Settlement. Within 7 calendar days of receiving the Aggrieved Employees' information from Defendants, the Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the Individual PAGA Payments to each Aggrieved Employee and the data used to calculate said payments. The Settlement Administrator shall obtain approval from all counsel of the calculations before mailing Individual PAGA Payments.

3. **Explanatory Letter and Individual PAGA Payments.** Upon receipt of the information for Aggrieved Employees, the Settlement Administrator will perform a search on the National Change of Address database to update the Aggrieved Employees' addresses. Within twenty-one (21) calendar days after the Settlement has been fully funded and after receiving approval from Plaintiff's Counsel and Defendants' counsel of the payment calculations as provided above, the Settlement Administrator shall mail copies of the explanatory letter, which has been mutually approved by the Parties, in English and Spanish, along with Individual PAGA Payments to all Aggrieved Employees via regular First Class U.S. Mail.

The Settlement Administrator will calculate the amount to be received by each Aggrieved Employee, which will be based on the formula set forth in Section III.5., *supra*. The Settlement Administrator will send each Aggrieved Employee a check for his or her Individual PAGA Payment along with the explanatory letter. Checks will remain negotiable for 180 days. Each Individual PAGA Payment shall be deemed penalties and reported using IRS Form 1099, with no withholdings taken.

4. **Undeliverable Notices.** The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Aggrieved Employee. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Aggrieved Employee.

Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace or other reputable search method using the name, address or Social Security number of the Aggrieved Employee involved, and will perform up to a single re-mailing if a new address is located.

Funds represented by checks returned as undeliverable after a re-mailing, checks for whom the Settlement Administrator could not locate an updated address after performing a skip trace, and funds represented by checks remaining un-cashed more than 180 days after issuance shall become void, and the funds associated with such voided checks, plus any accrued interest that has not otherwise been distributed (together, "Unused Funds"), shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code§ 1500 et seq., for the benefit of those Settlement Class Members who did not cash their checks until such time that they claim their property. The Parties agree that this disposition results in no "unpaid cash residue," or "unclaimed or abandoned funds" under California Civil Procedure Code§ 384, as amended effective June 27, 2018, as the entire Net Settlement Amount will be paid out, whether or not they all cash their payment checks.

5. **Distribution of Payments.** Within ten (10) calendar days of the Settlement being fully funded, the Settlement Administrator shall issue payments to (1) Aggrieved Employees; (2) the LWDA; (3) Plaintiff's Counsel for Plaintiff's Counsel's Court-approved attorneys' fees and litigation costs and expenses; and (4) the Settlement Administrator for Court-approved Settlement administration costs incurred in connection with the Settlement. Payments for Plaintiff's enhancement award and individual release will be sent to Plaintiff's Counsel on a monthly basis. Payments made by Defendants pursuant to this Settlement shall be held by the Settlement Administrator in an interest-bearing account until they are disbursed, with any accrued interest inuring to the benefit of the Aggrieved Employees in the form of pro rata increases to Aggrieved Employees' Individual PAGA Payments.

6. **Accounting.** Within 45 days after all payments have been made under the Settlement, the Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid from the settlement.

7. **Tax Consequences.** Neither Plaintiff nor Defendants, nor counsel for either of the Parties, makes any representations or warranties with respect to tax consequences of any payment under this Settlement Agreement.

V. MISCELLANEOUS PROVISIONS

1. **Drafting.** The Parties agree that the terms and conditions of this Settlement

Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that neither Party shall be considered the "drafter" of this Settlement Agreement for purposes of having terms construed against that Party.

2. **Successors.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators and successors.

3. **Costs and Fees.** The Parties shall each bear their own costs and attorneys' fees incurred in connection with this Settlement Agreement, the Action and Plaintiff's claims, except as otherwise set forth specifically herein.

4. **Governing Law.** This Settlement Agreement shall be construed under and governed by the laws of the State of California. This Settlement Agreement shall be deemed to have been entered into in San Diego, California, and all questions of validity, interpretation or performance of any of its terms or of any rights or obligations of the Parties to this Settlement Agreement shall be governed by California law. If any legal or equitable action is necessary to enforce the terms of this Settlement Agreement, it shall be brought in the State of California, County of San Diego.

5. **Complete Agreement.** The Parties each acknowledge and represent that no promise or representation not contained in this Settlement Agreement has been made to them with respect to the subject matter of this Settlement Agreement, and acknowledge and represent that this Settlement Agreement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the PAGA claim in the Action.

6. **Nullification of Settlement Agreement.** In the event that: (i) the Court does not approve the settlement as materially provided herein; or (ii) the settlement does not become final for any other reason, then this Settlement Agreement and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their respective positions before the Settlement was executed.

7. **Judgment and Continued Jurisdiction.** The Parties agree that the Court will have continuing jurisdiction under Cal. Code Civ. Proc. § 664.6 for purposes of addressing: (i) the interpretation and enforcement of the terms of the settlement, (ii) settlement administration matters, and (iii) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement.

8. **Amendment or Modification.** This Settlement Agreement may be amended or modified only by a written instrument, signed by either the Parties or their successors-in-interest, or by counsel for all Parties.

9. **Authorization to Enter into Settlement Agreement.** Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the settlement. If the Parties are unable to reach agreement on the form or

content of any document needed to implement the settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this settlement, the Parties may seek the assistance of the mediator (Mr. Roberts) or the Court to resolve such disagreement.

10. **Execution and Counterparts.** This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

11. **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties believe this Settlement Agreement is a fair, adequate and reasonable settlement of the Action, and have arrived at this settlement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this settlement.

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

13. **Severability.** If any term or provision of this Settlement Agreement is held to be invalid or unenforceable, the remaining portions of this Settlement Agreement will continue to be valid and will be performed, construed and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

14. **Waiver.** No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right or remedy.

15. **Enforcement Action.** In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

16. **Mutual Preparation.** The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one Party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

17. **Representation by Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

18. **Cooperation and Execution of Necessary Documents.** All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

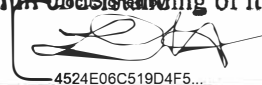
19. **Binding Agreement.** The Parties warrant that they understand and have full authority to enter into this settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

[SIGNATURES ON FOLLOWING PAGE]

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IN WITNESS THEREOF, the Parties each acknowledge that she/he/they/it have read the foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement and hereby executes it voluntarily and with full understanding of its consequences.
5/14/2024

Dated: May __, 2024



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DESIREE ASHLEY HERNANDEZ, Plaintiff

WESTWIND MANAGEMENT, INC.

Dated: May 13, 2024

By: Ray K. Farris II

Name: Ray K. FARRIS II

Title: CEO

WESTWIND ENTERPRISES

Dated: May 13, 2024

By: Ray K. Farris II

Name: Ray K. FARRIS II

Title: CEO

WESTWIND ENTERPRISES, LTD. dba RIO
BEND RV & GOLF RESORT

Dated: May 13, 2024

By: Ray K. Farris II

Name: Ray K. FARRIS II

Title: CEO

APPROVED AS TO FORM:

14

Dated: May __, 2024

SULLIVAN & YAECKEL LAW GROUP, APC

By: Eric Yaeckel

Eric K. Yaeckel
Attorneys for Plaintiff DESIREE ASHLEY
HERNANDEZ

Dated: May 14, 2024

SWEENEY MASON LLP

By: Christopher Olson

Christopher Olson
Attorneys for Defendants WESTWIND
MANAGEMENT, INC.; WESTWIND
ENTERPRISES; WESTWIND ENTERPRISES,
LTD. dba RIO BEND RV & GOLF RESORT