

SETTLEMENT AGREEMENT AND RELEASE OF PAGA CLAIM

This Settlement Agreement and Release of the Private Attorneys General Act Claim (“Agreement”) is made by and between plaintiff Travion McGuire (“Plaintiff”), on behalf of himself and acting as a private attorney general on behalf of other Aggrieved Employees (as defined below), and defendant Flight Club New York LLC (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS

- 1.1. “Action” means the Plaintiff’s PAGA lawsuit alleging Labor Code violations for PAGA penalties only against Defendant captioned *Travion McGuire v. Flight Club New York LLC, et al.*, Case No. 23STCV27019, initiated on November 3, 2023, and pending in Superior Court of the State of California, County of Los Angeles.
- 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 Employees” means all current and former non-exempt employees employed by Defendant for at least one PAGA Pay Period in California at any time between August 29, 2022 through the date of approval of the settlement agreement.
- 1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in Defendant’s possession including the Aggrieved Employee’s name, last-known mailing address, 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, County of Los Angeles.
- 1.8. “Defendant” means named Defendant Flight Club New York LLC.
- 1.9. “Defense Counsel” means and refers to counsel for Flight Club New York LLC, Littler Mendelson P.C.

- 1.10. "Effective Date" means the date by when both of the following have occurred: (a) the Court enters an order Approving the PAGA Settlement and (b) the order is final. The order is final the day it is entered by the Court.
- 1.11. "Gross Settlement Amount" means \$65,000.00 which is the total and maximum amount Defendant agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay the Representative Enhancement Award, Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator's Expenses Payment.
- 1.12. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of twenty-five percent (25%) of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.
- 1.13. "Final Order" means the order entered by the Court providing Final Approval of the Settlement.
- 1.14. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled under Labor Code section 2699, subd. (i).
- 1.15. "LWDA PAGA Payment" means the seventy-five (75%) of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.16. "Net Settlement Amount" means the Gross Settlement Amount less the following payments in the amounts approved by the Court: the Representative Enhancement Award, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment.
- 1.17. "PAGA Counsel" means Haig B. Kazandjian Lawyers, APC, the attorneys representing the Plaintiff in the Action.
- 1.18. "PAGA Counsel Fees Payment" and "PAGA Counsel Litigation Expenses Payment" mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.
- 1.19. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Flight Club New York LLC for at least one (1) day during the PAGA Period.
- 1.20. "PAGA Period" means the period from August 29, 2022 through the date of approval of the settlement agreement.
- 1.21. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.22. "PAGA Notice" means Plaintiff's August 29, 2023 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

- 1.23. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated twenty-five percent (25%) to the Aggrieved Employees (estimated to be \$4,587.50, gross) and the seventy-five (75%) to LWDA (estimated to be \$13,762.50, gross) in settlement of PAGA claims.
- 1.24. "Plaintiff" means Travion McGuire, the named plaintiff in the Action.
- 1.25. "Approval Order" means the proposed Court Order Granting Approval of PAGA Settlement.
- 1.26. "Released PAGA Claims" means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.
- 1.27. "Released Parties" means: Defendant and each of its former and present directors, officers, shareholders, owners, members, employees, agents, principals, representatives, attorneys, insurers, predecessors, successors, assigns, parents, subsidiaries, and affiliates.
- 1.28. "Representative Enhancement Award" means the amount of money for which Plaintiff shall make application to the Court for services performed and risk incurred in bringing the Action, in an amount not to exceed Ten Thousand Dollars and No Cents (\$10,000.00), which shall be paid out of the Gross Settlement Amount.
- 1.29. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

2. RECITALS

- 2.1. On November 3, 2023, Plaintiff commenced this Action by filing a Complaint alleging a single cause of action for penalties under the for Private Attorney General Act, Labor Code §2698, et seq. against Defendant, for alleged violations of the California Labor Code committed against Plaintiff and the Aggrieved Employees for failure to pay overtime and double time, failure to pay minimum wage, failure to provide rest and meal periods, failure to keep accurate payroll records and provided itemized wage statements, failure to provide employment records, failure to pay reporting time wages, failure to pay split shift wages, failure to timely pay all wages earned, failure to pay all wages earned upon discharge, failure to reimburse necessary, business-related expenses and engaged in other conduct that resulted in violations of the California Labor Code, including but not limited to violations of California Labor Code sections 201, 202, 203, 204, 226, 226.7, 432, 510, 512(a), 558(a), 1174(d), 1182.2, 1194, 1197, 1197.1, 1198, 1198.5, 2800, 2802, California Code of Regulations, Title 8, sections 11050(5)(A), 11050(4)(C), as well as violations of the applicable IWC Wage Order. The Complaint is the operative complaint in the Action (the "Operative Complaint."). Defendant denies the allegations in the Operative Complaint, deny any failure to comply with the laws identified in the Operative Complaint and deny any and all liability for the causes of action alleged.

- 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.
- 2.3. Defendant denies all of the allegations in the Action, including all PAGA representative claims, and further deny they committed any misconduct, statutory or regulatory violation, wrongdoing, or any other actionable conduct of any kind.
- 2.4. The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.
- 2.5. On April 2, 2024, the Parties participated in an all-day mediation presided over by the Mark Lemke, which led to this Agreement to settle the Action.
- 2.6. Prior to mediation, Plaintiff obtained, through informal discovery, information and documentation concerning the claims set forth in the Litigation, such as documentation regarding Named Plaintiff's employment; information regarding the number of putative Aggrieved Employees; and the total pay periods worked by the Aggrieved Employees.

3. MONETARY TERMS

- 3.1. Subject to the Court's approval of this Settlement pursuant to Labor Code § 2699(1)(2), which counsel and the Parties agree to recommend in good faith to the Court, the Parties agree to the following binding settlement of the Action.
- 3.2. Gross Settlement Amount: Defendant Flight Club New York LLC promises to pay \$65,000.00, and no more, as the Gross Settlement Amount, which includes the maximum amounts of payments Plaintiff will request the Court to award in Paragraph 3.3 below. Under no circumstances will Flight Club New York LLC pay more than the Gross Settlement Amount. Flight Club New York LLC has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1 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 Defendant.
- 3.3. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval Order:
 - 3.3.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than forty percent (40%), which is currently estimated to be twenty-six thousand dollars and zero cents (\$26,000.00), plus PAGA Counsel Litigation Expenses Payment of not more than \$7,000.00. Defendant will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for approval of settlement, including for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA

Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

- 3.3.2. To the Administrator: An Administrator Expenses Payment not to exceed \$3,650.00 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 \$3,650.00, the Administrator will retain the remainder in the Net Settlement Amount.
- 3.3.3. To the Plaintiff: Subject to Court approval, Representative Enhancement Award not to exceed \$10,000. Defendant will not oppose a request for Court approval of this payment provided that it does not exceed this amount. Plaintiff and/or PAGA Counsel will file an application or motion for Representative Enhancement Award. If the Court approves a Representative Enhancement Award less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will pay the Representative Enhancement Award using an IRS 1099 Form.
- 3.3.4. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$18,350.00 to be paid from the Gross Settlement Amount, with seventy-five percent (75%) (\$13,762.50) allocated to the LWDA PAGA Payment and twenty-five percent (25%) (\$4,587.50) allocated to the Individual PAGA Payments.
 - 3.3.4.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' twenty-five percent (25%) share of PAGA Penalties (\$4,587.50) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.
 - 3.3.4.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. Each Individual PAGA Payment shall be treated as non-wage income and 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, Defendant estimates there are fifty-six (56) Aggrieved Employees who worked a total 1,106 PAGA Pay Periods in the time period of August 29, 2022 through April 2, 2024.

- 4.2. Aggrieved Employee Data. Within thirty (30) calendar days of the Effective Date, Defendant will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' 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. Defendant 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 to the Settlement Administrator as soon as reasonably feasible. Without any extension of the deadline by which Defendant 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. Within five (5) business days after the Effective Date, the Administrator shall send Defendant's Counsel electronic wiring instructions to fund the Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than twenty-one (21) days after the Effective Date.
- 4.4. Payments from the Gross Settlement Amount. Within five (5) business days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the Representative Enhancement Award, the LWDA PAGA Payment, the Administration Expenses Payment, and the PAGA Counsel Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.
- 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 seven (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 to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.
- 4.4.4. The payment of Individual PAGA Payments shall not obligate Defendant 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. **RELEASES OF CLAIMS.** Effective on the date when Defendant fully funds the entire Gross Settlement Amount Plaintiff and PAGA Counsel will be deemed to have released all Released Parties of any and all claims as follows:
 - 5.1. **Plaintiff's Release.** Plaintiff and his respective former and present spouses, representatives, agents, beneficiaries, devisees, legatees, executors, attorneys (including PAGA Counsel), heirs, trustees, conservators, guardians, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences, including, but not limited to all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice.

Without limiting the generality of the foregoing, Plaintiff also expressly releases any and all claims of any form whatsoever, whether known or unknown, unsuspected or latent, that have been or could have been asserted by Plaintiff whether directly, indirectly, representatively, derivatively or in any other capacity, against Released Parties, including but not limited to all claims arising out of or relating to alleged violations of any contracts, express or implied (including but not limited to any contract of employment); any claims related to benefits, any contract or covenant of good faith and fair dealing (express or implied); any tort, including any claim for improper or unauthorized wage deductions, failure to pay the applicable wage, unpaid wages, unpaid vacation benefits, penalties, liquidated damages, other damages, overtime, and alleged "off the clock" work under federal and state law, including California Labor Code Sections 204 and 558, waiting time penalties pursuant to California Labor Section 203, damages or penalties pursuant to California Labor Code Section 226, meal period and rest break payments pursuant to California Labor Code Sections 226.7 and 512, failure to provide itemized wage statements pursuant to California Labor Code Section 226, statutory or civil penalties pursuant to California Labor Code Sections 210, unfair competition and unfair business practices pursuant to Business and Professions Code Section 17200, *et seq.*, interest and costs pursuant to California Civil Code Section 3287 and California Labor Code Section 218.6, statutory or common law rights to attorneys' fees and costs, including those pursuant to California Labor Code Section 1194, *et seq.*; claims under the Private Attorneys General Act of 2004, Labor Code section 2699, *et seq.*, and the alleged violation or breach of any other state or federal statute, rule and or regulation; including all applicable Industrial Welfare Commission Wage Orders, and all similar causes of action, including but not limited to, any claim for restitution, equitable relief, interest, penalties, costs or attorneys' fees in connection with any of the foregoing,

negligent infliction of emotional distress, intentional infliction of emotional distress, and defamation; any “wrongful discharge,” “constructive discharge,” and “retaliation” claims; any claims relating to any breach of public policy; any legal restrictions on Defendant’s right to discharge employees; and any federal, state, or other governmental statute, regulation, or ordinance, including, without limitation: (1) Title VII of the Civil Rights Act of 1964 (race, color, religion, sex, and national origin discrimination or harassment, including retaliation for reporting discrimination or harassment); (2) 42 U.S.C. § 1981 (discrimination); (3) Equal Pay Act, 29 U.S.C. § 209(d) (1) (equal pay); (4) Americans with Disabilities Act, 42 U.S.C. § 12100, *et seq.* (disability discrimination); (5) Family and Medical Leave Act, 29 U.S.C. § 2601, *et seq.* (family/medical leave); (6) California Fair Employment and Housing Act, Cal. Government Code § 12900, *et seq.* (discrimination or harassment in employment and/or housing, including discrimination or harassment based on race, religious creed, color, national origin, ancestry, disability, marital status, sex (including pregnancy), or age, including retaliation for reporting discrimination or harassment); (7) California Family Rights Act, Cal. Government Code § 12945.1, *et seq.* (family/medical leave); (8) California Labor Code, including Section 1720, *et seq.*, or any Industrial Welfare Commission Wage Order; (9) Executive Order 11246 (race, color, religion, sex, and national origin discrimination or harassment); (10) Executive Order 11141 (age discrimination); (11) Sections 503 and 504 of the Rehabilitation Act of 1973 (handicap discrimination); (12) the Fair Labor Standards Act; and (13) Employee Retirement Income Security Act, 29 U.S.C. § 1000, *et seq.* (“Plaintiff’s Release”).

Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff’s Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff’s discovery of them.

- 5.1.1. Plaintiff’s Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff’s Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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.

Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of all parties, Plaintiff and Plaintiff’s Counsel expressly acknowledge this Settlement Agreement is intended to include in its effect, without limitation, all claims that Plaintiff knows of, as well as all claims that he does not know or suspect to, exist in Plaintiff’s favor against the Released Parties, or any of them, for the time period from the beginning of time to the date of the Final Order and

Judgment, and that this Settlement Agreement contemplates the extinguishment of any such claims.

5.2. Release by Aggrieved Employees: In accordance with *Arias v. Superior Court* (2009) 46 Cal.4th 969, a settlement and release in “a representative action brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004 ... is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding,” which the settlement and order of approval shall so reflect. Therefore, all Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, and the PAGA Notice, including alleged violations of the California Labor Code and the California Industrial Welfare Commission Wage Orders, including but not limited to alleged failure to provide employment records, failure to pay minimum wages, overtime, and double time, failure to provide meal and rest breaks, failure to provide complete and accurate wage statements, failure to timely pay wages upon termination, failure to pay reporting time pay, failure to pay split shift differentials, failure to timely pay wages, failure to reimburse business expenses, and failure to provide notice of paid sick time leave and accrual. The Judgment shall not bind nor release the Aggrieved Employees of any individual wage claims (or other individual claims).

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

6. MOTION OR APPLICATION OF FOR APPROVAL OF SETTLEMENT. Plaintiff agrees to prepare and file a motion for approval of this Settlement.

6.1. Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (iv) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA Counsel shall

aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

- 6.2. Responsibilities of PAGA Counsel. PAGA Counsel is responsible for expeditiously finalizing and filing the motion for approval of this Settlement no later than 30 days after the full execution of this Agreement, and obtaining a prompt hearing date for an approval hearing and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's Approval Order and Judgment to the Administrator.
- 6.3. Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement 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. If the Court approve of this Settlement or conditions its approval on any material change to this Agreement, 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 modify the Agreement and otherwise satisfy the Court's concerns.

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, ILYM 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. AGGRIEVED EMPLOYEE SIZE ESTIMATES AND ESCALATOR CLAUSE

- 8.1. Based on its records, Defendant estimates that, between August 29, 2022 through April 2, 2024, there are 56 Aggrieved Employees who worked 1,106 Pay Periods between August 29, 2022 and April 2, 2024. In the event the actual number of Aggrieved

Employee Pay Periods is more than ten-percent higher than this estimated amount (*i.e.*, more than 1,217) through the date of court approval of the settlement, then the Gross Settlement Amount shall increase on a proportional basis equal to the percentage increase in the number of Pay Periods exceeding 10% (e.g. if the excess is 15%, the Gross Settlement Amount may increase by 5%, if the excess is 25%, the Gross Settlement Amount may increase by 15%).

- 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, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses 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 an Aggrieved Employee or 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.

10. ADDITIONAL PROVISIONS

- 10.1. Voiding the Agreement: The Settlement Agreement shall be voidable and unenforceable as to all Parties herein at the option of either Party if (a) the Court should for any reason fail to approve this Settlement in the form agreed to by the Parties, or (b) the Court should for any reason fail to enter a judgment, or (c) the approval of the Settlement and judgment is reversed, modified or declared or rendered void. In that event, then neither the Settlement nor any of the related negotiations or proceedings shall be of any force or effect, and all parties to the Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court. Notwithstanding the foregoing, the Parties may attempt in good faith to cure any perceived defects in the Settlement to facilitate approval.
- 10.2. 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 Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant'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, Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendant'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). This Settlement Agreement is a settlement document and shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the Settlement, and/or interpret or enforce this Settlement Agreement.

- 10.3. 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.
- 10.4. Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, 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.
- 10.5. 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.
- 10.6. 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, Defendant 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. Enforcement Actions: This Agreement is binding and enforceable under California Code of Civil Procedure section 664.6. Except as otherwise provided in this Settlement

Agreement, in the event that one or more of the Parties to this Settlement Agreement institutes any action or proceeding in this case under California Code of Civil Procedure section 664.6 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 Agreement, the successful Party or Parties shall be entitled to recover from the unsuccessful Party or Parties reasonable attorney's fees and costs incurred in connection with any enforcement actions.

- 10.11. 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.
- 10.12. 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.
- 10.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 10.14. Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from Defendant unless, prior to the Administrator's payment of all Settlement Funds, Defendant makes a written request to PAGA Counsel for the return, rather than the destructions, of Aggrieved Employee Data.
- 10.15. 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.
- 10.16. 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.
- 10.17. Waiver: The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.
- 10.18. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given

as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Haig B. Kazandjian, Esq.
Haig B. Kazandjian Lawyers, APC
801 North Brand Blvd., Suite 970
Glendale, CA 91203

To Defendant:

P. Dustin Bodaghi, Esq.
Littler Mendelson P.C.
18565 Jamboree Rd., Suite 800
Irvine, CA 92612

- 10.19. 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.
- 10.20. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, 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.

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Dated: 05 / 15 / 2024

By: 
Travion McGuire

Dated: May 16, 2024

By: 
7C5DF3AACF6D442...
Flight Club New York LLC
By: Yunah Lee
Its: Director



Title	Travion McGuire v. Flight Club New York LLC et al. - PAGA...
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