

1 Drew Lewis, Esq. (SBN 309288)

2 **DREW LEWIS, PC**

3 3010 Lava Ridge Ct., Suite 120

4 Roseville, California 95661

5 Telephone: (833) 600-7400

6 Attorneys for Plaintiffs, JACOB HAMMITT and
7 LOGAN CERUTTI

8 William Woolman (SBN 145124)

9 Charles P. Hamamjian (SBN 298685)

10 Megan Druetra (SBN 303749)

11 **SAGASER, WATKINS & WIELAND, PC**

12 5260 North Palm Avenue, Suite 400

13 Fresno, California 93704

14 Telephone: (559) 421-7000

15 Facsimile: (559) 473-1483

16 Attorneys for Defendant, GOOBER d/b/a M CUBED
17 TECHNOLOGIES

18 **STATE OF CALIFORNIA**

19 **SUPERIOR COURT FOR THE COUNTY OF FRESNO**

20 JACOB HAMMITT, an individual,
21 LOGAN CERUTTI, an individual,

22 Plaintiffs,

23 v.

24 GOOBER d/b/a M CUBED
25 TECHNOLOGIES, a California
26 Corporation, DOES 1-20, inclusive,

27 Defendant.

Case No.: 23CECG04290

**PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT AGREEMENT AND
RELEASE**

Complaint Filed: October 12, 2023
Trial Date: None Set

28 This Private Attorneys General Act Settlement Agreement and Release (“Agreement” or
“Settlement”) is entered into by and between JACOB HAMMITT and LOGAN CERUTTI
 (“Plaintiffs”), for themselves and as a representative of the State of California and the Aggrieved
 Employees, and GOOBER d/b/a M CUBED TECHNOLOGIES (“Defendant”), subject to and
 confirmation by the underlying court (Fresno County Superior Court, hereinafter, the “Court”). The
 Agreement refers to Plaintiffs and Defendant collectively as “Parties,” or individually as “Party.” This

Settlement is contingent on the review and approval of the Court as required under California Labor Code section 2699(l)(2).

1. DEFINITIONS.

1.1. “Action” means Plaintiffs’ lawsuit against Defendant captioned “*Jacob Hammitt, an individual, Logan Cerutti, an individual v. Goober d/b/a M Cubed Technologies, a California Corporation, Does 1-20, inclusive*” Case No. 23CECG04290 initiated on October 12, 2023, in Superior Court of the State of California, County of Fresno.

1.2. “Administrator” means ILYM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement and related matters.

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 for the cost of its services in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement, which are anticipated not to exceed zero dollars (\$0.00).

1.4. “Aggrieved Employee(s)” means all current and former persons who worked for Defendant within the State of California at any time during the PAGA Period as an hourly-paid or non-exempt employee.

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. “Approval Order” means the Court’s Order Confirming the Approval of the PAGA Settlement.

1.8. “Court” means the Superior Court of California, County of Fresno.

1.9. “Defendant” means Goober d/b/a M Cubed Technologies.

1.10. "Defense Counsel" means Sagaser, Watkins & Wieland PC.

1.11. "Effective Date" means the date by when both of the following have occurred: (a) the Court confirms and approves the PAGA Settlement and enters a Judgment on the PAGA Settlement and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the day the Court enters Judgment; (b) if the California Labor and Workforce Development Agency ("LWDA") does not object to the Settlement, the day the Court enters Judgment; (c) if the LWDA objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or (d) if a timely appeal from the Judgment is filed by the LWDA, the day after the date of final resolution of that appeal (including any requests for rehearing and/or petitions for certiorari), resulting in final and complete judicial approval of the Settlement in its entirety, with no further challenge to the Settlement being possible.

1.12. "Gross Settlement Amount" means seven thousand dollars and no cents (\$7,000.00), which is the total non-reversionary settlement amount Defendant agrees to pay under the Settlement. The Gross Settlement Amount includes Individual PAGA Payments, the LWDA PAGA Payment, the Administrator's Expenses Payment, and Attorney's Fees in the amount of two thousand one hundred dollars (\$2,100). Plaintiffs will only receive their Individual PAGA Payment from the Gross Settlement Amount in the same manner as all other Aggrieved Employees. Plaintiffs have entered into a separate settlement agreement covering their Individual Non-PAGA Claims and in consideration for their general release.

1.13. "Individual Non-PAGA Claims" shall refer to the first through eighth causes of action brought by Plaintiffs in the Operative Complaint ("Complaint") in their individual capacity only, which are subject to a separate settlement agreement reached between the Parties.

1.14. "Individual PAGA Payment" means the Aggrieved Employees' pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods for the Aggrieved Employee during the PAGA Period.

1.15. "Judgment" means the judgment or the dismissal entered by the Court based upon the approval of the Settlement.

1.16. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under California Labor Code section 2699, subd. (i).

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

1.18. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: the Administrator's Expenses Payment. The remainder is to be paid as PAGA Penalties to Aggrieved Employees as Individual PAGA Payments and to the LWDA as the LWDA PAGA Payment.

1.19. "PAGA Claims" means Plaintiffs' Ninth cause of action brought in the Operative Complaint in both an individual and representative capacity pursuant to the PAGA (California Labor Code §§ 2698, *et. seq.*), seeking civil penalties for Defendant's alleged violations of California Labor Code sections 201, 202, 203, 204, 226, 226(a), 226.7, 510, 512, 512(a), 1194, 1194.2, 1197, and Industrial Welfare Commission Wage Orders, including Wage Orders 4-2001 and 7-2001, on behalf of themselves, the Aggrieved Employees, and the State of California.

1.20. "PAGA Counsel" or "Plaintiffs' Counsel" means Drew Lewis, PC.

1.21. "PAGA Pay Periods" means the total number of pay periods for an Aggrieved Employee, based on the number of pay periods they worked for Defendant within the State of California during the PAGA Period, which is calculated by taking the period of time worked during the PAGA Period and dividing that number by fourteen (14) days (as Aggrieved Employees were paid every other week) and then rounding that number up.

1.22. "PAGA Period" means the period from August 7, 2023, to the date of approval by the Fresno Superior Court.

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

1.24. "PAGA Notice" means Plaintiffs' August 7, 2023, letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.25. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from

the Net Settlement Amount, allocated 25% to the Aggrieved Employees and 75% to the LWDA in settlement of the Released PAGA Claims. PAGA Counsel shall give timely notice of the Settlement to the LWDA under California Labor Code section 2699(1)(2).

1.26. “Plaintiffs” means Jacob Hammitt and Logan Cerrutti, the named plaintiffs in the Action.

1.27. “Operative Complaint” means the Complaint filed by Plaintiff on October 12, 2023, including both Individual Non-PAGA Claims and both individual and representative PAGA Claims.

1.28. “Released PAGA Claims” means all penalties, claims, causes of actions, liabilities, demands, obligations, interest, damages, liquidated damages, equitable relief, restitution, declaratory relief, expenses, costs, attorneys’ fees, and all other legal responsibilities of any form whatsoever, under the California Private Attorneys General Act, California Labor Code section 2698 *et seq.*, that were asserted or could have been asserted based upon the facts and allegations made in the PAGA Notice and Operative Complaint during the PAGA Period, including, but not limited to, being predicated on the failure to pay minimum, regular, and overtime wages, failure to pay for all hours worked, failure to provide compliant meal periods and associated premiums, failure to provide compliant rest periods and associated premiums, failure to timely pay wages during employment, failure to timely pay wages upon termination and separation of employment, failure to provide compliant and accurate wage statements, failure to maintain complete and accurate payroll records, and failure to reimburse necessary business-related expenses and costs, in violation of California Labor Code sections 201, 202, 203, 204, 226, 226(a), 226.7, 510, 512, 512(a), 1194, 1194.2, 1197 and applicable Industrial Welfare Commission Wage Orders.

1.29. “Released Parties” means Defendant and each of its past, present, and future agents, employees, representatives, administrators, officers, directors, boards, members, shareholders, attorneys, accountants, insurers, receivers, advisors, consultants, partners, partnerships, parents, divisions, owners, auditors, subsidiaries, affiliates or related entities, assigns, successors, heirs, executors, pension and welfare benefit plans, predecessors in interest, joint venturers, trustees, investors, fiduciaries, and commonly controlled corporations, as well as any individual or entity who

1 or which could be jointly liable with Defendant, and all persons or entities acting by, through, under,
2 or in concert with any of them, and Defendant's counsel of record in the Action.

3 **2. RECITALS.**

4 2.1. Plaintiff Jacob Hammitt ("Hammitt") is a former employee of Defendant. Defendant
5 hired Hammitt in 2021 and he remained employed by the company until approximately September
6 20, 2022.

7 2.2. Plaintiff Logan Cerutti ("Cerutti") is a former employee of Defendant. Defendant
8 hired Cerutti in 2022 and he remained employed by the company until approximately July 17, 2024.

9 2.3. On October 12, 2023, Plaintiffs filed a complaint in Fresno County Superior Court
10 alleging numerous individual actions.

11 2.4. On August 7, 2023, Plaintiffs' Counsel submitted the PAGA Notice on behalf of
12 Plaintiffs, to the LWDA and Defendant, to notify the LWDA and Defendant, pursuant to the PAGA,
13 of Plaintiffs' intent to seek civil penalties under PAGA for Defendant's alleged violations of
14 California Labor Code sections 201, 202, 203, 204, 226, 226(a), 226.7, 510, 512, 512(a), 551, 552,
15 1174(d), 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, and 2810.5, and Industrial Welfare
16 Commission Wage Orders, including Wage Orders 4-2001 and 7-2001, thereby initiating LWDA
17 Case Number LWDA-CM-936026-23.

18 2.5. Defendant denies each and all of the allegations, claims, and contentions alleged by
19 Plaintiffs in the Action, Operative Complaint, and PAGA Notice and expressly denies each and all
20 alleged charges of wrongdoing or liability arising out of the acts, omissions, facts, matters,
21 transactions, or occurrences alleged, or that could have been alleged, in the Action, Operative
22 Complaint, and PAGA Notice. Defendant denies any and all liability for the claims alleged.
23 Defendant expressly contends that it has complied with applicable state, municipal, and federal
24 statutes, ordinances, regulations, common laws, and applicable Industrial Wage Orders concerning
25 wage and hour laws. Defendant further denies that, for any purpose other than settling this Action,
26 these alleged claims are appropriate for representative treatment. Nevertheless, Defendant has
27 concluded that further proceedings in the Action would be protracted and expensive. Defendant,
28

therefore, has determined that it is desirable and beneficial that the Action be settled in a manner and upon the terms and conditions set forth in the Agreement.

2.6. Pursuant to California Labor Code section 2699.3, subd.(a), Plaintiffs gave written notice to Defendant and the LWDA by sending the PAGA Notice.

2.7. On July 29, 2024, the Parties participated in an all-day mediation with well-respected mediator Russ Wunderli, Esq., the Parties reached the Settlement described herein to resolve the Action in its entirety. 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.

2.8. Prior to mediation, through formal discovery, PAGA Counsel conducted a detailed investigation of the alleged PAGA claims and obtained data pertaining to the Aggrieved Employees including, but not limited to, the number of employees, a breakdown of position types, hire and termination dates, the number of pay periods, sample time records, sample payroll records. In addition, PAGA Counsel received written wage and hour policies applicable to the Aggrieved Employees during the relevant time frame and relevant information regarding practices and procedures. PAGA Counsel also received Plaintiffs' personnel file and time and payroll records.

2.9. There has been no determination on the merits of the Action or the PAGA Notice but, in order to avoid additional cost and the uncertainty of litigation, the Parties desire to resolve the Action and Released PAGA Claims.

2.10. 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 shall be construed as or deemed to be an admission, concession, or indication by Defendant that any of the allegations in the Action, Operative Complaint, and PAGA Notice have merit or that Defendant has any liability for any claims asserted; nor shall it be construed as or deemed to be an admission by Plaintiffs 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 grant approval of the Settlement or enter Judgment, Defendant reserves the right to

1 contest representative treatment, and Defendant reserves all available defenses to the claims in the
2 Action, and Plaintiffs reserve the right to contest Defendant's defenses. The Settlement, this
3 Agreement, and Parties' willingness to settle the Action will have no bearing on, and will not be
4 admissible in connection with, any litigation or any civil, criminal, or administrative proceeding in
5 any court, administrative agency, alternative dispute resolution forum, or other tribunal (except for
6 proceedings to enforce or effectuate the Settlement and this Agreement).

7 **3. MONETARY TERMS.**

8 3.1. Gross Settlement Amount. In consideration for the Settlement of the PAGA Claims
9 within the Action and Operative Complaint and the release of all Released PAGA Claims of
10 Plaintiffs, the Aggrieved Employees, and the LWDA/State of California against Defendant and
11 Released Parties, Defendant agrees to pay seven thousand dollars and no cents (\$7,000.00) (and no
12 more as the Gross Settlement Amount), for Individual PAGA Payments, the LWDA PAGA
13 Payment, the Administrator's Expenses Payment, and Attorney's Fees in the amount of two thousand
14 one hundred dollars (\$2,100),. Plaintiffs will not receive any portion of the Gross Settlement Amount
15 beyond their Individual PAGA Payment in the same manner as other Aggrieved Employees, with
16 Plaintiffs releasing their PAGA Claims through receipt of this Individual PAGA Payment. Defendant
17 has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.2
18 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without
19 asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of
20 the Gross Settlement Amount will revert to Defendant.

21 3.2. Payments from the Gross Settlement Amount. The Administrator will make and
22 deduct the following payments from the Gross Settlement Amount, in the amounts specified by the
23 Court in the Approval Order:

24 3.2.1. To the Administrator: An Administrator Expenses Payment not to exceed zero
25 dollars (\$0.00) except for a showing of good cause and as approved by the Court. To the extent the
26 Administration Expenses are less, or the Court approves payment less than zero dollars (\$0.00), the
27 Administrator will retain the lower amount reflecting the lower expense than expected or, if
28

1 applicable, the court approved amount.

2 3.2.2. To the LWDA and Aggrieved Employees: Seventy-five percent
3 (75%) of the Net Settlement Amount to the LWDA for PAGA Penalties, and the remaining twenty-
4 five percent (25%) of the Net Settlement Amount to the Individual PAGA Payments for PAGA
5 Penalties.

6 3.2.2.1. The Administrator will calculate each Individual PAGA
7 Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by
8 the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA
9 Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods.

10 3.2.2.2. The Administrator will report the LWDA PAGA Payment and
11 Individual PAGA Payments on IRS 1099 Forms. The LWDA assumes full responsibility and liability
12 for any taxes owed on the LWDA PAGA Payment, the Aggrieved Employees assume full
13 responsibility and liability for any taxes owed on their Individual PAGA Payment, and the LWDA
14 and Aggrieved Employees shall hold Defendant and Released Parties harmless and indemnify
15 Defendant and the Released Parties from any and all liability with regard thereto.

16 3.2.2.3. Because this is a settlement of PAGA claims for civil penalties
17 only, no portion of the Settlement is allocated to alleged unpaid wages. One Hundred Percent (100%)
18 of all Individual PAGA Payments to Aggrieved Employees are to be considered penalties and will
19 not be subject to local, state, or federal payroll tax withholdings.

20 **4. SETTLEMENT FUNDING AND PAYMENTS.**

21 4.1. PAGA Data. Not later than twenty-one (21) days after the Court approves this
22 Agreement, and enters an Order approving of the Settlement, Defendant will deliver the PAGA Data
23 to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect PAGA Members'
24 privacy rights, the Administrator must maintain the PAGA Data in confidence, use the PAGA Data
25 only for purposes of this Settlement and for no other purpose, and restrict access to the PAGA Data
26 to Administrator employees who need access to the PAGA Data to effect and perform under this
27 Agreement. PAGA Counsel and Plaintiffs will not be provided identifying or contact information or
28

1 Social Security Numbers for any Aggrieved Employee in connection with the Settlement. The PAGA
2 Data provided to the Administrator will remain confidential and will not be disclosed to anyone,
3 except as required to applicable tax authorities, unless Defendant provides the express written
4 consent thereto, or by order of the Court, provided that the Administrator may communicate total
5 sums of Individual PAGA payments to PAGA Counsel and Defense Counsel.

6 4.2. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross
7 Settlement Amount by transmitting the funds to the Administrator no later than thirty (30) business
8 days after the Effective Date. If the date by which payment by Defendant is due falls on a Saturday,
9 Sunday, or legal holiday in the State of California, then the due date shall be extended to the next
10 following day which is not a Saturday, Sunday, or legal holiday in the State of California.

11 4.3. Payments from the Gross Settlement Amount. Within 14 days after Defendant funds
12 the Gross Settlement Amount, the Administrator will mail checks or disburse funds for all Individual
13 PAGA Payments, the LWDA PAGA Payment, and the Administrator's Expenses Payment.

14 4.3.1. The Administrator shall distribute each Individual PAGA Payment by way of
15 check, along with a cover letter ("Cover Letter") agreed to by the Parties and approved by the Court,
16 in substantially the form attached hereto as "Exhibit A".

17 4.3.2. The Administrator shall conduct one (1) National Change of Address
18 ("NCOA") search for all Aggrieved Employees identified in the PAGA Data prior to the mailing of
19 the agreed-upon Cover Letter and Individual PAGA Payment, and update addresses for the Aggrieved
20 Employees to the extent updated addresses are located through the NCOA search.

21 4.3.3. The Administrator will issue checks for the Individual PAGA Payments and
22 send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid, along with the
23 Cover Letter. The face of each check shall prominently state the date (180 days after the date of
24 mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the
25 void date.

26 4.3.4. The Administrator must conduct an Aggrieved Employee Address Search for
27 all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address.
28

1 Within seven (7) days of receiving a returned check, the Administrator must re-mail checks to the
2 USPS forwarding address provided or to an address ascertained through the Aggrieved Employee
3 Address Search. The Administrator need not take further steps to deliver checks to Aggrieved
4 Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly
5 send a replacement check to any Aggrieved Employee whose original check was lost or misplaced,
6 or requested by the Aggrieved Employee prior to the void date, provided that the Administrator first
7 void the original check prior to sending the new check.

8 4.3.5. For any Aggrieved Employee whose Individual PAGA Payment check is
9 uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by
10 such checks to the cy pres beneficiary, Valley Children's Hospital.

11 4.3.6. The payment of Individual PAGA Payments shall not obligate Defendant or
12 Released Parties to confer any additional benefits or make any additional payments to the Aggrieved
13 Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.
14 Neither the Agreement nor any amounts paid under the Agreement will modify any previously
15 credited hours, days, or weeks of service under any employee benefit plan, policy or bonus program
16 sponsored by Defendant or Released Parties. Such amounts will not form the basis for additional
17 contributions to, benefits under, or any other monetary entitlement under Defendant or Released
18 Parties' sponsored benefit plans, policies, or bonus programs. The payments made under the terms
19 of this Agreement shall not be applied retroactively, currently, or on a going forward basis, as salary,
20 earnings, wages, or any other form of compensation for the purposes of any of Defendant or Released
21 Parties' benefit plan, policy, or bonus program. Defendant and Released Parties retain the right to
22 modify the language of its benefits plans, policies, and bonus programs to effect this intent and to
23 make clear that any amounts paid pursuant to this Agreement are not for "pay periods" or any similar
24 measuring term as defined by applicable plans, policies, and bonus programs for purpose of
25 eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits
26 are not required by this Agreement. Defendant and Released Parties do not consider the payments
27 as part of this Agreement "compensation" for purposes of determining eligibility for, or benefit
28

1 accrual within, any benefit plans, policies, or bonus programs, or any other plan sponsored by
2 Defendant or Released Parties.

3 **5. RELEASES OF CLAIMS.** Upon the Effective Date and Defendant fully funding the Gross
4 Settlement Amount, Plaintiffs, Aggrieved Employees, LWDA/State of California, and PAGA Counsel
5 will release claims against Defendant and all Released Parties as follows:

6 5.1. Release by Plaintiffs, Aggrieved Employees, and LWDA/State of California
7 Regarding PAGA Claims: All Aggrieved Employees, on behalf of themselves and their former and
8 present heirs, spouses, agents, attorneys, executors, administrators, successors, assigns, and
9 representatives, and the LWDA/State of California, knowingly and voluntarily, each release
10 Defendant and the Released Parties from all Released PAGA Claims during the PAGA Period.

11 It is the desire of the Parties, Aggrieved Employees, and LWDA/State of California to fully,
12 finally, and forever settle, compromise, and discharge the Released PAGA Claims against Defendant
13 and the Released Parties. Each Aggrieved Employee and the LWDA/State of California will be
14 bound by the release of the Released PAGA Claims as a result of this Agreement and bound by the
15 terms of the judgment and satisfaction of such judgment.

16 **6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT.**

17 6.1. Plaintiffs' and PAGA Counsel Responsibilities. Plaintiffs/PAGA Counsel and
18 Defendant/Defendant Counsel shall submit to the Court a Proposed Approval Order. Each Party shall
19 cooperate when seeking approval of the PAGA Settlement. PAGA Counsel is responsible for
20 delivering the Court's Approval Order to the Administrator.

21 6.1.1 Plaintiffs/PAGA Counsel will also prepare and deliver to Defense Counsel
22 and the Court all documents necessary for obtaining approval of this Settlement under California
23 Labor Code Section 2699, subd. (l)(2)) including, but not limited to, (i) a signed declaration from
24 the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to
25 its willingness to serve; competency; operative procedures for protecting the security of Aggrieved
26 Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other
27 misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved
28

Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiffs, PAGA Counsel, or Defense Counsel; (ii) 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 all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator.

6.2 Duty to Cooperate. The Parties expressly acknowledge that the Court's approval of the Agreement is a condition precedent to any payments described in this Agreement. If the Court does not grant approval of the PAGA Settlement, conditions approval on any material change to this Settlement (including, but not limited to, the scope of release to be granted by Plaintiffs, the Aggrieved Employees, the LWDA/State of California, and PAGA Counsel), and/or refuses to grant judgment or dismissal of the Action with prejudice, this Agreement will be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the Court's concerns and obtain approval, if such can be done in a manner that is mutually agreed upon by the Parties. The Court's decision to award less than the amounts requested for the Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph. The Parties will work together to make any non-material modifications of the Settlement requested by the Court to obtain approval of the Parties' Settlement.

6.2.1 The Parties are aware that some courts have approved a PAGA settlement and entered an order approving the settlement and judgment and thereafter closed the case, while other courts have approved a PAGA settlement and entered only an order approving the settlement with later instructions to file a request for dismissal of the action with prejudice. The Parties agree to cooperate and take any and all steps required by the Court in the Action to implement the settlement and terminate the Action pursuant to settlement (i.e., to terminate the Action by way of judgment or dismissal with prejudice).

7. SETTLEMENT ADMINISTRATION.

7.1 Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to

1 serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees
2 to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement
3 and such other duties as requested by the Parties, including, but not limited to, maintaining the
4 settlement funds in an appropriate account, locating Aggrieved Employees, and calculating,
5 administering, distributing all payments under the Agreement and issuing all tax forms (i.e. IRS 1099
6 Forms, etc.) and tax reports to state and federal tax authorities as may be required by law for all
7 amounts paid pursuant to this Agreement, in exchange for payment of Administration Expenses. The
8 Parties and their Counsel represent that they have no interest or relationship, financial or otherwise,
9 with the Administrator other than a professional relationship arising out of prior experiences
10 administering settlements.

11 7.1.1 Any tax forms issued to Aggrieved Employees in connection with the
12 proceeds from any uncashed checks will be withdrawn and voided by the Administrator. All
13 expenses and costs incurred by, or at the direction of, the Administrator in connection with the
14 operation and implementation of this Agreement (including, without limitation, expenses of tax
15 attorneys and/or accountants and mailing and distribution costs and expenses relating to filing or
16 failing to file the informational and other tax returns described in this Agreement) shall be treated
17 as, and considered to be, costs of administration of this Settlement and thus part of the Administrator
18 Expenses Payment.

19 7.2 Qualified Settlement Fund. The Administrator shall establish a settlement fund that
20 meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation
21 section 468B-1.

22 7.3 Administrator Duties. The Administrator has a duty to perform or observe all tasks
23 to be performed or observed by the Administrator contained in this Agreement or otherwise.

24 7.3.1 Email Address and Toll-Free Number. The Administrator will maintain and
25 monitor an email address and a toll-free telephone number to receive Aggrieved Employee calls,
26 faxes, and emails.

27 7.3.2 Report by Administrator. The Administrator shall notify PAGA Counsel and
28

Defense Counsel of the following: (i) when each of the payments have been issued as required under this Agreement and (ii) when all payments have been issued as required under this Agreement.

7.3.3 Final Report by Administrator. Within ten (10) days after the Administrator disburses all funds in the Gross Settlement Amount also including the payment to the cy pres beneficiary, the Administrator will provide PAGA Counsel and Defense Counsel with a final report detailing all payments made under this Agreement and its disbursements by employee identification number only of all payments made to the Aggrieved Employees. Within fifteen (15) days after the Administrator disburses all funds in the Gross Settlement Amount also including the payment to the cy pres beneficiary, the Administrator will prepare, and submit to PAGA Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. PAGA Counsel is responsible for filing the Administrator's declaration in Court.

8. 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.

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

8.2 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by

1 Plaintiffs, the Aggrieved Employees, the LWDA/State of California, and PAGA Counsel), this
2 Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good
3 faith to address the appellate court's concerns and obtain approval, if such can be done in a manner
4 that is mutually agreed upon by the Parties. An appellate decision to vacate, reverse, or modify the
5 Court's award of the Administrator Expenses Payment shall not constitute a material modification
6 to the Agreement within the meaning of this paragraph.

7 8.3 Amended Judgment. If any amended judgment is required, the Parties will work
8 together in good faith to jointly submit a proposed amended judgment.

9 **9. NULLIFICATION OF THIS AGREEMENT.**

10 9.1 Non-Approval of the Agreement. In the event that the Court fails to approve the
11 Settlement under the terms agreed to by the Parties, or if the appropriate appellate court fails to
12 uphold or affirm the Settlement, or if the Agreement is otherwise terminated: (1) the Agreement shall
13 have no force and effect and the Parties shall be restored to their respective positions prior to entering
14 into it, and no Party shall be bound by any of the terms of the Agreement; (2) Defendant and Released
15 Parties shall have no obligation to make any payments under this Agreement; (3) the Parties shall
16 split the Administrators costs incurred to that point; (3) any approval order or judgment shall be
17 vacated; and (4) the Agreement and all negotiations, statements, proceedings, and data relating
18 thereto shall be deemed confidential mediation settlement communications and not subject to
19 disclosure for any purpose in any proceeding.

20 **10. ADDITIONAL PROVISIONS.**

21 11.1 Invalidity of Any Provision. Before declaring any provision or term(s) of this
22 Agreement invalid, the Court shall first attempt to construe the provision or term(s) as valid to the
23 fullest extent possible consistent with applicable precedents so as to define all provisions or term(s)
24 of this Agreement valid and enforceable. Any invalid, illegal, or unenforceable provision or term(s)
25 determined by the Court shall in no way affect any other provision or term(s) if Defendant and
26 PAGA Counsel, on behalf of the Parties and the Aggrieved Employees, mutually elect in writing to
27 proceed as if such invalid, illegal, or unenforceable provision or term(s) had never been included in
28

1 this Agreement.

2 11.2 Invalidation. Invalidation of any material portion of the Settlement shall invalidate
3 the Settlement in its entirety, unless the Parties shall subsequently agree in writing that the remaining
4 provisions of the Settlement are to remain in full force and effect.

5 11.3 Integrated Agreement. Upon execution by all Parties and their counsel, this
6 Agreement together with its attached exhibits shall constitute the entire agreement between the
7 Parties relating to the Settlement, superseding all prior or contemporaneous agreements,
8 representations, warranties, covenants, or inducements, whether oral or written, and whether to or
9 by a Party or such Party's legal counsel.

10 11.5 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and
11 represent that they are authorized by Plaintiffs and Defendant, respectively, to take all appropriate
12 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its
13 terms, and to execute any other documents reasonably required to effectuate the terms of this
14 Agreement including any amendments to this Agreement.

15 11.6 Cooperation. The Parties and their counsel will cooperate with each other and use
16 their best efforts, in good faith, to implement the Settlement by, among other things, modifying the
17 Agreement, submitting supplemental evidence, and supplementing points and authorities as
18 requested by the Court. In the event the Parties are unable to agree upon the form or content of any
19 document necessary to implement the Settlement, or on any modification of the Agreement that may
20 become necessary to implement the Settlement, the Parties will seek the assistance of a mediator
21 and/or the Court for resolution.

22 11.7 Different Facts. The Parties hereto, and each of them, acknowledge that, except for
23 matters expressly represented herein, the facts in relation to the dispute and all claims released by
24 the terms of this Agreement may turn out to be other than or different from the facts now known by
25 each Party and/or its counsel, or believed by such Party or counsel to be true, and each Party therefore
26 expressly assumes the risk of the existence of different or presently unknown facts, and agrees that
27 this Agreement shall be in all respects effective and binding despite such difference.
28

11.8 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 any portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

11.9 Settlement Amounts and Taxes. Defendant and Released Parties shall have no responsibility for deciding the validity of the Individual PAGA Payment or any other payments made pursuant to this Stipulation, shall have no involvement in or responsibility for the determination or payment of taxes, and shall have no liability for any errors made with respect to taxes. Plaintiffs, PAGA Counsel, Aggrieved Employees, and the LWDA/State of California shall be solely responsible for any and all tax obligation associated with their respective payments under this Agreement.

11.10 No Tax Advice. Neither Plaintiffs, 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.

11.11 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.

11.12 No Waiver. If Plaintiffs or Defendant fail to enforce this Agreement or to insist on performance of any term, that failure does not mean a waiver of that term or of the Agreement. The Agreement remains in full force and effect anyway.

11.13 Agreement Binding on Successors. This Agreement shall be binding upon and inure to the benefit of the Parties, LWDA, and Aggrieved Employees and their respective present and former heirs, trustees, executors, administrators, representatives, officers, directors, shareholders, agents, employees, insurers, attorneys, accountants, auditors, advisors, consultants, pension and welfare benefit plans, fiduciaries, parent companies, subsidiaries, affiliates, related companies, joint ventures, predecessors, successors, and assigns.

11.14 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.

11.15 Construction. The Parties have cooperated in the drafting and preparation of this Agreement. The Parties hereto agree that the terms and conditions of this Agreement are the result of lengthy, intensive, arms-length non-collusive negotiations between the Parties and that this Agreement is not to be construed in favor of or against any party by reason of the extent to which any party or its counsel participated in the drafting of this Agreement.

11.16 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during the Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

11.17 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 all Settlement funds, Plaintiffs shall destroy all paper and electronic versions of Aggrieved 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.

11.18 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.

11.19 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 Saturday, Sunday, or legal holiday in the State of California, then the due date shall be extended to the next following day which is not a Saturday, Sunday, or legal holiday in the State of California.

11.20 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 Plaintiffs:
Drew Lewis
Drew Lewis PC
3010 Lava Ridge Ct., Ste. 120
Roseville, California 95661
Drew@drewlewis.law

To Defendant:
William M. Woolman
Sagaser, Watkins & Wieland PC
5260 N. Palm Ave., Ste. 400
Fresno, California 93704
Bill@sw2law.com

11.21 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign, AdobeSign), 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.

11.22 Action to Enforce Agreement. In any suit or court action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover their attorneys' fees and costs.

11.23 California Labor Code §§ 206 and 206.5 Do Not Apply. The Parties agree that this Settlement involves the settlement of highly contested and disputed claims, such that the provisions of California Labor Code §§ 206 and 206.5 are not applicable to this Settlement or the Releases required by this Agreement.

11.24 Attorneys' Fees, Costs, and Expenses. Except as otherwise specifically provided for herein, each party shall bear their own attorneys' fees, costs, and expenses, taxable or otherwise,

incurred by them in or arising out of the Action and shall not seek reimbursement thereof from any other party to this Stipulation.

11.25 Stay of Litigation. The Parties agree that upon the full execution of this Agreement the litigation shall be stayed, except such proceedings necessary to implement and complete the Settlement, pending approval of the Settlement.

HAVING ELECTED TO EXECUTE THIS SETTLEMENT AGREEMENT, TO FULFILL THE PROMISES, AND TO RECEIVE THE CONSIDERATION SET FORTH ABOVE, PLAINTIFFS AND DEFENDANT, FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTER INTO THIS SETTLEMENT AGREEMENT.

IN WITNESS WHEREOF, the Parties knowingly and voluntarily and their counsel have executed this Stipulation on the date(s) below. The date of the Stipulation shall be the date of the latest signature.

Dated: 09 / 06 / 2024



Jacob Hammitt

Dated: 09 / 08 / 2024



Logan Cerutti

GOOBER

Dated: _____

By: _____
Mehdi Honarvar, President

incurred by them in or arising out of the Action and shall not seek reimbursement thereof from any other party to this Stipulation.

11.25 Stay of Litigation. The Parties agree that upon the full execution of this Agreement the litigation shall be stayed, except such proceedings necessary to implement and complete the Settlement, pending approval of the Settlement.

HAVING ELECTED TO EXECUTE THIS SETTLEMENT AGREEMENT, TO FULFILL THE PROMISES, AND TO RECEIVE THE CONSIDERATION SET FORTH ABOVE, PLAINTIFFS AND DEFENDANT, FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTER INTO THIS SETTLEMENT AGREEMENT.

IN WITNESS WHEREOF, the Parties knowingly and voluntarily and their counsel have executed this Stipulation on the date(s) below. The date of the Stipulation shall be the date of the latest signature.

Dated: _____

Jacob Hammitt

Dated: _____

Logan Cerutti

GOOBER

Dated: Sep 9, 2024

By: Mehdi Honarvar
Mehdi Honarvar (Sep 9, 2024 14:16 CDT)

Mehdi Honarvar, President

PROOF OF SERVICE
(CODE CIV. PROC. § 1013A(3))

STATE OF CALIFORNIA, COUNTY OF FRESNO

I am employed in the County of Fresno, State of California. I am over the age of 18 years and am not a party to the within action; my business address is 5260 North Palm Avenue, Suite 400, Fresno, California 93704.

On _____, 2024, I served the following document(s) described as *****on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

- ☐ **BY MAIL:** I deposited such envelope in the mail at Fresno, California. The envelope(s) was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.
- ☐ **BY OVERNIGHT COURIER:** I sent such document(s) on September 6, 2024, by with postage thereon fully prepaid at Fresno, California.
- ☐ **BY FAX:** I sent such document by use of facsimile machine telephone number (559) 473-1483. Facsimile cover sheet and confirmation is attached hereto indicating the recipients' facsimile number and time of transmission pursuant to California Rules of Court Rule 2.306. The facsimile machine I used complied with California Rules of Court Rule 2.301(3) and no error was reported by the machine.
- ☐ **BY PERSONAL SERVICE:** I placed the above document in a sealed envelope. I caused said envelope to be handed to our messenger service to be delivered by hand to the above address(es).
- ☒ **BY EMAIL:** I sent such document by use of email to the email address(es) above. (CCP § 1013(a)) Such document was scanned and emailed to such recipient and email confirmation is attached hereto indicating the recipients' email address and time of receipt pursuant to CCP § 1013(a).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____, 2024, at Fresno, California.

Dayana Ochoa

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SERVICE LIST

Drew Lewis, Esq. (SBN 309288)

Attorney for Plaintiff

DREW LEWIS, PC

2999 Douglas Blvd. Ste. 180

Roseville, CA 95661

Tel: (833) 600-7400

Email: drew@drewlewis.lawdschnebly@drewlewis.lawagonzalez@drewlewis.lawmail@drewlewis.lawjkraus@drewlewis.law*Service List Updated 7.16.2024*

Drew Lewis, Esq. (SBN 309288)
DREW LEWIS, PC
3010 Lava Ridge Ct., Suite 120
Roseville, California 95661
Telephone: (833) 600-7400

Attorneys for Plaintiffs, JACOB HAMMITT and
LOGAN CERUTTI

William Woolman (SBN 145124)
Charles P. Hamamjian (SBN 298685)
Megan Drutra (SBN 303749)
SAGASER, WATKINS & WIELAND, PC
5260 North Palm Avenue, Suite 400
Fresno, California 93704
Telephone: (559) 421-7000
Facsimile: (559) 473-1483

Attorneys for Defendant, GOOBER d/b/a M CUBED
TECHNOLOGIES

STATE OF CALIFORNIA

SUPERIOR COURT FOR THE COUNTY OF FRESNO

JACOB HAMMITT, an individual,
LOGAN CERUTTI, an individual,

Plaintiffs,

v.

GOOBER d/b/a M CUBED
TECHNOLOGIES, a California
Corporation, DOES 1-20, inclusive,

Defendant.

Case No.: 23CECG04290

**AMENDMENT TO PRIVATE
ATTORNEYS GENERAL ACT
SETTLEMENT AGREEMENT AND
RELEASE**

Complaint Filed: October 12, 2023
Trial Date: None Set

The Private Attorneys General Act Settlement Agreement and Release (“Agreement” or “Settlement”) entered into by and between JACOB HAMMITT and LOGAN CERUTTI (“Plaintiffs”), for themselves and as a representative of the State of California and the Aggrieved Employees, and GOOBER d/b/a M CUBED TECHNOLOGIES (“Defendant”), on or about September 9, 2024, is hereby amended as follows with respect to Section 1.18:

1.18 “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: the Attorney’s Fees and the Administrator’s Expenses Payment. The remainder is to be paid as PAGA Penalties to Aggrieved Employees as Individual PAGA Payments and to the LWDA as the LWDA PAGA Payment.

All other terms of the September 9, 2024 Agreement will remain as provided in that Agreement. Both the September 9, 2024 Agreement and this Amendment are subject to confirmation by the underlying court (Fresno County Superior Court, hereinafter, the “Court”).

IN WITNESS WHEREOF, the Parties knowingly and voluntarily and their counsel have executed this Stipulation on the date(s) below. The date of the Stipulation shall be the date of the latest signature.

Dated: 10 / 02 / 2024



Jacob Hammitt

Dated: 10 / 02 / 2024



Logan Cerutti

GOOBER

Dated: _____

By: _____
Mehdi Honarvar, President

1.18 “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: the Attorney’s Fees and the Administrator’s Expenses Payment. The remainder is to be paid as PAGA Penalties to Aggrieved Employees as Individual PAGA Payments and to the LWDA as the LWDA PAGA Payment.

All other terms of the September 9, 2024 Agreement will remain as provided in that Agreement. Both the September 9, 2024 Agreement and this Amendment are subject to confirmation by the underlying court (Fresno County Superior Court, hereinafter, the “Court”).

IN WITNESS WHEREOF, the Parties knowingly and voluntarily and their counsel have executed this Stipulation on the date(s) below. The date of the Stipulation shall be the date of the latest signature.

Dated: _____

Jacob Hammitt

Dated: _____

Logan Cerutti

GOOBER

Dated: Oct 2, 2024

By: Mehdi Honarvar
Mehdi Honarvar (Oct 2, 2024 14:03 CDT)
Mehdi Honarvar, President