

Edwin Aiwarzian (SBN 232943)
Joanna Ghosh (SBN 272479)
Melissa LeBlanc-Mansell (SBN 283080)
LAWYERS for JUSTICE, PC
450 N. Brand Blvd., Suite 900
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES—STANLEY MOSK COURTHOUSE

MAURICIO ANTHONY FONSECA,
individually, and on behalf of other
aggrieved employees pursuant to the
California Private Attorneys General Act;

Plaintiff,

vs.

ARM MANAGEMENT, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 23STCV27739

Honorable Barbara A. Meiers
Department 12

**DECLARATION OF MELISSA LEBLANC-
MANSELL IN SUPPORT OF PLAINTIFF'S
MOTION FOR APPROVAL OF PRIVATE
ATTORNEYS GENERAL ACT
SETTLEMENT AGREEMENT AND
RELEASE, AWARD OF ATTORNEYS'
FEES AND COSTS, GENERAL RELEASE
FEE, AND SETTLEMENT
ADMINISTRATION COSTS**

[Notice of Motion and Motion for Approval of
Private Attorneys General Act Settlement
Agreement and Release, Attorneys' Fees and
Costs, General Release Fee, and Settlement
Administration Costs; Declaration of Plaintiff
(Mauricio Anthony Fonseca); and [Proposed]
Order and Judgment filed concurrently
herewith]

Reservation ID: Specially Set by Court
Hearing Date: April 11, 2025
Hearing Time: 9:00 a.m.
Department: 12

Complaint Filed: November 13, 2023
Trial Date: None Set

DECLARATION OF MELISSA LEBLANC-MANSELL

I, Melissa LeBlanc-Mansell, hereby declare as follows:

1. I am an attorney licensed to practice law in the State of California. I am a member of Lawyers *for* Justice, PC, attorneys of record for Plaintiff Mauricio Anthony Fonseca (“Plaintiff”). The facts set forth in this declaration are within my personal knowledge or based on information and belief and, if called as a witness, I could and would competently testify thereto.

LITIGATION AND REPRESENTATIVE AND CLASS ACTION EXPERIENCE

2. For over a decade, Lawyers *for* Justice, PC has almost exclusively focused on the prosecution of consumer and employment class actions, involving wage-and-hour claims, race discrimination, unfair business practices, or consumer fraud. Currently, Lawyers *for* Justice, PC is the attorney of record in well over a dozen employment-related putative class actions in both state and federal courts in the State of California. Lawyers *for* Justice, PC is comprised of attorneys who focus on litigating complex wage-and-hour class and Private Attorneys General Act (“PAGA”) representative actions. Lawyers *for* Justice, PC has successfully litigated cases involving the executive, administrative, and other overtime exemptions to the State of California and federal overtime compensation requirements. Lawyers *for* Justice, PC has recovered, sometimes in association with other law firms, millions of dollars on behalf of thousands of individuals in California.

3. Edwin Aiwarzian is a Managing Member and Shareholder of Lawyers *for* Justice, PC. He received his Bachelor of Arts degree from Pepperdine University in April of 1999 and earned a Juris Doctor degree from Pepperdine University School of Law in May of 2004. He has extensive formal training in dispute resolution and negotiation from the Straus Institute for Dispute Resolution as part of its Masters in Dispute Resolution degree program. In addition, he has previously served as a pro bono mediator for the Los Angeles County Superior Court. In October of 2000, he obtained a Litigation Paralegal Certificate from the UCLA Extension Program. During the summer of 2000, he studied Legal Writing at Harvard University. From

approximately September 2002 to approximately December 2002, he served as a Judicial Extern to the Honorable Kim McLane Wardlaw of the United States Court of Appeals for the Ninth Circuit. From approximately June 2002 to approximately August 2002, he served as a Judicial Extern to the Honorable Earl Johnson, Jr. of the California Court of Appeal for the Second Appellate District. In December of 2004, he obtained a license to practice law from the California State Bar. Since in or around October of 2008, through his work at Lawyers *for* Justice, PC, he has almost exclusively focused on the prosecution of consumer and employment class actions. While employed by Lawyers *for* Justice PC, he has argued over one hundred (100) motions, taken or defended over one hundred fifty (150) depositions, prepared dozens of expert witnesses for deposition or trial, and attended over one hundred seventy-five (175) mediations. Together with other attorneys at the firm, and in some cases in conjunction with co-counsel, he has successfully litigated cases involving the executive, administrative, and other overtime exemptions to the State of California and federal overtime compensation requirements. Under his supervision, Lawyers *for* Justice, PC has successfully obtained class certification by contested motion practice in approximately sixteen (16) cases in the last decade, and litigated over 1,000 class action or representative action cases.

4. Arby Aiwazian is a Member and Shareholder of Lawyers *for* Justice, PC. He received his Bachelor of Arts degree from University of California, Los Angeles and graduated magna cum laude. He earned a Juris Doctor degree, cum laude, from Southwestern Law School. From approximately May 2007 to approximately July 2007, he served as a Judicial Extern to the Honorable Earl Johnson, Jr. of the California Court of Appeal for the Second Appellate District. From approximately August 2008 to approximately December 2008, he served as a Judicial Extern to the Honorable Kim McLane Wardlaw of the United State Court of Appeals for the Ninth Circuit. He was admitted to practice law in California in 2010. He is admitted to practice before all courts of the State of California and all United States District Courts in the State of California. He has worked on many wage-and-hour class action and representative action cases, taking the lead in taking and defending depositions, arguing motions, and attending mediations.

1 He has played an integral role in preparing matters for class certification, including and not
2 limited to, successful certification of a class in *Upson v. Sur La Table* (Los Angeles County
3 Superior Court Case No. BC424012), *Montazemi v. Regus Management* (Los Angeles County
4 Superior Court Case No. BC478769), and *Abdulhaqq v. Urban Outfitters* (Alameda County
5 Superior Court Case No. RG13680477). Under his supervision, dozens of class action or
6 representative action cases have resulted in settlements that have been granted court approval.
7 He has handled over one hundred and fifty (150) mediations and has worked on over two
8 hundred and fifty (250) class action or representative action cases which have resulted in
9 settlement.

10 5. Joanna Ghosh is a Managing Member of Lawyers for Justice, PC. She received a
11 Bachelor of Arts degree from California State University, Los Angeles in 2006, a Master of
12 Science degree from the London School of Economics in 2007, and a Juris Doctor degree from
13 Georgetown University Law Center in 2010. She is admitted to practice in California (since
14 2010) and in New York (since 2013) and she is also admitted to practice in all U.S. District
15 Courts in California, the U.S. Bankruptcy Court for the Central District of California, and the
16 U.S. Supreme Court. She has taken and defended dozens of depositions and successfully
17 handled motion practice in class action cases regarding discovery (including and not limited to,
18 regarding class contact information), class certification (both contested class certification and
19 stipulated class certification), arbitration agreements, coordination, and intervention. She has
20 successfully handled briefing and oral argument on appeal and obtained notable decisions
21 regarding Private Attorneys General Act claims and employer efforts to compel arbitration of
22 such claims, e.g., *Roberto Betancourt v. Prudential Overall Supply* (Cal. Ct. App., Mar. 7, 2017)
23 9 Cal.App.5th 439, cert. denied (Cal., May 24, 2017), cert. denied (U.S., Dec. 11, 2017) and *ZB,*
24 *N.A. v. Superior Court* (2019) 8 Cal.5th175. She has significant experience with class actions,
25 including and not limited to working on cases to obtain class certification through contested
26 motion practice and working on cases in the post-certification stage (e.g., post-certification
27 discovery, appeal, statistical sampling and pilot study, and trial preparation in conjunction with
28

co-counsel in a case involving a certified class consisting of approximately 2,600 individuals). She has extensive experience with class action and/or representative action settlements, and has handled this process in over five hundred (500) cases. Under her, Edwin Aiwazian, and Arby Aiwazian's supervision, Lawyers *for* Justice, PC has handled the class certification and court approval process for hundreds of class action and/or representative action matters that have successfully resolved. She is a member of the California Employment Lawyers Association and, on several occasions, has been a speaker regarding topics in wage and hour law at the organization's continuing legal education events.

6. I am a Member of Lawyers *for* Justice, PC. I received my undergraduate degree from Louisiana State University, Baton Rouge and my Juris Doctor degree from the University of Toledo College of Law. After graduating from law school, I clerked for the Honorable George J. Larke, Jr. of the Louisiana 32nd Judicial District Court. I was originally admitted to practice law in Louisiana in 2009, then admitted to practice law in California in 2012, in Washington in 2022, and in Oregon in 2023. Prior to joining Lawyers *for* Justice, PC, I practiced family law and personal injury law, serving as second chair for trials, practiced workers' compensation law, handled medical malpractice and plaintiff's-side securities and wage and hour class action cases, and served as a Compliance and Special Investigations Unit Manager for AIDS Healthcare Foundation. At Lawyers *for* Justice, PC, I have worked on many complex wage-and-hour class and PAGA representative action cases, and handled all aspects of litigation of said cases. Further, I have trained and managed a large team of attorneys at the firm, with a focus on evaluating and preparing cases for mediation and mandatory settlement conferences. I have extensive experience in the class action mediation process and have successfully negotiated settlements in over one hundred (100) cases.

THE LAWSUIT

7. Defendant owns and oversees various nationally branded restaurant franchises throughout Southern California. Defendant is headquartered in Pacific Palisades, California. Plaintiff Mauricio Anthony Fonseca is a former employee of Defendant.

8. Plaintiff has satisfied the prerequisites under California Labor Code § 2699.3(a), including, and not limited to, providing the California Labor and Workforce Development Agency (“LWDA”) and the employer with written notice of the specific provisions of the California Labor Code that are alleged to have been violated, including the facts and theories to support the alleged violations, by way of written correspondence on behalf of Plaintiff Mauricio Anthony Fonseca that was dated September 6, 2023 (“Fonseca PAGA Notice”). The PAGA Notice was sent by U.S. Certified Mail to the employers and submitted to the LWDA by way of online submission on the LWDA’s website. Aside from confirmation of receipt of the PAGA Notices, the LWDA did not respond to the PAGA Notice. A true and correct copy of the PAGA Notice is attached hereto as “**EXHIBIT 1.**”

9. On November 13, 2023, Plaintiff filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.* (“Operative Complaint”) against Defendant in the Los Angeles County Superior Court (“Court”), Case No. 23STCV27739 (the “Action”). Plaintiff’s core allegation is that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff and other Aggrieved Employees, of, *inter alia*, failing to pay overtime and minimum wages, failing to provide compliant meal and rest periods and associated premiums, failing to pay timely wages during employment and upon termination of employment, failing to provide complete and accurate itemized wage statements, failing to keep complete and accurate payroll records, and failing to reimburse necessary business-related expenses and costs.

10. On January 5, 2024, Defendant filed an Answer to the Operative Complaint. Defendant maintained, and continues to maintain, that it had, and continues to have, legally-compliant employment policies and practices throughout the time period at issue. Defendant denies that it ever violated any provision of the California Labor Code, including, but not limited to, those sections for which Plaintiff seeks civil penalties under PAGA.

11. On November 18, 2024, Plaintiff propounded Form Interrogatories—General (Set One), Requests for Admission (Set One), Request for Production of Documents (Set One), and

Special Interrogatories (Sets One and Two) on Defendant. Further, on October 29, 2024, Plaintiff also served a Notice of Deposition on Defendant's Person Most Knowledgeable, regarding various topics, including and not limited to, document retention, organizational structure, wage and hour practices, defenses, as well as topics relevant to claim evaluation, along with requests for production of documents.

THE SETTLEMENT REACHED IN THE ACTION

12. Marked and attached hereto as "EXHIBIT 2" is the Private Attorneys General Act Settlement Agreement and Release ("Settlement," "Agreement," or "Settlement Agreement"), entered into between Plaintiff Mauricio Anthony Fonseca, for himself and on behalf of the State of California with respect to Aggrieved Employees pursuant to the Private Attorneys General Act, and Defendant ARM Management, Inc. The parties have also drafted and agreed to the form and content of the proposed informational cover letter ("Cover Letter") for mailing to Aggrieved Employees when Individual Settlement Shares are distributed to them, in substantially the form attached as "EXHIBIT A" to the Settlement Agreement and "EXHIBIT 1" to the [Proposed] Order and Judgment Granting Approval of Private Attorneys General Act Settlement Agreement and Release, Award of Attorneys' Fees and Costs, General Release Fee, and Settlement Administration Costs. The Court is respectfully requested to approve the proposed Cover Letter.

13. The Settlement pertains to the following allegedly aggrieved employees: all current and former hourly-paid or non-exempt employees employed by Defendant within the State of California at any time during the PAGA Period ("Aggrieved Employees"). In Sections 3(a)(5) and 3(b) of the Settlement Agreement, the "PAGA Period" is defined as the period of September 6, 2022, through the earlier of December 28, 2024, or, if applicable, the Alternate End Date. Section 3(b) of the Settlement Agreement provides that if the actual number of Compensable Pay Periods during the period September 6, 2022 through December 28, 2024 is more than 24,750 Compensable Pay Periods, then, at the election of Defendant, one of the following will occur: (a) the Total Settlement Amount will increase by the percentage that the

actual number exceeds 24,750 Compensable Pay Periods (and the end date of the PAGA Period will be December 28, 2024) or (b) the PAGA Period shall end on the date that is earlier than December 28, 2024, when the total Compensable Pay Periods for the Aggrieved Employees total 24,750 Compensable Pay Periods (“Alternate End Date”). Based on information provided by Defendant, it is estimated that there are approximately 900 Aggrieved Employees who are credited with 22,500 Compensable Pay Periods during the period September 6, 2022 through October 31, 2024.

14. Defendant has agreed to pay the gross amount of \$600,000.00 (“Total Settlement Amount”), subject to possible increase under Section 3(b) of the Settlement Agreement, to settle this matter. The Settlement Agreement provides that the “Net Settlement Amount” will be the Total Settlement Amount less the following amounts: (1) Attorneys’ Fees and Costs in the amount of up to \$210,000.00 for attorneys’ fees and up to \$25,000.00 for reimbursement of litigation costs and expenses to Lawyers *for* Justice, PC (“Plaintiff’s Counsel”); (2) General Release Fee in the amount of up to \$10,000.00 to Plaintiff; and (3) Settlement Administration Costs of up to \$5,500.00 to the PAGA Settlement Administrator. Simpluris, Inc., the proposed third-party administrator (“PAGA Settlement Administrator”) has quoted \$4,500.00 to handle the administration of the Settlement, with a capped fee of up to \$5,500.00; undersigned counsel is not currently aware of whether the PAGA Settlement Administrator will charge more than the \$4,500.00 quoted by them, as such, the accompanying motion requests that the Court award \$4,500.00 to the PAGA Settlement Administrator. Plaintiff’s Counsel only seeks an award of reimbursement of litigation costs and expenses in the amount of \$14,533.36, and assuming that the requested Attorneys’ Fees and Costs, General Release Fee, and Settlement Administration Costs, are approved by the Court, the Net Settlement Amount is estimated to be approximately \$360,966.64. The Net Settlement Amount will be distributed to the LWDA and the Aggrieved Employees pursuant to California Labor Code § 2699(i). 75% of the Net Settlement Amount will be distributed to the LWDA, which is estimated to be \$270,724.98 (“LWDA Payment”), and 25% of the Net Settlement Amount, which is estimated to be \$90,241.66 (“Employees’ Portion”),

will be distributed to the Aggrieved Employees on a *pro rata* basis, based on their Compensable Pay Periods. The parties have agreed to retain Simpluris, Inc. (i.e., the PAGA Settlement Administrator) to handle the administration of the Settlement, and the Court is respectfully requested to appoint Simpluris, Inc. to serve as the PAGA Settlement Administrator.

THE LITIGATION AND WORK PERFORMED BY PLAINTIFF'S COUNSEL

15. The effectiveness of Plaintiff's Counsel, Lawyers *for* Justice, PC in prosecuting this case has translated into tangible monetary benefits for Plaintiff, Aggrieved Employees, and the State of California in the following respects: (1) their recoveries over a reasonably short period of time as opposed to waiting additional years for the same, or possibly, a worse, result; (2) a guaranteed result that compares favorably with other similar representative action settlements; and (3) significant savings in fees and costs which would have only increased significantly had the case progressed through trial and/or appeals.

16. After engaging in extensive investigations, formal and informal discovery, and exchange of information, data, and documents, the parties participated in extensive settlement discussions and negotiations to try to resolve the above-captioned lawsuit. These efforts included participating in a formal full-day mediation on October 28, 2024, conducted by Monique Ngo-Bonnici, Esq., a well-respected mediator experienced in mediating complex labor and employment matters. While the case did not settle at the mediation session, the parties agreed to continue informal settlement negotiations, and with the aid of the mediator, the parties reached the Settlement described herein. In the course of mediation and settlement discussions, the parties discussed all aspects of the case, including the risks and delays of further litigation and proceeding with trial, as well as the law relating to representative PAGA actions, off-the-clock theory, meal and rest periods, failure to provide reimbursement for business expenses, regular rate of pay calculations, Industrial Welfare Commission Wage Orders, arbitration agreements, wage-and-hour enforcement, the evidence produced and analyzed, and the possibility of bifurcation of discovery and/or trial and appeals, among other things. During all settlement discussions, the parties conducted their negotiations at arm's length in an adversarial

position.

17. Prior to reaching the Settlement, the parties investigated the veracity, strength, and scope of the PAGA claim and allegations, and were preparing for trial. Plaintiff served formal discovery requests and conducted significant investigation and informal discovery and exchange of information, documents, and data regarding the facts of the case, including and not limited to, the review, consideration, and analysis of a large volume of information, documents, and data obtained from Plaintiff, Defendant, and other sources. The information, documents, and data that were reviewed and analyzed by Plaintiff's Counsel included, and were not limited to, Plaintiff's employment records; a detailed sampling of Aggrieved Employees' time and pay data; meal premium reports, multiple iterations of Defendant's Employee Handbook; job descriptions; various forms, agreements, and acknowledgments (such as, Defendant's Mutual Arbitration Agreement, Time, Meal and Rest Period, and Workplace Safety Acknowledgement, Direct Deposit Acknowledgement Form, and Acknowledgement of Receipt of Employee Handbook); and Defendant's operations and employment practices, policies, and procedures, among other documents. Counsel for the parties undertook significant investigation and evaluation of the PAGA claim and related allegations, including, and not limited to, calculating the potential monetary recovery under PAGA. Other work performed by Plaintiff's Counsel included, but was not limited to: meeting and conferring with Defendant's counsel regarding the pleadings, case management, discovery, mediation, and settlement negotiations, among other issues; case strategy and analysis; researching, drafting, reviewing, and revising pleadings, court filings, motion-related papers, briefs for settlement negotiations and mediation, and the settlement agreement; propounding formal discovery on Defendant; claims evaluation and analysis; preparing for and participating in settlement negotiations and the mediation; and appearing for court proceedings. Counsel for the parties have further invested time to research the applicable law, which is evolving as it relates to representative PAGA actions, off-the-clock theory, meal and rest periods, business expense reimbursement, regular rate of pay calculations, Industrial Welfare Commission Wage Orders, arbitration agreements, wage-and-hour enforcement,

Plaintiff's claims, and Defendant's defenses, as well as facts discovered.

18. Based on investigation and information discovered, Plaintiff's Counsel believes that there is sufficient evidence to support the allegations that Defendant violated the California Labor Code. While Plaintiff's Counsel believes that the PAGA claim has merit and that Plaintiff will ultimately succeed in this litigation and prevail at trial, Plaintiff and Plaintiff's Counsel also recognize Defendant's defenses, the costs of further litigation, and multiple risks to recovery. For example, although wage-and-hour actions are amenable to resolution as to a group of employees, some courts have also found that, for various reasons, the issues raised by Plaintiff, including, and not limited to, the issues of non-compliant meal periods, non-compliant rest periods, off-the-clock work, and unreimbursed business expenses, raise individualized issues and/or are not suitable for adjudication as to a group of employees.

19. Plaintiff and her counsel have also considered the uncertainty and risk of the outcome of further litigation, including the difficulties and delays inherent in such litigation. In order to prevail on the PAGA claim, Plaintiff would have to prove that Defendant engaged in the alleged California Labor Code violations and demonstrate that Defendant's conduct warrants the imposition of civil penalties.

**THE STRENGTHS AND WEAKNESSES OF THE PAGA CLAIM, AND THE RANGE
OF POSSIBLE OUTCOMES**

20. In order for Plaintiff to prevail on the PAGA claim, he would have to prove that Defendant engaged in the alleged California Labor Code violations and demonstrate that Defendant's conduct warrants the imposition of civil penalties. Furthermore, although wage-and-hour actions are amenable to resolution as to a group of employees, some courts have also found that, for various reasons, the issues raised by Plaintiff may involve individualized issues and/or are not suitable for adjudication as to a group of employees.

21. From the inception of this litigation, Defendant indicated that it would aggressively litigate this case and contended that it would ultimately succeed in the action. Defendant maintained several defenses to Plaintiff's allegations, which, if successfully argued

1 and proven, had the potential to eliminate or substantially reduce recovery. Throughout this
2 litigation, Defendant maintained, and continues to maintain, that it did not engage in a uniform
3 policy and systematic scheme of wage abuse against any of its employees, and that it had, and
4 continues to have, legally-compliant employment policies and practices throughout the time
5 period at issue. Defendant denies that it ever violated any provision of the California Labor
6 Code. Defendant further denied, and continues to deny, that the lawsuit is appropriate for
7 representative adjudication for any purpose other than the Settlement.

8 22. Defendant also challenged Plaintiff's standing as an aggrieved employee and
9 denied that any of its other employees, with respect to whom Plaintiff seeks civil penalties, are
10 aggrieved. Also, multiple courts have taken an approach requiring a plaintiff to establish
11 standing and face the possibility of bifurcation of discovery and/or trial of the PAGA claim. See
12 *Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court*. (2009) 46th Cal.4th 993,
13 1001 (noting that PAGA "require[s] a plaintiff to have suffered an injury resulting from an
14 unlawful action"); *Stafford v. Dollar Tree Stores, Inc.* (E.D. Cal. Nov. 21, 2014) 2014 WL
15 6633396, at *4 (finding that judicial economy supported bifurcation because of the difficulties
16 and inherent uncertainties of being able to establish liability with respect to a large number of
17 potentially aggrieved employees and noted that "PAGA's public purpose would be ill-served if
18 the court finds [the plaintiff] has not been aggrieved by a Labor Code violation"); *Grappo v.*
19 *Coventry Fin. Corp.* (1991) 235 Cal.App.3d 496, 504 (Trial courts have "broad discretion to
20 determine the order of proof in the interest of judicial economy"); see also Cal. Code Civ. Proc. §
21 598 (The court may "when the convenience of witnesses, the ends of justice, or the economy and
22 efficiency of handling the litigation would be promoted thereby, on motion of a party, after
23 notice and hearing, make an order. . . that the trial of any issue or any part thereof shall precede
24 the trial of any other issue or any part thereof in the case[.]"); Cal. Code Civ. Proc. § 1048(b)
25 (Court can separate trial of any cause of action or of any separate issue in the interest of
26 convenience or to avoid prejudice); Cal. Code Civ. Proc. § 2019.020(b) (Courts have the power
27 to "establish the sequence and timing of discovery for the convenience of parties and witnesses
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and in the interests of justice”); *Horton v. Jones* (1972) 26 Cal.App.3d 952, 955 (stating that bifurcation and sequencing of litigation is allowed to avoid wasting time and money on trial when litigation of issues could be rendered moot).

23. Defendant pointed to case law that held that, given the derivative nature of the PAGA claim, it would stand or fall based on whether Plaintiff could successfully demonstrate the requisite elements to establish the various alleged violations of the California Labor Code that the PAGA claim is predicated on and derives from, and the success of showing, *inter alia*, failure to properly pay wages, failure to provide compliant meal and rest periods, failure to reimburse for expenses, etc.

24. Further, Defendant also maintained that, in addition to its strong arguments against the underlying claims, taking the current unsettled state of law, it would be unjust to award the maximum potential PAGA penalties. There was also a dearth of law and guidance regarding trials and/or assessment of penalties under the PAGA statute, there is no clearly established methodology for the valuation and/or assessment of PAGA penalties, and case outcomes (such as those discussed below) have shown that the actual amount of civil penalties actually assessed by trial courts is far less than the amount sought.

25. Defendant also argued that an important feature of PAGA is that the Court retains discretion to lower the penalties if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is “unjust, arbitrary and oppressive, or confiscatory.” See Cal. Lab. Code § 2699(e)(2); see also *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1136 (holding that a court may reduce the amount of PAGA penalties awarded to an employee based upon discretionary factors). Defendant maintained, and continues to maintain, that it had and continues to have, legally-compliant employment policies and practices throughout the time period at issue. Even if, *arguendo*, such violations occurred, which Defendant denies, Defendant contended that said violations would only be considered “initial violations” and thus heightened “subsequent violation” penalties were not warranted. See Cal. Lab. Code § 2699(f)(2); see also *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th

1 1157, 1208-09 (“Until the employer has been notified that it is violating a Labor Code provision
2 [...], the employer cannot be presumed to be aware that its continuing underpayment of
3 employees is a ‘violation’ subject to penalties.”). Defendant argued that it would be able to show
4 a lack of willfulness in the violations, such that the alleged California Labor Code violations
5 would not be considered “willful.” Defendant contended that, at best, even if a violation giving
6 rise to a penalty was shown for each pay period, only the lower civil penalty associated with
7 initial violations would apply. As discussed above, Defendant denied and continues to deny that
8 it ever violated any provision of the California Labor Code. However, assuming, *arguendo*, that
9 any violations occurred, Defendant argued the violations would not be viewed as subsequent
10 violations giving rise to heightened penalties. Defendant also argued that the Court was unlikely
11 to assess cumulative penalties for the maximum number of possible, separate California Labor
12 Code violations, because it would be unjust, arbitrary, oppressive, and/or confiscatory—
13 especially where certain conduct may be regulated by multiple provisions of the California Labor
14 Code that are interrelated and work in tandem. As such, Defendant contended that cumulative
15 penalties and heightened penalties would be unjust, arbitrary, oppressive, and confiscatory.

16 26. Plaintiff’s Counsel was also aware of case law indicating that courts have
17 attributed little separate value to PAGA claims, for example, allowing them to be resolved for \$0
18 where the other underlying California Labor Code claims are being (or have been) resolved, or,
19 assessing much lower amounts of civil penalties against employers than are sought. See e.g.,
20 *Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F.Supp.3d 1058, 1100-1101, 1103-1104,
21 1111 (finding that, under Labor Code § 2699(e)(2), “the Court has broad discretion to award
22 PAGA penalties the Court sees fit” and reducing the PAGA penalty award significantly from the
23 maximum penalties possible); *Morales v Bridgestone Retail Operations LLC*, Orange County
24 Superior Court No. 30-2017-00900244 (Aug. 2, 2018) (of \$7 million PAGA penalties requested,
25 the court awarded \$425,000); *Carrington v Starbucks Corp.* (2018) 30 Cal.App.5th 504, 517,
26 529 (of \$75 million in penalties sought, the court affirmed the trial court’s \$150,000 PAGA
27 penalty award based on 30,000 violations, which reduced the penalty rate to \$5 per violation);
28

1 *Arnold v San Diego Second Chance Program*, San Diego County Superior Court No. 37-2016-
2 00018375 (Dec. 18, 2017) (no PAGA penalties awarded); *Felczner v Apple Inc.*, San Diego
3 County Superior Court No. 37-2011-00102593 (Sept. 13, 2017) (no PAGA penalties awarded);
4 *In re Taco Bell Wage and Hour Actions* (E.D. Cal. Apr. 8, 2016) No. 1:07-cv-01314-SAB, 2016
5 U.S. Dist. LEXIS 48557 at *41 (the court declined to award PAGA penalties after trial); *Allen v*
6 *American Multi-Cinema*, Alameda County Superior Court No. RG11585502 (July 24, 2016) (no
7 PAGA penalties awarded); *Atempa v Pama*, San Diego County Superior Court (July 31, 2015)
8 (of PAGA penalties of \$456,133 sought, the court awarded \$197,434.00); *Driscoll v Granite*
9 *Rock*, Santa Clara County Superior Court No. 1-08-cv-103426 (Sept. 20, 2011) (the court
10 declined to award PAGA penalties); *Fleming v Covidien, Inc.*, No. ED CV10-01487 RGK (OPx)
11 (C.D. Cal. Aug. 12, 2011) 2011 U.S. Dist. LEXIS 154590 at **8-9 (of \$2,800,000 PAGA
12 penalties requested, the court awarded \$500,000); *Aguirre v Genesis Logistics*, No. SACV 12-
13 00687-JVS (ANx) (C.D. Cal. Dec. 30, 2013) 2013 U.S. Dist. LEXIS 189820 at **6-7 (of
14 \$1,800,000 PAGA penalties requested, the court awarded \$500,000); *Halevi v Aroma Bakery*
15 *Café, Inc.*, Los Angeles County Superior Court No. 468146 (Aug. 30, 2013) (the court declined
16 to award PAGA penalties after trial awarding wages to class on the basis that, inter alia, the
17 lawsuit was not prompted by availability of PAGA penalties, penalties were not necessary to
18 remedy ongoing or future violations, corporate defendants corrected violations and were no
19 longer in business, and plaintiffs did not offer evidence establishing imposition of penalties on
20 individual defendants would not be confiscatory).

21 27. Importantly, Defendant also contended that the claims of Plaintiff and other
22 Aggrieved Employees are subject to enforceable agreements that included, *inter alia*, binding
23 individual arbitration and class and collective action waiver provisions. Defendant contended
24 that, taken together, these agreements would have claim preclusive impact, or otherwise, could
25 effectively be used to require Aggrieved Employees to engage in individual arbitration of their
26 individual claims on which the PAGA claim is predicated. There is also uncertainty regarding
27 PAGA claims due to decisions of the high courts and recent amendment of the PAGA statute.
28

For example, as a result of a recent United States Supreme Court decision, it is more likely that employer agreements containing arbitration terms will impact the viability of adjudication of PAGA claims in the judicial forum. *Viking River Cruises, Inc. v. Moriana*, (2022) 596 U.S. 639. Although the substantive statutory right to pursue a PAGA claim has not been eviscerated and has been preserved, arbitration agreements may be used to select the forum and procedure to be used to resolve PAGA claims to some extent. Somewhat recently, the California Supreme Court confirmed that an aggrieved employee who has been compelled to arbitrate claims under PAGA that are premised on California Labor Code violations that were sustained by the aggrieved employee still maintains statutory standing to pursue a PAGA claim arising out of events involving other employees through a PAGA representative claim. *Adolph v. Uber Technologies* (2023) 14 Cal.5th 1104. Nevertheless, while the arbitrable and non-arbitrable components of an action are not severed from one another, it is still possible that trial courts will stay the representative/non-individual PAGA claims pending arbitration of a plaintiff's individual PAGA claims and if a plaintiff is determined to not be an "aggrieved employee" for PAGA purposes, issue preclusion may apply and, once reduced to a final judgment, trial courts are bound by the arbitrator's determination and the plaintiff may lose standing to pursue non-individual PAGA claims. *Id.* at 693.

28. Unless otherwise specified, all citations and references to the PAGA statute contained herein are to the version of the statute prior to the recent amendment effective July 1, 2024; the amended statute does not apply to the above-captioned action and the Settlement pursuant to California Labor Code § 2699(v)(1), as amended, because the above-captioned action was filed prior to June 19, 2024. It is worth noting that the recent amendment of the PAGA statute enacted on July 1, 2024, adopting, *inter alia*, modified standing requirements, codifying a manageability requirement, capping civil penalties that can be assessed against an employer if an employer meets certain conditions, and allowing an employer to cure violations to avoid the assessment of civil penalties if an employer meets certain conditions, has created uncertainty regarding the future of claims for civil penalties under PAGA. As such, at the time that the Parties reached the settlement, and also now, there is

1 uncertainty regarding the PAGA claim.

2 29. While Plaintiff disagrees with Defendant's contentions and maintains that his
3 PAGA claim have merit, in reaching the settlement, Plaintiff and his counsel took into account
4 the strengths and weaknesses of each side's position and the uncertainty of how the case might
5 have concluded as litigation continued, at trial, and/or upon appeal.

6 30. The parties had the opportunity to review extensive information, documents, and
7 data regarding Plaintiff's and Aggrieved Employees' employment with Defendant in an effort to
8 determine the potential value and strength of the PAGA claim. Counsel for the parties invested
9 time reviewing and analyzing the relevant information, documents, and data, and this
10 information made it possible to calculate the potential value of the PAGA claim (as discussed
11 below). Accordingly, the parties have conducted sufficient investigation and review of data,
12 documents, and information to be sufficiently apprised of the nature and extent of the PAGA
13 claim asserted in this lawsuit, and to enable both sides to fully evaluate the Settlement for its
14 fairness, adequacy, and reasonableness. The parties have also considered the settlement
15 negotiations and the recommendations of the mediator Monique Ngo-Bonnici, Esq., who is
16 highly experienced in mediation complex labor and employment matters. The parties have
17 agreed that this case is well-suited for settlement given the legal issues relating to the PAGA
18 claim, as well as the costs, risks, and delays to both sides that would attend further litigation.
19 The Settlement takes into account the strengths and weaknesses of each side's position and the
20 uncertainty of how the case might have concluded as litigation continued, at trial, and/or upon
21 appeal.

22 31. The foregoing discussion confirms that the amount of the Settlement is adequate
23 in light of the legal basis, facts, evidence, and circumstances in connection with Plaintiff's
24 allegations and the PAGA claim. Neither liability nor the ability to adjudicate and/or recover
25 civil penalties on a representative basis is clear-cut, which is why the Parties elected to settle this
26 matter. Plaintiff's Counsel considered the defenses asserted, information and evidence obtained,
27 and circumstances in this case, which posed risks to representative adjudication and monetary
28

recovery. Plaintiff's Counsel also considered the fact that, by law, the Court has the discretion to reduce and/or assess lower penalties, that it was not clear that heightened penalties would apply, and that stacking and/or cumulative penalties may not be allowed.

32. The Settlement Agreement has been submitted to the California Labor and Workforce Development Agency in conformity with California Labor Code § 2699(l)(2). Attached hereto as "EXHIBIT 3" is a true and correct copy of the confirmation of submission from the LWDA.

ATTORNEYS' FEES REQUESTED BY PLAINTIFF'S COUNSEL

33. As set forth more fully in the accompanying Motion, Plaintiff's Counsel seeks attorneys' fees in the amount of \$210,000.00, which represents approximately thirty-five percent (35%) of the Total Settlement Amount. Pursuant to the contingency-fee agreement entered into by and between Plaintiff and Plaintiff's Counsel, Plaintiff has agreed to a contingency-fee of at least thirty-five percent (35%) of the recovery. The attorneys' fees sought are commensurate with: (1) the risk that Plaintiff's Counsel took in commencing the case; (2) the time, effort, and expense that Plaintiff's Counsel dedicated to the case; (3) the skill and determination that Plaintiff's Counsel has shown; (4) the results that Plaintiff's Counsel has achieved throughout the litigation; (5) value of the settlement that Plaintiff's Counsel has achieved in the case; and (6) the other cases that Plaintiff's Counsel has turned down in order to devote its time and efforts to this case.

**LITIGATION COSTS AND EXPENSES INCURRED
BY PLAINTIFF'S COUNSEL**

34. The Settlement provides for reimbursement of litigation costs and expenses of up to \$25,000.00. Plaintiff's Counsel seeks reimbursement of \$14,533.36 for litigation costs and expenses incurred in this case, as reflected in the Case Cost Detail attached hereto as "EXHIBIT 4." It should be noted that Plaintiff's Counsel has borne all of the risks and costs of litigation to date and will not receive any compensation until a recovery is obtained in this matter. These costs and expenses were reasonable and necessary in the prosecution of this matter and to obtain the Settlement. The amount sought for reimbursement is less than the maximum amount

1 (\$25,000.00) allocated under the Settlement Agreement for reimbursement of litigation costs and
2 expenses. The cost savings of \$10,466.64 will be part of the Net Settlement Amount.

3 **GENERAL RELEASE FEE TO PLAINTIFF**

4 35. For his broader individual waiver and release of claims with a California Civil
5 Code Section 1542 waiver (set forth in Section 8(b) of the Settlement Agreement), the
6 Settlement provides a General Release Fee to Plaintiff in the amount of up to \$10,000.00 to be
7 paid out of the Total Settlement Amount, subject to approval by the Court. The requested
8 General Release Fee is fair and appropriate. It is also worth noting that Plaintiff has undertaken
9 significant efforts and worked to spearhead the pursuit of this matter. By initiating and pursuing
10 this matter, Plaintiff stepped into the shoes of the State of California and undertook the
11 responsibilities of serving in a representative capacity. Plaintiff has spent a substantial amount
12 of time and effort discussing his employment with his counsel, gathering and producing relevant
13 documents and information, and providing the facts and evidence necessary to attempt to prove
14 the allegations. For example, Plaintiff spent time providing information and documents in
15 preparation for mediation and throughout the case and continued settlement negotiations.
16 Plaintiff was available whenever his counsel needed him and actively tried to obtain and provide
17 information that would facilitate the pursuit of the PAGA claim. Accordingly, it is appropriate
18 and just for Plaintiff to receive a General Release Fee, in addition to any individual penalties
19 payment he will receive as an aggrieved employee.

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Executed this 4th day of April 2025, at Salem, Oregon.

Melissa LeBlanc-Mansell

EXHIBIT 1



September 6, 2023

BY ONLINE SUBMISSION

California Labor & Workforce Development Agency
PAGAFilings@dir.ca.gov

Re: ARM MANAGEMENT, INC.

Dear Representative:

We have been retained to represent Mauricio Anthony Fonseca against Arm Management, Inc. (including any and all affiliates, subsidiaries, parents, directors, officers, agents, and executive employees) (collectively referred to as "Arm Management") for violations of California wage-and-hour laws. Mr. Fonseca seeks penalties for violations of the California Labor Code, which are recoverable under California Labor Code section 2698, et seq., the Labor Code Private Attorneys General Act of 2004 ("PAGA") and all other remedies available under PAGA.

Mr. Fonseca seeks these remedies on behalf of the State of California and "aggrieved employees," as defined herein. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Arm Management employed Mr. Fonseca as an hourly-paid, non-exempt employee from approximately June 2022 to approximately March 2023, in the State of California.

The "aggrieved employees" that Mr. Fonseca may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees who worked for any of the above-referenced entities within the State of California.

Based on the following facts and theories, Arm Management has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and IWC Wage Orders including *inter alia*, Wage Order 4-2001.

Arm Management required aggrieved employees to perform work before their scheduled shifts, after their scheduled shifts, during off-the-clock meal breaks, and/or during rest breaks and failed to compensate aggrieved employees for this time. Such work included, but was not limited to, waiting in line to clock-in and/or clock out, and responding to work-related inquiries.

California Labor Code sections 510 and 1198 require employers to pay time-and-a-half or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates at one-

and-one-half times or double the regular rate of pay, including additional remuneration. During the relevant time period, Mr. Fonseca and other aggrieved employees worked in excess of 8 hours in a day and 40 hours in a week. Therefore, Mr. Fonseca and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each meal or rest period that is not provided. During the relevant time period, Arm Management required Mr. Fonseca and other aggrieved employees to work during meal and rest periods and failed to compensate them properly for non-compliant meal and rest periods including, *inter alia*, short, late, interrupted, and missed meal and rest periods.

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. During the relevant time period, Arm Management failed to pay Mr. Fonseca and other aggrieved employees all wages due to them within any time period specified by California Labor Code sections 201 and 202, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, Arm Management failed to pay Mr. Fonseca and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, Arm Management did not provide Mr. Fonseca and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from Arm Management were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include the total hours worked by Mr. Fonseca and other aggrieved employees, including time spent working off-the-clock and during meal and rest periods as discussed above.

California Labor Code sections 551 and 552 require that every person employed in any occupation of labor is entitled to one day's rest in a seven-day workweek, that no employer of labor shall cause

his employees to work more than six days in a workweek, and that an employer shall pay a civil penalty in the amounts of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation. During the relevant time period, Mr. Fonseca and the aggrieved employees were required to regularly and/or consistently work in excess of six (6) days in a workweek. During the relevant time period, Mr. Fonseca and the aggrieved employees were required to work in excess of thirty (30) hours in a week and/or six (6) hours in any one (1) day thereof, during workweeks in which they were required to work in excess of six (6) days. During the relevant time period, Mr. Fonseca and the aggrieved employees were required to work in excess of six (6) days in a workweek without accumulating or being provided the opportunity to take at least one (1) day of rest, and when Mr. Fonseca and the aggrieved employees accumulated days of rest, they were not actually provided the opportunity to take the equivalent of one (1) day's rest in seven (7) during each calendar month.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years. During the relevant time period, Arm Management failed to keep accurate and complete payroll records showing the actual hours worked daily and the wages earned by Mr. Fonseca and other aggrieved employees, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code section 2810.5 requires an employer to provide written notice to an employee, at the time of hiring, containing the following information:

The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable. Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances. The regular payday designated by the employer in accordance with the requirements of this code. The name of the employer, including any "doing business as" names used by the employer. The physical address of the employer's main office or principal place of business, and a mailing address, if different. The telephone number of the employer. The name, address, and telephone number of the employer's workers' compensation insurance carrier. That an employee: may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates. Any other information the Labor Commissioner deems material and necessary.

Arm Management failed to accurately provide aggrieved employees with the requisite notice in violation of California Labor Code section 2810.5.

California Labor Code sections 1194, 1197, and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, Arm Management did not provide Mr. Fonseca and other aggrieved employees with the minimum wages to which they were entitled for work performed “off-the-clock.”

California Labor Code section 1198 provides that “The employment of any employee ... under conditions of labor prohibited by the [Industrial Wage Orders] is unlawful.” The applicable Industrial Wage Orders, including *inter alia*, Wage Order 4-2001, require that for each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay. Further, if an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee’s regular rate of pay. During the relevant time period, Arm Management failed to pay Mr. Fonseca and other aggrieved employees half the usual or scheduled day’s work in an amount no less than two (2) hours nor more than four (4) hours at the employee’s regular rate of pay for workdays in which Mr. Fonseca and the other aggrieved employees reported to work and were furnished less than half the usual or scheduled day’s work. During the relevant time period, Arm Management failed to pay Mr. Fonseca and other aggrieved employees for two (2) hours at the employee’s regular rate of pay on days in which Mr. Fonseca and the other aggrieved employees were required to report for work a second time in one workday and were furnished less than two (2) hours of work upon the second reporting.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During the relevant time period, Mr. Fonseca and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by Arm Management. These costs include, but are not limited to, the use of a personal phone for work-related tasks, and the purchasing and maintenance of clothing and footwear in compliance with the dress code.

Therefore, on behalf of all aggrieved employees, Mr. Fonseca seeks all applicable penalties arising out of the above-referenced wage, hour, and payroll practices, or which could be assessed and collected by the Labor and Workforce Development Agency, for violation of the California Labor Code pursuant to PAGA, including civil penalties pursuant to Labor Code section 558.

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If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

With kind regards,

A handwritten signature in dark ink, reading "Gabriella Sole". The script is cursive and fluid, with the first name and last name clearly distinguishable.

Gabriella Sole, Esq.

Cc: (By U.S. Certified Mail / Return Receipt Requested)

Arm Management, Inc.
c/o Registered Agents Inc
Agent for Service of Process
1401 21st Street, Suite R
Sacramento, CA 95811

EXHIBIT 2

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

This Private Attorneys General Act Settlement Agreement and Release (“Settlement Agreement” or “Settlement”) is entered into by and between Mauricio Anthony Fonseca (“Plaintiff”), for himself and as a representative of the State of California with respect to the Aggrieved Employees (as defined in Section 3(a)(5) below) and ARM Management, Inc. (“Defendant”), subject to approval by the Court. The term “Party” or “Parties” as used herein shall refer to Plaintiff, Defendant, or both, as may be appropriate.

1. **Recitals.** This Settlement Agreement is made with reference to the following facts:

(a) Plaintiff is a former employee of Defendant. Plaintiff was employed by Defendant from approximately June 2022 to approximately March 2023;

(b) On September 6, 2023, Lawyers *for* Justice, PC (“Plaintiff’s Counsel”), submitted a letter on behalf of Plaintiff to the California Labor and Workforce Development Agency (“LWDA”) and Defendant, to notify the LWDA and Defendant, pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”) of Plaintiff’s intent to seek civil penalties under PAGA for Defendant’s alleged violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, and 2810.5 and Industrial Welfare Commission Wage Orders, including *inter alia*, Wage Order 5-2001, thereby initiating LWDA Case Number LWDA-CM-979916-23 (the “PAGA Notice”);

(c) On November 13, 2023, Plaintiff filed his Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *et seq.* (“Operative Complaint”), commencing a representative action under PAGA against Defendant, entitled *Fonseca v. ARM Management, Inc.*, Los Angeles Superior Court Case No. 23STCV27739 (the “Action”). The Operative Complaint asserts a single cause of action for civil penalties under PAGA, for violations of multiple provisions of the California Labor Code and applicable Industrial Welfare Commission Wage Orders;

(d) On October 28, 2024, the Parties mediated the Action with Monique Ngo-Bonnici, Esq., and, while the matter did not settle at the mediation session, with extensive post-mediation settlement negotiations and the aid of the mediator’s evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety;

(e) 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 Claims (as defined in Section 8(a) below).

2. **No Admission of Wrongdoing.** The Parties agree that neither this Settlement Agreement nor the furnishing of the consideration for this Settlement Agreement shall be deemed or construed at any time for any purpose as an admission by the Released Parties of wrongdoing or evidence of any liability or unlawful conduct of any kind.

3. **Consideration.**

(a) In consideration for Plaintiff signing this Settlement Agreement and complying with its terms, Defendant shall pay the maximum gross sum of \$600,000.00 (the “Total Settlement Amount”) to resolve the Action and Released Claims (as defined herein), which will be paid as follows:

(1) Attorneys’ fees in the amount of thirty-five percent (35%) of the Total Settlement Amount, which is two hundred ten thousand dollars (\$210,000) if the Total Settlement Amount remains \$600,000 and reimbursement of litigation costs and expenses in the amount of up to Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) (collectively, “Attorneys’ Fees and Costs”) to Plaintiff’s Counsel, which Defendant will not contest.

(2) A general release fee of up to the amount of ten thousand dollars (\$10,000) (“General Release Fee”) to Plaintiff, which Defendant will not contest.

(3) Costs and expenses of administration of the Settlement up to the amount of Five Thousand Five Hundred Dollars and Zero Cents (\$5,500.00) (“Settlement Administration Costs”) to Simpluris, Inc. (the “PAGA Settlement Administrator”).

(4) The amounts stated in Sections 3(a)(1) – 3(a)(3) above, once approved by the Court, shall be paid from the Total Settlement Amount. The balance remaining after these deductions is referred to as the “Net Settlement Amount.”

(5) Seventy-five percent (75%) of the Net Settlement Amount will be distributed to the LWDA (“LWDA Payment”); and the remaining twenty-five percent (25%) will be distributed to all current and former hourly-paid or non-exempt employees who worked for Defendant in the State of California during the PAGA Period (the “Aggrieved Employees”). The period from September 6, 2021 through the earlier of (a) December 28, 2024 or (b) the Alternate End Date, at Defendant’s election is the “PAGA Period”. The 25% portion of the Net Settlement Amount payable to Aggrieved Employees is referred to as the “Employees’ Portion.”

(b) The Aggrieved Employees are estimated to consist of approximately 900 individuals who worked approximately 22,500 Compensable Pay Periods. If the actual number of Compensable Pay Periods during the PAGA Period is more than ten percent (10%) above 22,500 the Total Settlement Amount will be increased by the percentage that the actual number exceeds 24,750 Compensable Pay Periods, or the PAGA Period will be cutoff at the 10% escalator or December 28, 2024, whichever occurs first (“Alternate End Date”), at Defendant’s election.

(c) Because this is a settlement of PAGA claims for civil penalties only, no portion of the Settlement is allocated to unpaid wages. One Hundred Percent (100%) of the payments for Attorneys’ Fees and Costs, General Release Fee, and the Net Settlement Amount to be paid to the LWDA and Aggrieved Employees as described in Section 3(a) above will be treated and reported for tax purposes as non-wage payments and the PAGA Settlement Administrator will be responsible for issuing IRS Forms 1099 as required.

4. **Court Approval is Required.** Plaintiff understands and agrees that the State of California and Aggrieved Employees, including Plaintiff, would not receive the

consideration specified in Section 3(a) above, except for Plaintiff's execution of this Settlement Agreement, and the fulfillment of the promises contained herein, as well as Court approval of the Settlement. If this Settlement Agreement is not approved by the Court, it shall be null and void.

5. Disbursal of Settlement Funds.

(a) Subject to Section 4 above, Defendant shall remit to the PAGA Settlement Administrator the sums described more fully in Section 3(a) above, after all of the following has occurred: (i) the Settlement Agreement is fully executed by all Parties and their counsel; and (ii) the Court has entered an order approving the Settlement Agreement.

(b) Upon complete distribution of the Total Settlement Amount by the PAGA Settlement Administrator in accordance with this Settlement Agreement, the PAGA Settlement Administrator will notify the Parties of distribution of the entire Total Settlement Amount.

6. Approval and Implementation of the PAGA Settlement.

(a) 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 others 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. 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).

(b) The Parties further agree to cooperate in the drafting and/or filing of any further documents and/or filings reasonably necessary to be prepared and/or filed, and to take all steps that may be requested by the Court in order to obtain approval and implementation of this Settlement Agreement, and the payments described in Section 3(a) above.

(c) The Parties shall seek to obtain Court approval of this Settlement Agreement by way of an unopposed motion to be filed by Plaintiff's Counsel. Plaintiff's Counsel shall provide a draft of all documents to be submitted in connection with the motion to approve this Settlement Agreement to Jesse M. Caryl and Jennifer Carver of Bent Caryl & Kroll, LLP ("Defendant's Counsel") for review; Defendant's Counsel will be given an opportunity to comment on the papers prior to their being filed with the Court, and such comments will be implemented to the extent reasonable.

(d) The Parties expressly acknowledge that the Court's approval of the Settlement Agreement is a condition precedent to any payments described in this Settlement Agreement. Therefore, the Parties further acknowledge that, should the Court not grant approval of this Settlement Agreement and/or should the Court refuse to grant judgment or dismissal of the Action and close the Action based on the Settlement, the entirety of this Settlement Agreement shall be null and void.

7. Payment of Total Settlement Amount / Notice to Recipients.

(a) Subject to Court approval of this Settlement Agreement, payment of the sums described in Section 3(a) above shall be made by Defendant by transmitting the

required sums to a qualified settlement account established by the PAGA Settlement Administrator for administration of this Settlement, within fourteen (14) calendar days of the Court's order granting approval of this Settlement Agreement. If the date by which payment by Defendant is due falls on a Saturday, Sunday or legal holiday in the State of California, then the due date shall be extended the next following day which is not a Saturday, Sunday or legal holiday in the State of California.

(b) Each Aggrieved Employee will be entitled to a *pro rata* share of 25% of the Net Settlement Amount (i.e., the Employees' Portion) based upon the number of pay periods they each worked between September 6, 2021 through December 28, 2024 or the Alternate End Date ("Compensable Pay Periods"). The pro rata share will be based on Defendant's payroll records showing the names and number of pay periods worked during the Compensable Pay Periods. Specifically, to calculate each Aggrieved Employee's share of the Employees' Portion ("Individual Settlement Share"), the PAGA Settlement Administrator shall: (i) for each Aggrieved Employee, divide the number of Compensable Pay Periods he or she individually worked by the total aggregate number of Compensable Pay Periods worked by all Aggrieved Employees, and then (ii) multiply this amount by the Employees' Portion to arrive at each Aggrieved Employee's Individual Settlement Share.

(1) One Hundred Percent (100%) of all Individual Settlement Shares are to be considered penalties and the PAGA Settlement Administrator will not undertake any deductions, withholding, or remittances for local, state, or federal taxes. Aggrieved Employees' Individual Settlement Shares will be reported on an IRS Form 1099, as required by the IRS.

(c) The PAGA Settlement Administrator shall distribute each Individual Settlement Share by way of check, along with a cover letter ("Cover Letter") agreed to by the Parties and approved by the Court, in substantially the form attached hereto as "Exhibit A", in the following manner:

(1) No later than fourteen (14) calendar days after the Court's order granting approval of the Settlement, Defendant shall provide the PAGA Settlement Administrator with a list of all Aggrieved Employees (the "Aggrieved Employees List"), containing the following information for each Aggrieved Employee: (i) first and last name; (ii) last known address; (iii) last known telephone number; (iv) Social Security number; and (v) Compensable Pay Periods.

(2) The PAGA Settlement Administrator shall conduct one (1) National Change of Address ("NCOA") search for all individuals identified on the Aggrieved Employees List, and update addresses for Aggrieved Employees to the extent updated addresses are located through the NCOA search.

(3) No later than fourteen (14) calendar days after the PAGA Settlement Administrator receives the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement Administrator shall mail the agreed-upon Cover Letter and Individual Settlement Share checks (together, the "PAGA Settlement Package") to all Aggrieved Employees by first-class United States mail. For each PAGA Settlement Package that is returned undeliverable within thirty (30) calendar days of the initial mailing, the PAGA Settlement Administrator shall promptly attempt to locate an alternate, updated address for the Aggrieved Employee at issue, by using a skip-trace search and shall attempt one (1) re-mailing of the PAGA Settlement Package.

(4) The Individual Settlement Share checks issued to Aggrieved Employees shall remain valid for ninety (90) calendar days, and thereafter, shall be canceled. Funds associated with canceled checks shall be transmitted to the State Controller's Office Unclaimed Property Division in the name of the Aggrieved Employee(s) at issue and in the amount of his or her respective Individual Settlement Share(s).

(d) No later than fourteen (14) calendar days after the PAGA Settlement Administrator receives the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement Administrator shall transmit the LWDA Payment to the LWDA.

(e) No later than fourteen (14) calendar days after the PAGA Settlement Administrator receives the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement Administrator shall transmit the Attorneys' Fees and Costs to Plaintiff's Counsel, unless instructed otherwise by Plaintiff's Counsel. At the request of Plaintiff's Counsel, the PAGA Settlement Administrator may purchase annuities, utilize United States Treasuries and bonds, or utilize any other attorney fee deferral vehicles and any additional expenses associated with doing so will be paid separately by Plaintiff's Counsel.

(f) No later than fourteen (14) calendar days after the PAGA Settlement Administrator receives the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement Administrator shall transmit the General Release Fee to Plaintiff.

(g) No later than fourteen (14) calendar days after the PAGA Settlement Administrator receives the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement Administrator shall transmit the Settlement Administration Costs to itself, only after the PAGA Settlement Packages have been mailed to all Aggrieved Employees.

8. **Release of Claims by Plaintiff, Aggrieved Employees, and the State of California.**

(a) Upon the date the Court has entered an order approving the Settlement Agreement and full funding of the Total Settlement Amount, and except as to the rights and obligations created by this Settlement Agreement, Plaintiff and the State of California with respect to Aggrieved Employees, will be deemed to have knowingly and voluntarily released and forever discharged Defendant, including Defendant's parent corporation, affiliates, subsidiaries, divisions, predecessors, insurers, successors and assigns, and their current and former employees, attorneys, officers, directors and agents thereof, both individually and in their business capacities, and their employee benefit plans and programs and the trustees, administrators, fiduciaries and insurers of such plans and programs (collectively, the "Released Parties"), to the full extent permitted by law, of and from the Action and from any and all claims, arising during the PAGA Period, for civil penalties under California Labor Code section 2698, *et seq.* ("PAGA") as well as any interest, fees, and costs available under PAGA, based on the factual allegations in the Operative Complaint, including but not limited to, for failure to pay minimum, regular, and overtime wages, 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, 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(a), 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198,

2800, 2802, and 2810.5, and Industrial Welfare Commission Wage Orders, including *inter alia*, Wage Order 5-2001 (collectively, the “Released Claims”).

(b) Upon the date the Court has entered an order approving the Settlement Agreement and full funding of the Total Settlement Amount, and except as to the rights and obligations created by this Settlement Agreement, Plaintiff, individually and on behalf of his heirs, executors, administrators, representatives, attorneys, successors and assigns, will be deemed to have knowingly and voluntarily released and forever discharged Released Parties, to the full extent permitted by law, from any and all claims of every nature whatsoever, known or unknown, suspected or unsuspected, which Plaintiff has or may have as of the date the Court has entered an order approving the Settlement Agreement. This broader release includes, but is not limited to, all claims arising directly or indirectly from Plaintiff’s employment with Defendant and the termination of that employment, including without limitation claims arising under federal, state, or local laws and claims for unpaid wages, penalties, liquidated damages, breach of contract, breach of the implied covenant of good faith and fair dealing, infliction of emotional distress, wrongful or retaliatory discharge, harassment, discrimination, defamation, impairment of economic opportunity, and violations of public policy, the Fair Labor Standards Act, the California Labor Code, the California Fair Employment and Housing Act, the California Business and Professions Code, the California Constitution, the Civil Rights Act of 1866, Title VII of the Civil Rights Act of 1964, and the Americans with Disabilities Act of 1990. With respect to those claims released by Plaintiff in an individual capacity, Plaintiff acknowledges and waives any and all rights and benefits available under California Civil Code Section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Plaintiff understands and agrees that claims or facts in addition to or different from those which are now known or believed by his to exist may hereafter be discovered. It is Plaintiff’s intention to, upon the date the Court has entered an order approving the Settlement Agreement and full funding of the Total Settlement Amount, settle fully and release all claims he now has against the Released Parties, whether known or unknown, suspected or unsuspected. Notwithstanding the above, the general release by Plaintiff shall not extend to claims for workers’ compensation benefits, claims for unemployment benefits, or other claims that may not be released by law.

9. **Governing Law and Interpretation.**

(a) This Settlement Agreement shall be governed and conformed in accordance with the laws of the State of California. Should any non-material provision of this Settlement Agreement be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable such provision immediately shall become null and void, leaving the remainder of this Settlement Agreement in full force and effect.

(b) In the event of a breach of any provision of this Settlement Agreement, any Party reserves the right to institute an action specifically to enforce any term or terms of this Settlement Agreement or seek damages for breach. In an action to enforce any term or terms of this Settlement Agreement or to seek damages for breach of this Settlement Agreement, the prevailing Party in that action shall be entitled to recover reasonable attorney's fees and costs from the non-prevailing Party.

10. **Amendment.** This Settlement Agreement may not be modified, altered or changed except in writing and signed by both Parties' counsel, wherein specific reference is made to this Settlement Agreement, subject to approval by the Court.

11. **Miscellaneous.**

(a) The Parties agree to stay all proceedings in the Action, including with respect to California Code of Civil Procedure section 583.310, except such proceedings necessary to implement and complete the Settlement, pending approval of the Settlement.

(b) This Settlement Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which, taken together shall constitute the same instrument. A signature made on a faxed or electronically transmitted copy of the Settlement Agreement or a signature transmitted by facsimile or electronic mail shall have the same effect as the original signature.

(c) The section headings used in this Settlement Agreement are intended solely for convenience of reference and shall not in any manner amplify, limit, modify or otherwise be used in the interpretation of any of the provisions hereof.

(d) This Settlement Agreement was the result of negotiations between the Parties and their respective counsel under the auspices of mediator Monique Ngo-Bonnici, Esq. In the event of vagueness, ambiguity or uncertainty, this Settlement Agreement shall not be construed against the Party preparing it but shall be construed as if both Parties prepared it jointly, and the Parties may present their disputes to the mediator to resolve any vagueness, ambiguity, or uncertainty.

(e) If Plaintiff or Defendant fail to enforce this Settlement Agreement or to insist on performance of any term, that failure does not mean a waiver of that term or of the Settlement Agreement. The Settlement Agreement remains in full force and effect anyway.

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

[Signature Page Below]

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Settlement Agreement as of the date set forth below:

Date: January²⁷, 2025

Electronically Signed
2025-01-27 21:26:52 UTC - 76.81.18.66
Mauricio Anthony Fonseca
64381da-e6f1-498c-8f5b-b27201300d7f

Mauricio Anthony Fonseca
Individually and On Behalf of
the State of California with Respect to Aggrieved
Employees

ARM Management, Inc.

February 24
Date: ~~January~~, 2025

Ahmad Moalej
Name: Ahmad Moalej
Title: Authorized Representative

Approved as to form.

LAWYERS FOR JUSTICE, PC

Date: January²⁷, 2025

Arby Aiwanian
Joanna Ghosh
Melissa LeBlanc-Mansell
Attorneys for Plaintiff Mauricio Anthony Fonseca

Bent Caryl & Kroll LLP

February 25
Date: ~~January~~, 2025

Jesse M. Caryl
Jesse M. Caryl
Jennifer Carver
Attorneys for Defendant ARM Management, Inc.

Exhibit A

<<Mailing Date>>

To: <<First Name>><<Last Name>>
<<Street Address>>
<<City>> <<State>> <<Zip>>

Re: Settlement Payment from *Fonseca v. ARM Management, Inc.*, Los Angeles Superior Court Case No. 23STCV27739

Dear <<First Name>><<Last Name>>:

Please find enclosed a check in the amount of <<amount of payment>> (“Individual Settlement Share”). This check is your payment from the settlement in the lawsuit entitled *Fonseca v. ARM Management, Inc.*, Los Angeles Superior Court Case No. 23STCV27739 (“Action”).

The lawsuit was filed on November 13, 2023 by Mauricio Anthony Fonseca (“Plaintiff”) against his former employer, ARM Management, Inc. (“Defendant”), on behalf of the State of California, with respect to himself and other alleged aggrieved employees, to seek recovery of civil penalties pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”), for multiple alleged violations of the California Labor Code and Industrial Welfare Commission Wage Orders, including, *inter alia*, for failure to properly pay minimum and overtime wages, failure to provide compliant meal and rest periods and associated premiums, failure to pay wages during employment and upon termination, failure to provide compliant wage statements, failure to maintain requisite payroll records, and failure to reimburse business expenses. Prior to filing the lawsuit, on September 6, 2023, Plaintiff submitted a letter to the California Labor and Workforce Development Agency (“LWDA”), pursuant to PAGA, to provide notice of her intent to seek civil penalties under PAGA for Defendant’s alleged violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, and 2810.5, and Industrial Welfare Commission Wage Orders, including *inter alia*, Wage Order 5-2001, thereby initiating LWDA Case Number LWDA-CM-979916-23 (the “PAGA Notice”).

Defendant denies all of Plaintiff’s allegations and denies any wrongdoing of any kind associated with Plaintiff’s allegations.

A settlement was reached between the Parties. On << Date>>, the settlement was approved by the Court, with a portion to be paid to the LWDA and a portion to be paid to all current and former hourly-paid or non-exempt employees who worked for Defendant in the State of California during the period from September 6, 2021 through (a) December 28, 2024 or (b) the Alternate End Date (“Aggrieved Employees”). The period September 6, 2021 through (a) December 28, 2024 or (b) the Alternate End Date is the “PAGA Period”.

You are receiving a portion of the settlement (the enclosed Individual Settlement Share) because you have been identified as an Aggrieved Employee. Your Individual Settlement Share is based on the total number of pay periods that you worked for Defendant in California during the PAGA Period. The Individual Settlement Share is considered to be 100% penalties, which will be reported on an IRS Form 1099. You are responsible for paying any and all taxes that may be due as a result of any payment issued to you under the settlement and should consult a tax advisor regarding the tax consequences of such payment.

Under the settlement, as of <<date of entry of order by the Court approving the Settlement>>, the Released Parties were fully released and forever discharged from any and all Released Claims.

“Released Parties” means Defendant, including Defendant’s parent corporation, affiliates, subsidiaries, divisions, predecessors, insurers, successors and assigns, and their current and former employees, attorneys, officers, directors and agents thereof, both individually and in their business capacities, and their employee benefit plans and programs and the trustees, administrators, fiduciaries and insurers of such plans and programs.

“Released Claims” means any and all claims, arising during the PAGA Period, for civil penalties under California Labor Code section 2698, *et seq.* (“PAGA”) as well as any interest, fees, and costs available under PAGA, based on the factual allegations in the Operative Complaint, including but not limited to, for failure to pay minimum, regular, and overtime wages, 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, 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(a), 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, and 2810.5, and Industrial Welfare Commission Wage Orders, including *inter alia*, Wage Order 5-2001.

The enclosed check is valid for 90 days from the original date of issuance and mailing, and if it is not cashed, deposited, or otherwise negotiated within the 90-day timeframe, it will be canceled, and the funds associated with the canceled check will be transmitted to the State Controller’s Office Unclaimed Property Division in your name and in the amount of your respective Individual Settlement Share.

Do not call or write the Court, Office of the Clerk of the Court, Defendant, or Defendant's counsel to ask questions about the settlement or to ask tax-related questions. If you have any such questions, you may contact **[PAGA Settlement Administrator]** at **[toll-free phone number]**.

EXHIBIT 3