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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF ALAMEDA**

10 MARIA GABRIELA GUTIERREZ
11 GARCIA,

12 Plaintiff,

13 vs.

14 KSS IMMERSION SCHOOLS, INC.; KIDS
15 SPEAKING SPANISH PRESCHOOLS
16 LLC; and DOES 1 to 25, inclusive,

17 Defendants

Case No.: 24CV059118

18 **DECLARATION OF HAROUT**
19 **MESSRELIAN IN SUPPORT OF**
20 **UNOPPOSED MOTION FOR APPROVAL**
21 **OF PAGA SETTLEMENT**

Action filed: 1/8/24

Date: 4/17/2025

Time: 2:30pm

Dept: 518, Hon.

Mark Fickes

Reservation ID:

611168649955

22 Submitted Herewith Under Separate Cover:

- 23 1. Plaintiff's Notice of Unopposed Motion for
24 Approval of PAGA Settlement; Memorandum
25 of Points and Authorities in Support Thereof;
26 2. [Proposed] Order

27 **DECLARATION OF HAROUT MESSRELIAN IN SUPPORT OF**
28 **UNOPPOSED MOTION FOR APPROVAL OF PAGA SETTLEMENT AND RELEASE**

I, HAROUT MESSRELIAN, declare and state as follows:

1. I am an attorney duly licensed to practice before all the Courts of the State of California. I am the managing attorney of Messrelian Law Inc. and the attorney of record for Plaintiff Maria Gabriela Gutierrez Garcia ("Plaintiff") in her lawsuit against Defendants KSS

1 IMMERSION SCHOOLS, INC. and KIDS SPEAKING SPANISH PRESCHOOLS LLC
2 (hereinafter collectively “KSS” or “Defendant(s)”).

3 2. I am experienced in handling employment law matters and specifically wage and
4 hour representative and individual actions. My qualifications are as follows: I received my JD
5 from Loyola Law School in 2010. I started my own law firm in 2011 – the Law Offices of Harout
6 Messrelian. Since 2016, I have been the founder and principal attorney at Messrelian Law, Inc.
7 Since 2011, I have filed and handled over 350 civil actions and/or claims involving representative
8 actions under the Private Attorneys General Act (“PAGA”) and/or wage and hour claims on
9 behalf of my clients and have been appointed Class Counsel in three class action cases –*Zohrab*
10 *Mekhitarian v. Triple Play Motors dba Bob Smith Toyota*, Los Angeles Superior Court Case No.
11 19STCV22411 (ADR Services, Inc., Case Number 20-2668-RWT), *Carina Camberos, on behalf*
12 *of herself and others similarly situated, v. Great American Chicken Corp, Inc.*, Los Angeles
13 Superior Court Case No. 21STCV32015, and *Robert Garcia, on behalf of himself and others*
14 *similarly situated v. HD Supply Management Inc.*, San Bernardino Superior Court Case No.
15 CIVSB2028067. I have a practice that encompasses cases in the Los Angeles Superior Courts,
16 the Orange County Superior Courts, the Riverside County Superior Courts, the San Bernardino
17 County Superior Courts, the Alameda County Superior Courts, Santa Clara County Superior
18 Courts, San Mateo County Superior Courts, and the Monterey County Superior Courts.

19 3. Except as otherwise indicated, I have personal knowledge of all matters set forth
20 herein and, if called as a witness, could and would competently testify thereto under oath.

21 ***Factual and Procedural Background***

22 4. Defendant is in the education industry and operates a preschool tailored to
23 Spanish speaking children. Plaintiff was classified as an hourly, non-exempt employee and
24 worked for Defendant as a teacher from 2021 through October 2023.

25 5. Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit
26 under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq.
27 (“PAGA”). On October 31, 2023, Plaintiff Maria Gabriela Gutierrez Garcia on behalf of herself
28 and Defendant’s other California non-exempt employees (hereafter collectively the “Aggrieved

1 Employees”) gave written notice by electronic service to the California Labor and Workforce
2 Development Agency (“LWDA”) and via certified mail to Defendant of their claims against
3 Defendant. In her notice to the LWDA, Plaintiff asserted on behalf of herself and the Aggrieved
4 Employees that Defendant (1) failed to compensate for all hours worked and to pay minimum
5 wages (Labor Code Sections 1194, 1197, 1197.1); (2) failed to pay overtime compensation
6 (Labor Code Section 510); (3) failed to provide rest breaks (Labor Code Section 226.7); (4)
7 failed to provide meal breaks (Labor Code Sections 512, 226.7); (5) failed to timely pay wages
8 due during employment (Labor Code Section 204); (6) failed to provide accurate itemized wage
9 statements (Labor Code Section 226); (7) failed to keep accurate and complete payroll records
10 (Labor Code Section 1174/1174.5); (8) failed to pay wages at the end of employment (Labor
11 Code section 203); (9) failed to reimbursement business expenses (Labor Code section 2802);
12 and claims under Industrial Welfare Commission Wage Orders 4-2001/5-2001. Plaintiff filed
13 her initial lawsuit on January 8, 2024, in the Superior Court for the State of California, County
14 of Alameda, Case No. 24CV059118, with thirteen total causes of action, including individual
15 wage and hour claims, claims for retaliation and wrongful termination, and for PAGA penalties
16 based on the theories as outlined in the PAGA letter.

17 6. Through informal discovery, Defendant produced records and represented that it
18 employed approximately 67 non-exempt employees for the period from November 4, 2022
19 through May 8, 2024, and that there are paychecks issued for a total of approximately 2213 pay
20 periods worked for that same time period.

21 7. The Settlement Agreement covers PAGA Members, which are all hourly, non-
22 exempt employees employed by Defendants in California on or after November 4, 2022 through
23 May 8, 2024.

24 8. Defendant denies any liability or wrongdoing of any kind whatsoever associated
25 with the lawsuit and the Representative PAGA Claim. It is the desire of the Parties to fully,
26 finally, and forever compromise, and discharge all claims known or unknown related to those
27 alleged in Plaintiff’s lawsuit.

28 9. The Parties attended a full-day mediation with experienced mediator Steve Pearl

1 on May 8, 2024, and settled the matter at mediation. Before agreeing to the terms of the
2 Settlement Agreement, the Parties engaged in extensive informal discovery regarding
3 Defendants' policies, practices, operations, time and payroll information and other topics. Prior
4 to negotiation, Defendants produced Plaintiff's personnel file, time and payroll data for Plaintiff,
5 and time records and payroll records for 14 aggrieved employees (20% sample) falling within
6 Plaintiff's Aggrieved Employees definition and during the applicable PAGA period. Through
7 extensive arm's length negotiations and only after extensive discovery and investigation were
8 performed, the Parties agreed to settlement terms. Attached as **Exhibit 1** is a true and accurate
9 copy of the "PAGA Settlement Agreement" (hereinafter "Settlement Agreement") and the
10 PAGA notice that will be sent to the PAGA Members covered by the Settlement Agreement.

11 10. The Parties conducted investigation of the facts and law both before and after the
12 lawsuit was filed. Counsel for the Parties have further investigated the applicable law as applied
13 to the facts discovered regarding Plaintiff's claims, the defenses thereto, and the Labor Code
14 violations claimed by Plaintiff. Based on their own independent investigations and evaluations,
15 the Parties and their respective counsel are of the opinion that the Settlement for the
16 consideration and on the terms set forth in this Motion are fair, reasonable and adequate and are
17 in the best interests of Plaintiff, the PAGA Members, and Defendants in light of all known facts
18 and circumstances and the risks inherent in litigation, especially in this post-pandemic era when
19 most California businesses are still struggling to remain afloat, much less prosper and make a
20 large profit.

21 11. The Parties further recognize that the issues presented in the Action are likely
22 only to be resolved with extensive and costly pretrial and trial proceedings, and that further
23 litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate
24 to the maximum potential benefits, especially in light of the post- pandemic era and the business
25 climate.

26 12. Plaintiff alleges that the strongest claims based on the analyzed data were that
27 Plaintiff and other PAGA Members were not provided meal breaks under the law.

28 13. Plaintiff contends that the civil penalty statutes applicable to the Action arise

from violations of the California Labor Code, including, but not limited to, Labor Code §§ 512, 558, 1197, 1197.1, and 2699(f)(2). Under these civil penalty statutes, an employee who suffers a Labor Code violation may be awarded a sum of money for each pay period in which he or she was underpaid. However, under Labor Code § 2699(e)(2), the Court can reduce an award of civil penalties if the award is unjust, arbitrary, oppressive, or confiscatory.

14. As it relates to Plaintiff's argument for meal break violations, Plaintiff's data analysis revealed a shift violation rate of 16.6% for short, late, or no meal breaks for shifts over 5 hours long (which comprised 95.3% of the overall shifts in the sample). If you extrapolate the 16.6% shift violation rate, it amounts to 81.8% of pay periods having at least one meal period violation. As such, the maximum exposure for meal period violations in the PAGA period would be **\$86,250**, which is calculated as follows: 2213 total pay periods x 95.3% pay periods over 5 hours equals 2109 pay periods at issue as far as meal period violations are concerned. 2109 pay periods x 81.8% pay period violation rate equals 1725 affected pay periods; 1725 pay periods x \$50/pay period (civil penalty) amounts to \$86,250 in exposure. The latter exposure calculation does not take into account the fact that Defendant had strong, compliant meal period policies.

15. As it relates to Plaintiff's other claims, there would be issues with proof. The sampling did not reveal any rounding as hours were paid to the second decimal point. There were no clock-in or clock-out entries for rest breaks as it is not required under California law and, as such, no data analysis was done by the data expert on this front. As it relates to any overtime issues, the data showed the average workday was 7.7 hours, which means that overtime pay was not a major consideration. In addition, per the data analyst, overtime hours were properly paid when employees did work overtime hours. Moreover, Defendant provided overall strong written policies as it related to wage and hour practices. As it relates to Plaintiff's claim of business expense reimbursement, there was no evidence that Plaintiff and others were required to use their cell phones for work purposes. Moreover, any articles of clothing that were worn by aggrieved employees as uniforms were not of a specific or distinctive design and could be worn outside of work as well. Plaintiff's other claims for violations of Labor Code sections 203, 204, and 226 (for not being paid all wages owed every pay period or at the end of

1 employment as well as not receiving accurate, itemized wage statements) would not be triggered
2 since they are derivative claims, and no rounding/overtime issues were identified.

3 16. Based on the above calculations, Plaintiff's aggregate exposure for the strongest
4 disputed claims would be **\$86,250**. Assuming that Plaintiff's calculations and analysis are
5 accurate, the maximum exposure presumes that the Court will not reduce the penalty award as
6 unjust, arbitrary, oppressive, or confiscatory. Based on the above analysis, a gross settlement in
7 the amount of \$75,000, is a very strong result, especially in light of the risk factors in terms of
8 proof as discussed above.

9 17. Moreover, Plaintiff is aware of no California state courts awarding Plaintiff
10 multiple PAGA penalties for the same violation for the same pay period under different Labor
11 Code provisions. As such, one of the risks Plaintiff faces is that the Court would refuse to "stack"
12 civil penalties arising under the various Labor Code statutes. Furthermore, judges have awarded
13 extremely small sums to PAGA claimants in the past. Defendant also adamantly disputes all of
14 Plaintiff's allegations in the operative Complaint.

15 18. PAGA states a court has discretion to award a lesser amount than the maximum
16 penalty. *See Lab. Code* § 2699(e)(2) ("...a court may award a lesser amount than the maximum
17 civil penalty amount specified by this part if, based on the facts and circumstances of the
18 particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive,
19 or confiscatory."); *see also Thurman v. Bayshore Transit Management, Inc.* (2012) 203
20 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that the Court could
21 reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff's evidence of
22 willful and intentional conduct. *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504
23 ("Carrington") illustrates this. In that case, the Court of Appeal affirmed a trial court's heavily
24 discounted award of only \$5 per violation because it was within the Court's discretion to
25 significantly reduce PAGA penalties even when there is a finding that a violation of the
26 California Labor Code occurred. The plaintiff in *Carrington* had requested penalties in excess of
27 \$70 million and was successful in proving the PAGA claim during a bench trial. However, the
28 trial court reduced the total award after trial to only \$150,000 (30,000 violations x \$5) and stated

1 that this reduction was warranted because imposing the maximum penalty would be “unjust,
2 arbitrary, and oppressive”, based on Starbucks’s “good faith attempts” to comply with meal break
3 obligations and because the Court found the violations were minimal. Applying the same formula
4 here and assuming there was one violation during each pay period, the award of civil penalties
5 could not exceed \$11,065.00 in PAGA penalties (2213 violations x \$5). As such, this Settlement
6 is a great result based solely on the risk the Court chooses to apply the *Carrington* formula.
7 Defendant has also posed formidable defenses to the Labor Code claims underlying Plaintiff’s
8 allegations. Thus, the chance of Plaintiff recovering a higher amount than the Gross Settlement
9 Amount is uncertain.

10 19. The Parties further recognize that the issues presented in the Action are likely
11 only to be resolved with extensive and costly pretrial and trial proceedings, and that further
12 litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate
13 to the maximum potential benefits to the PAGA Members and Plaintiff from continued
14 litigation.

15 20. The settlement of the Action involves monetary relief to all PAGA Members,
16 Plaintiff, her attorneys, and the State of California.

17 21. Furthermore, Plaintiff recognizes that continued litigation presents significant
18 risks that support a significant downward departure from Plaintiff’s estimated civil penalties
19 amount. In view of the risks, the Settlement represents a fair, adequate, and reasonable
20 compromise amount for these claims and is in the best interest of Plaintiff and PAGA Members
21 and thus, warrants approval. *See Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir.
22 June 3, 2014) 2014 WL 2465049, * 3. The PAGA settlement and its terms are fair, just,
23 reasonable, adequate, and equitable to Defendant, Plaintiff, and the State, especially in light of
24 the current economic climate, and are the product of good faith, and informed arms-length
25 negotiations between the Parties consistent with public policy and fully comply with applicable
26 provisions of law.

27 22. As such, the settlement of PAGA penalties in the gross sum of \$75,000.00, of
28 which 75% of the net amount after attorney’s fees [\$25,000.00], attorney costs [\$10,726.25],

1 and settlement administrator fees [\$3,000.00], which is \$27,205.31 will be paid to the LWDA,
2 and 25%, which equates to \$9,068.44, will be distributed to the PAGA Members, is reasonable
3 and appropriate under the circumstances.

4 ***Plaintiff's Individual Settlement***

5 23. Plaintiff did have individual claims, which also included retaliation and
6 wrongful termination. The Parties agreed that the consideration Plaintiff received pursuant to
7 an individual settlement agreement was to settle any individual claims. As part of this
8 confidential agreement, Plaintiff also provided Defendant with a general release of all claims,
9 whether known or unknown, including unknown claims covered by Civil Code Section 1542.
10 Plaintiff has no conflict of interest with the absent Aggrieved Employees and is adequate to
11 represent the Aggrieved Employees.

12 ***Attorneys' Fees and Costs***

13 24. I represent Plaintiff on a straight contingency basis. My firm's request for
14 \$25,000.00 in attorney fees and \$10,726.25 in litigation costs is fair and reasonable. To date, I
15 have investigated and prosecuted this matter vigorously, including drafting the initial PAGA
16 notice as well as the original complaint; drafting informal discovery questions, reviewing
17 Defendant's informal data and document production, including wage and hour policies; sending
18 and receiving emails on the case with defense counsel; sending the PAGA data to Plaintiff's
19 expert for review/analysis and reviewing the expert's findings/conclusions; attending a full-day
20 private mediation and reviewing the PAGA Settlement Agreement; and drafting this PAGA
21 approval motion. I also expect to perform additional work on this case if the Court grants final
22 approval of the Settlement, including supervision of the Settlement Administrator's
23 disbursement of the settlement funds to the Aggrieved Employees. "Empirical studies show that,
24 regardless of whether the percentage method or the lodestar method is used, fee awards in class
25 actions average around one-third of the recovery. *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th
26 43, 47 fn. 11 (quoting *Shaw v. Toshiba America Information Systems, Inc.* (E.D. Tex. 2000) 91
27 F.Supp.2d 942, 972; *See also Lafitte v. Robert Half Int'l Inc.* (Cal. Aug. 11, 2016) 1 Cal.5th 480,
28 503, 376 P.3d 672, 686 (holding that courts can use the percentage method for the calculation
of attorneys' fees). This is also consistent with my experience in cases involving PAGA claims.

1 This award is justified here because I achieved a strong result for the PAGA Members and the
2 State while bearing the substantial burdens of contingency representation.

3 25. My previous experience in litigating wage and hour actions also supports the
4 reasonableness of the fee request, as does the caliber of opposing counsel. My previous
5 experience in similar matters was integral in evaluating the strengths and weaknesses of the
6 case against Defendant and the reasonableness of the Settlement. Because it is reasonable to
7 compensate me commensurate with my skill, reputation, and experience, attorney's fees of
8 approximately one-third of the Gross Settlement Amount is reasonable. Likewise, the caliber
9 and experience of opposing counsel in labor and employment litigation supports the fairness and
10 reasonableness of the requested fee award.

11 26. The litigation costs expended to aid in the representation of the PAGA Members
12 include the following: lawsuit filing fee of \$467.10; PAGA initial filing fees of \$75.00; expert
13 data analysis fee of \$1,000.00; mediation fee of \$9,012.50; and miscellaneous filing fees of
14 \$171.65 for a total of \$10,726.25. All of these costs are documented and reasonably incurred.

15 ***Settlement Administration Costs***

16 27. With regard to the settlement administration costs provision, it is reasonable.
17 Before agreeing to Phoenix Settlement Administrators ("Phoenix"), the Parties sought and
18 reviewed bids from other reputable third-party administrators, including ILYM Group and Apex,
19 and Phoenix's bid was comparable. Phoenix's bid has been attached as **Exhibit 2** to this
20 declaration.

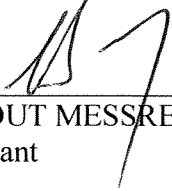
21 ***Notice of Settlement to the LWDA***

22 28. Pursuant to Lab. Code § 2699(1)(2), my firm submitted a copy of the Settlement
23 with the LWDA at the same time the Settlement is being filed with the Court. True and correct
24 copies of this submission with the LWDA and the confirmation email are collectively attached
25 as **Exhibit 3** to this declaration. My firm will further provide a copy of the Court's Order and
26 Judgment to the LWDA within ten (10) calendar days after entry of said judgment or order as
27 required by Labor Code sections 2699(1)(2)-(3).

28 I declare under the penalty of perjury of the laws of the State of California that the

1 foregoing is true and correct to the best of my knowledge.

2 Executed on March 24, 2025, at Glendale, California.

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5 HAROUT MESSRELIAN,
6 Declarant
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EXHIBIT 1

PAGA SETTLEMENT AGREEMENT

This “PAGA” (Private Attorneys General Act of 2004, California Labor Code section 2698 et seq.) Settlement Agreement (“Agreement”) is made by and between Plaintiff Maria Gabriela Gutierrez Garcia (“Plaintiff”) and defendants KSS Immersion Schools, Inc. and Kids Speaking Spanish Preschools, LLC, (“KSS” or “Defendants”). The Agreement refers to Plaintiff and Defendants collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1 “Action” means the Plaintiff’s PAGA lawsuit alleging wage and hour violations against Defendants captioned Maria Gabriela Gutierrez Garcia v. KSS Immersion Schools, Inc., et al., (Case No. 24CV059118) initiated on January 8, 2024, and pending in Superior Court of the State of California, County of Alameda.
- 1.2 “Aggrieved Employee” means any and all persons who worked for Defendants in California as a non-exempt employee during the PAGA Period.
- 1.3 “Aggrieved Employee Data” means Aggrieved Employee identifying information in Defendants’ possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.
- 1.4 “Aggrieved Employee Address Search” means the Settlement 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 Settlement Administrator with Aggrieved Employees.
- 1.5 “Approval Order” means the Court’s order granting approval of the Settlement.
- 1.6 “Attorneys’ Costs” or “Litigation Costs” means the amount to be reimbursed to PAGA Counsel for their litigation costs and expenses incurred to prosecute the Action. Attorneys’ Costs shall not exceed \$15,000.00.
- 1.7 “Attorneys’ Fees” means the amount to be awarded to PAGA Counsel for the work they have performed in furtherance of the Action. Attorneys’ Fees shall not exceed \$25,000.00, which represents one-third of the Gross Settlement Amount.
- 1.8 “Court” means the Superior Court of California, County of Alameda.
- 1.9 “Defense Counsel” means Fisher & Phillips LLP, the attorneys representing Defendants in the Action.
- 1.10 “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order granting approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the period for filing any appeal, writ, or other appellate proceeding opposing the settlement approval has elapsed without any appeal, writ, or other appellate proceeding having been filed; (b) any appeal, writ, or other appellate proceeding opposing the

settlement approval has been dismissed finally and conclusively with no right by any appellant or objector to pursue further remedies or relief; or (c) any appeal, writ, or other appellate proceeding has upheld the settlement approval with no right by any appellant or objector to pursue further remedies or relief.

- 1.11 “Gross Settlement Amount” means \$75,000.00 which is the maximum total amount Defendants agree to pay under the Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, Attorneys’ Fees, Attorneys’ Costs, and the Settlement Administration Costs.
- 1.12 “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of the 25% of the Net Settlement Amount calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.
- 1.13 “Judgment” means the judgment entered by the Court based upon the Approval Order.
- 1.14 “LWDA PAGA Payment” means the 75% of the Net Settlement Amount paid to the Labor and Workforce Development Agency (“LWDA”) under Labor Code section 2699, subd. (i).
- 1.15 “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Attorneys’ Fees, Attorneys’ Costs, and the Settlement Administration Costs. The remainder is the total amount of PAGA civil penalties to be paid under the Settlement, which will be allocated 75% to the LWDA and 25% to the Aggrieved Employees in settlement of PAGA claims.
- 1.16 “PAGA Counsel” means Messerlian Law, the attorneys representing Plaintiff in the Action.
- 1.17 “Pay Period” means any pay period during which an Aggrieved Employee worked for Defendants for at least one day during the PAGA Period.
- 1.18 “PAGA Notice” means Plaintiff’s October 31, 2023 letter to Defendants and the LWDA providing notice pursuant to Labor Code § 2699.3(a).
- 1.19 “PAGA Period” means the period from November 4, 2022 to May 8, 2024.
- 1.20 “Released Claims” means the claims being released by Plaintiff and Aggrieved Employees as described in Paragraph 5.2 below.
- 1.21 “Released Parties” means Defendants and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.
- 1.22 “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.23 “Settlement Administrator” means Phoenix Settlement Administrators, a neutral, third-party administrator the Parties have agreed to appoint to administer the Settlement.

- 1.24 “Settlement Administration Costs” means the amount the Settlement Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in administering the Settlement in accordance with this Agreement.

2. RECITALS

- 2.1 On January 8, 2024, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendants for (1) Failure to Compensate for All Hours Worked; (2) Failure to Pay Minimum Wages; (3) Failure to Pay Overtime; (4) Failure to Provide Accurate Itemized Wage Statements; (5) Failure to Pay Wages Owed Every Pay Period; (6) Failure to Give Rest Breaks; (7) Failure to Give Meal Breaks; (8) Failure to Reimburse For Business Expenses; (9) Failure to Pay Wages When Employment Ends; (10) Private Attorneys General Act (“PAGA”); (11) Retaliation in Violation of Labor Code Section 98.6; (12) Wrongful Termination in Violation of Public Policy; (13) Violation of California Business and Professions Code Section 17200. The Complaint is the operative complaint in the Action (the “Operative Complaint.”) Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in in the Operative Complaint and deny any and all liability for the causes of action alleged.
- 2.2 Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in in the Operative Complaint, and deny any and all liability for the causes of action alleged. This Agreement shall not be construed as an admission of fault or wrongdoing by the Released Parties, or any of them.
- 2.3 Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendants and the LWDA by sending the PAGA Notice.
- 2.4 On May 8, 2024, the Parties participated in an all-day mediation presided over by Steve Pearl which led to this Agreement to settle the Action.
- 2.5 Prior to the mediation Plaintiff obtained, through informal discovery a sample of the time and payroll records for the Aggrieved Employees, the number of Pay Periods and Aggrieved Employees in the PAGA Period, Defendants’ employment policies and handbook, Plaintiff’s personnel file and other relevant documents.
- 2.6 The Parties, PAGA Counsel, and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS

- 3.1 Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Defendants promise to pay \$75,000.00 and no more as the Gross Settlement Amount. Defendants have no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.3 of this Agreement. The Settlement Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.

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

3.2.1 To PAGA Counsel: Attorneys' Fees of not more than one-third (1/3) of the Gross Settlement Amount, or \$25,000.00, and Litigation Costs of not more than \$15,000.00 (together, "Attorneys' Fees and Costs"). Defendants will not oppose requests for these payments provided that they do not exceed these amounts. The Attorneys' Fees are reasonable within the meaning of Labor Code section 2699(g)(1) because the requested award of fees is based on the common fund doctrine, is in line with the prevailing guidelines established in California case law and with the fees awarded in similar cases, and is based on the experience, reputation, and ability of PAGA Counsel. The Attorneys' Costs are reasonable within the meaning of Labor Code section 2699(g)(1) because PAGA Counsel will seek only those costs that were actually incurred and reasonably necessary in prosecuting this Action, which PAGA Counsel is entitled to recover. Further, Plaintiff and/or PAGA Counsel will file a motion for approval of the Settlement, which will include a request for PAGA Counsel's Attorneys' Fees and Costs. If the Court approves Attorneys' Fees and Costs less than the amounts requested, the Settlement Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other plaintiff's counsel arising from any claim to any portion of the Attorneys' Fees and Costs. The Settlement Administrator will pay the Attorneys' Fees and Costs using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the Attorneys' Fees and Costs and holds Released Parties harmless, and indemnifies Released Parties, from any dispute or controversy regarding any division or sharing of any of these payments.

3.2.2 To the Settlement Administrator: Settlement Administration Costs not to exceed \$3,500.00 except for a showing of good cause and as approved by the Court. To the extent the Settlement Administration Costs are less or the Court approves payment less than \$3,500.00, the Settlement Administrator will retain the remainder in the Net Settlement Amount.

3.2.3 To the LWDA and Aggrieved Employees: The Net Settlement Amount will be distributed amongst Aggrieved Employees and the LWDA, with 75% allocated to the LWDA PAGA Payment and 25% allocated to the Individual PAGA Payments.

3.2.3.1 The Settlement Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of the Net Settlement Amount by the total number of Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payments.

3.2.3.2 All payments to Aggrieved Employees under this Settlement shall be characterized as non-wage penalties, and the Settlement Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1 PAGA Period Pay Periods. Based on a review of its records to the date of mediation, Defendants estimate there are approximately 67 Aggrieved Employees who worked a total of 2,213 pay periods in the PAGA Period.
- 4.2 Aggrieved Employee Data. Not later than seven (7) calendar days after the Effective Date, Defendants will deliver the Aggrieved Employee Data to the Settlement Administrator, in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employees' privacy rights, the Settlement Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to the Settlement Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted Aggrieved Employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Defendants must send the Aggrieved Employee Data to the Settlement Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.
- 4.3 Funding of Gross Settlement Amount. Defendants shall fully fund the Gross Settlement Amount by transmitting the funds to the Settlement Administrator as follows: (1) \$25,000.00 within 30 days of the Court's Approval Order; (2) the next \$25,000.00 within 60 days of the Court's Approval Order; (3) the last \$25,000 within 90 days of the Court's Approval Order.
- 4.4 Payments from the Gross Settlement Amount. Within fourteen (14) calendar days after Defendants fully fund the Gross Settlement Amount, the Settlement Administrator shall mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, Attorneys' Fees, and Litigation Costs. Disbursement of PAGA Counsel Attorneys' Fees and Litigation Costs shall not precede disbursement of Individual PAGA Payments.
- 4.4.1 The Settlement Administrator will issue checks for the Individual PAGA Payments and send them to Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Settlement Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the "National Change of Address Database".
- 4.4.2 The Settlement Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within seven (7) calendar days of receiving a returned check, the Settlement Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Settlement Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a

replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

4.4.3 For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Settlement Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

4.4.4 The payment of Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS.

Effective on the date when Defendants fully fund the entire Gross Settlement Amount, Plaintiff and the Aggrieved Employees will release claims against all Released Parties as follows:

5.1 Plaintiff's Release. Plaintiff and her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties for all penalties under the California Private Attorneys' General Act (Labor Code section 2698, et seq.) that were or could have been sought by the Labor Commissioner for the violations identified in the Operative Complaint and Plaintiff's PAGA Notice, that accrued at any time during the PAGA Period. ("Plaintiff's Release.") Plaintiff's Release under this Agreement does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the PAGA Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

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

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

5.2 Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for statutory penalties under the California Private Attorneys' General Act (Labor Code section 2698, et seq.) that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in, and that could have been sought by the

California Labor Commissioner for the violations identified in, the Operative Complaint and/or Plaintiff's PAGA Notice to the LWDA that accrued at any time during the PAGA Period ("Released Claims"). Aggrieved Employees, with the exception of Plaintiff, retain their rights to pursue claims for wages, statutory penalties, and any other damages, other than the PAGA claims being released by this Settlement.

6. MOTION FOR APPROVAL OF SETTLEMENT.

- 6.1 Plaintiff's Responsibilities. Plaintiff will prepare all documents necessary to obtain the Court's approval of the Settlement and deliver them to Defense Counsel before the motion and supporting papers are filed with the Court. Plaintiff shall also submit this Settlement Agreement to the LWDA at the same time it is submitted to the Court.
- 6.2 Responsibilities of Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the motion for approval of the Settlement ("Approval Motion") no later than 30 days after the full execution of this Agreement, and obtaining a prompt hearing date for the Approval Motion and appearing in Court to advocate in favor of the Motion. PAGA Counsel is responsible for delivering the Court's Approval Order to the Settlement Administrator.
- 6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Approval Motion and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the Approval Motion or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

- 7.1 Selection of Settlement Administrator. The Parties have jointly selected Phoenix Settlement Administrators ("Phoenix") to serve as the Settlement Administrator and verified that, as a condition of appointment, Phoenix agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Settlement Administration Costs. The Parties, PAGA Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the Settlement Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.2 Employer Identification Number. The Settlement Administrator shall have and use its own "Employer Identification Number" for purposes of calculating payroll tax withholdings and providing reports to state and federal tax authorities.
- 7.3 Qualified Settlement Fund. The Settlement Administrator shall establish a settlement fund that meets the requirements of a qualified settlement fund ("QSF") under US Treasury Regulation section 468B-1.
- 7.4 Notice to Aggrieved Employees. All checks for the Individual PAGA Payment mailed to each Aggrieved Employee shall be accompanied by a notice letter from the Settlement

Administrator, substantially in the form attached to this Agreement as **Exhibit A**, subject to Court's approval.

7.5 Final Accounting and Declaration. Within seven (7) days after the Settlement Administrator disburses all funds in the Gross Settlement Amount, the Settlement Administrator shall provide PAGA Counsel and Defense Counsel with a final accounting, detailing its disbursements of all payments made under this Agreement. If requested by the Parties and/or the Court, at least fourteen (14) days before any deadline set by the Court, the Settlement Administrator shall prepare and provide PAGA Counsel and Defense Counsel, a signed declaration attesting to its due diligence and compliance with all of its obligations under this Agreement. The Settlement Administrator shall supplement its declaration as needed or requested by the Parties and/or the Court. PAGA Counsel is responsible for filing the Settlement Administrator's declaration in Court.

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

8. ESCALATOR CLAUSE. Based on its records, Defendants estimate that, as of May 8, 2024, there are approximately 2,213 Pay Periods in the PAGA Period. If the number of Pay Periods in the PAGA Period exceeds 2,213 by more than 7.5%, meaning if the number of total Pay Periods is 2,378 or more, the Gross Settlement Amount shall be increased by the percentage that the actual number of Pay Periods exceeds 2,378. Alternatively, Defendants may elect to end the PAGA Period applicable to the Released Claims on the date that the total number of Pay Periods reaches 2,378.

9. CONTINUING JURISDICTION AND WAIVER OF RIGHT TO APPEAL.

9.1 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, pursuant to California Code of Civil Procedure section 664.6, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

9.2 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Attorneys' Fees and Attorneys' Costs, the Parties, their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If 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, except as to matters that do not affect the amount of the Net Settlement Amount.

10. ADDITIONAL PROVISIONS.

10.1 No Admission of Liability or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any

of the allegations in the Operative Complaint have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve the Settlement, Defendants reserve all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendants' defenses. The Settlement, this Agreement, and the Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

- 10.2 Publicity. PAGA Counsel agrees to discuss the terms of this Settlement only in declarations submitted to the Court to establish PAGA Counsel's adequacy to serve as counsel, in declarations submitted to the Court in support of the Approval Motion, and any other pleading filed with the Court in conjunction with the Settlement. PAGA Counsel and Plaintiff agree that they will not publish any press releases or press statements regarding the Settlement, identify Defendants or Defense Counsel by name in any media including PAGA Counsel's website, or have any communications with the press or media about the Action or the Settlement. Plaintiff, in response to inquiries, will state that that "the Action was resolved." This provision will not impede PAGA Counsel's ability to discharge fiduciary duties, including responding to inquiries from Aggrieved Employees and effectuating the terms of this Settlement.
- 10.3 Confidentiality Prior to Approval. Plaintiff, PAGA Counsel, Defendants, and Defense Counsel separately agree that, until the Approval Motion is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency.
- 10.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibit shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 10.5 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 10.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any

modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of the Action's mediator, Steve Pearl, and/or the Court for resolution.

- 10.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Parties in this Settlement.
- 10.8 No Tax or Legal Advice. The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that the Aggrieved Employees will assume any such tax obligations or consequences that may arise from this Agreement, and that the Aggrieved Employees shall not seek any indemnification from the Parties or any of the Released Parties in this regard. Neither Plaintiff, PAGA Counsel, Defendants, nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 10.9 Invalidity of Any Provision. Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable.
- 10.10 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, and approved by the Court.
- 10.11 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 10.12 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the State of California, without regard to conflict of law principles.
- 10.13 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 10.14 Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Defendants 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.
- 10.15 Headings. The descriptive headings contained in this Agreement are inserted for convenience and reference only and in no way define, limit, extend or describe the scope of this Settlement or any provision hereof. Each term of this Settlement is contractual and not merely a recital.

- 10.16 Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 10.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Harout Messrelian
MESSRELIAN LAW
500 N Central Ave
#840
Glendale, CA 91203
Telephone: (818) 484-6531
Facsimile: (818) 956-1983
hm@messrelianlaw.com

To Defendants:

Grace Y. Horoupian
Waseem H. Dulloo
FISHER & PHILLIPS LLP
2050 Main Street, Suite 1000
Irvine, California 92614
Telephone: (949) 851-2424
Facsimile: (949) 851-0152
ghoroupian@fisherphillips.com
wdulloo@fisherphillips.com

- 10.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 10.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement, until Final Approval is granted. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 the date to bring a case to trial under CCP section 583.310 shall be tolled until Final Approval.

[SIGNATURES ON THE FOLLOWING PAGE]

Date: _____

Plaintiff Maria Gabriela Gutierrez

Date: 12/12/2024

Erin Miller

Defendants KSS Immersion Schools, Inc. and Kids
Speaking Spanish Preschools, LLC,

By: Erin Miller

Its: Chief Finance & Administrative Officer

MESSRELIAN LAW

Approved as to form by:

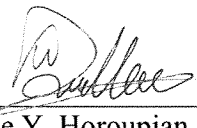
Date: _____

Messrelian
Counsel for Plaintiff

Harout

FISHER & PHILLIPS LLP

Date: 12/12/2024



Grace Y. Horoupian
Waseem H. Dulloo
Counsel for Defendants

Date: 12/09/24

Maria Gabriela Gutierrez
Maria Gabriela Gutierrez Dec 9 2024 12:33 PM
Plaintiff Maria Gabriela Gutierrez

Date: _____

Defendants KSS Immersion Schools, Inc. and Kids
Speaking Spanish Preschools, LLC,

By: _____

Its: _____

Approved as to form by:

Date: 12/9/24

MESSRELIAN LAW

Harout Messrelian
Harout Messrelian
Counsel for Plaintiff

Date: _____

FISHER & PHILLIPS LLP

Grace Y. Horoupian
Waseem H. Dulloo
Counsel for Defendants

Exhibit A

To [NAME]:

The enclosed check is your share of a court-approved representative action settlement between Plaintiff Maria Gabriela Gutierrez Garcia ("Plaintiff"), and Defendants KSS Immersion Schools, Inc. and Kids Speaking Spanish Preschools, LLC, ("KSS" or "Defendants") in the matter of *Maria Gabriela Gutierrez Garcia v. KSS Immersion Schools, Inc., et al.*, Court Case No. 24CV059118 (the "Action").

Plaintiff filed a lawsuit against Defendants as the representative of the State of California and Defendants' other current and former hourly, non-exempt employees that worked in California. Plaintiff asserted claims against Defendant under California Labor Code sections 2698 *et seq.*, also known as the Private Attorneys General Act ("PAGA"), alleging violations of the Labor Code based on Defendants' failure to pay wages for all hours worked at minimum wage and all overtime hours worked at the overtime rate of pay; failure to authorize or permit all legally required and/or compliant meal periods or pay meal period premium wages; failure to authorize or permit all legally required and/or compliant rest periods or pay rest period premium wages; statutory waiting time penalties in the form of continuation wages for failure to timely pay employees all wages due upon separation of employment; failure to pay business expenses; failure to pay wages owed every pay period during employment; and statutory penalties for failure to provide accurate wage statements. Defendants deny any liability or wrongdoing and contend, among other things, that they have complied at all times with the California Labor Code, the related California Wage Orders, and all other state and federal wage laws, and further contend that the Action is without merit. The Court has not made a ruling on the merits of the case.

Pursuant to the Court's Order, a payment of \$75,000 was approved in settlement of this Action. After accounting for Plaintiff's Counsel's attorneys' fees and reimbursement of litigation costs, administration of the settlement, Plaintiff's enhancement payment, and employer-side payroll taxes, penalties, and interest, the remaining sum is \$ _____. This sum, called the "Net Settlement Amount" will be divided pursuant to California law as follows: \$ _____ (75%) to the State of California Labor Workforce Development Agency and \$ _____ (25%) to all employees considered to be an "Aggrieved Employee" under this Action, to be shared on a proportionate basis. An Aggrieved Employee is a person employed by Defendants in California and classified as a non-exempt, hourly employee, who worked at least one pay period for Defendants at any time during the time period of November 4, 2022, to May 8, 2024.

As an Aggrieved Employee, you are covered by this settlement. Per the Court's final judgment in this case, the Aggrieved Employees release Defendant and the other Released Parties for any PAGA claims based on Defendant's alleged failure to pay wages for all hours worked at minimum wage and all overtime hours worked at the overtime rate of pay; failure to authorize or permit all legally required and/or compliant meal periods or pay meal period premium wages; failure to authorize or permit all legally required and/or compliant rest periods or pay rest period premium wages; statutory waiting time penalties in the form of continuation wages for failure to timely pay employees all wages due upon separation of employment; statutory penalties for failure to provide accurate wage statements; failure to pay business expenses; failure to pay wages owed every pay period during employment and all other claims and allegations made or which could have been made in the Action based on the facts and allegations pled in the Plaintiff's Complaint and PAGA Notice to the LWDA, from November 4, 2022, to May 8, 2024. This means that you are not able to pursue a PAGA lawsuit against Defendants based on such claims. A full list of the released claims and Released Parties is contained in the Court's Order granting settlement of this Action.

The enclosed check is your share of the settlement. The payment amount was calculated based on the number of pay periods you worked for Defendants as an Aggrieved Employee from November 4, 2022, to May 8, 2024, as determined by Defendants' business records. Because this calculation

was approved by the Court, the amount of your payment is final and cannot change. Enclosed with your check is an IRS Form 1099. Please note that no taxes were withheld from your payment, so it will be your responsibility to pay any taxes that may be due. You should consult with your own tax accountant with regard to any questions that you may have concerning any taxes that may be due.

Your enclosed check is valid for 180 days from the date of its issuance. After that date, you cannot cash the check and it will be null and void. Funds attributable to such uncashed checks will be sent to the State of California Unclaimed Property Fund in your name. You are bound by the settlement and release of claims based on the Court's final judgment whether or not you cash or deposit the enclosed check. Regardless of what you do with the settlement check, you will have released claims for penalties arising under PAGA as asserted in the Action.

If you have any questions or would like more information about the settlement or this lawsuit, you may contact the Settlement Administrator at Phoenix Settlement Administrators, 1411 N. Batavia, Suite 105 Orange, CA 92867, (800) 523-5773 or you may review the papers, pleadings and records on file with the Court by scheduling an appointment with the clerk of the Alameda Superior Court.

100

100

100

100

EXHIBIT 2



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

CASE ASSUMPTIONS

Class Members	67
Opt Out Rate	N/A
Opt Outs Received	
Total Class Claimants	67
Subtotal Admin Only	\$3,452.95

Flat Fee Total \$3,000.00

For 67 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Spanish Translation, Printing & Mailing Included

October 11, 2024

Case: Gutierrez v KSS, PAGA Administration

Phoenix Contact: Michael E. Moore
Contact Number: 949.331.0131
Email: mike@phoenixclassaction.com

Requesting Attorney: Harout Messrelian
Firm: Messrelian Law, Inc.
Contact Number: 818.484.6531
Email: hm@messrelianlaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PHX will need to adjust this Estimate accordingly.

Estimate is based on **67** Class Members. Class data **Must** be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of \$150 per hour will be charged for any additional analysis or programming. Pricing good for 90 day

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$100.00	1	\$100.00
Programming Database & Setup	\$100.00	1	\$100.00
Toll Free Setup*	\$100.00	1	\$100.00
Call Center & Long Distance	\$2.50	8	\$20.00
NCOA (USPS)	\$10.00	1	\$10.00
Total			\$330.00

* Up to 120 days after disbursement

Data Merger & Scrub / PAGA Letter & Check / Postage / Spanish Translation

Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$100.00	1	\$100.00
Spanish Translation	\$150.00	1	\$150.00
Data Merge & Duplication Scrub	\$0.09	67	\$6.03
PAGA Letter and Check Packet	\$1.00	67	\$67.00
Estimated Postage (up to 1 oz.)*	\$0.64	67	\$42.88
Total			\$365.91

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



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CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing PAGA Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	2		\$110.00
Skip Tracing Undeliverables	\$0.75	14		\$10.50
Remail PAGA Packets	\$1.00	11		\$11.00
Estimated Postage	\$0.64	11		\$7.04
Programming Undeliverables	\$50.00	1		\$50.00
Total				\$188.54

Case Management

Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	2		\$110.00
Case Manager	\$85.00	1		\$85.00
Total				\$195.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	1		\$135.00
Disbursement Review	\$135.00	1		\$135.00
Programming Manager	\$95.00	1		\$95.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	1		\$135.00
Total				\$635.00

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$115.00	1	\$115.00
Remail Undeliverable Checks (Postage Included)	\$1.50	9	\$13.50
Case Associate	\$55.00	2	\$110.00
Reconcile Uncashed Checks	\$85.00	2	\$170.00
Conclusion Reports	\$115.00	2	\$230.00
Case Manager Conclusion	\$85.00	2	\$170.00
Final Reporting & Declarations	\$115.00	2	\$230.00
QSF Annual Tax Reporting * (State Tax Reporting & Escheating Uncashed Checks to the State of CA included)	\$700.00	1	\$700.00
Check to Cy-Pres	\$150.00	1	Included
Total			\$1,738.50
* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.			
Estimate Total:			\$3,452.95



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT 3