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Team Risk management Strategies, LLC

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 COUNTY OF LOS ANGELES

18 WINSON HSIEH, individually, and on behalf of
all others similarly situated,

19 Plaintiff,

20 vs.

21 TEAM RISK MANAGEMENT STRATEGIES,
22 LLC, a limited liability company; and DOES 1
through 10, inclusive,

23 Defendants.
24

Case No.: 20STCV29112

[Assigned to Hon. Elaine Lu, Dept. 26]

**SETTLEMENT AGREEMENT AND
RELEASE OF PAGA CLAIMS**

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1 of 30,000.

2 8. "PAGA Settlement Members" shall mean all individuals that Defendant issued wage
3 statements to in California at any time during the PAGA Period.

4 9. "PAGA Fund" shall mean the Total Settlement Payment, less Plaintiff's Counsel
5 Payment, and the Settlement Administration Costs.

6 10. "Plaintiff" refers to Winson Hsieh individually and in his capacity as representatives of
7 the State of California on behalf of other aggrieved employees.

8 11. "Plaintiff's Counsel" refers to Moon & Yang, APC.

9 12. "Parties" collectively refers to Plaintiff and Defendants.

10 13. "Released Claims" shall mean any and all claims, whether known or unknown, to recover
11 civil penalties pursuant to PAGA for any alleged violations by Defendants of California Labor Code §§
12 201-203, 204, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2802, and any
13 category of violations identified in Labor Code § 2699.5, and the related applicable IWC Wage Order
14 provision for the PAGA Period, and any other violations that were alleged or could have been alleged in
15 Plaintiff's letter to the LWDA or any complaint filed in this action.

16 14. "Released Parties" shall mean Defendant, and all of their subsidiary companies, affiliates,
17 holding companies, successors, partners, shareholders, insurers, legal representatives, assigns,
18 employees, officers, directors, attorneys, and agents.

19 15. "Settlement Administrator" refers to a qualified, third-party settlement administrator
20 agreed to by the Parties to administer the terms of the Settlement. The Parties agree to utilize ILYM
21 Group, Inc. to administer the Settlement, at an estimated cost not to exceed \$20,000.00.

22 **II. RECITALS**

23 16. On July 24, 2020, Plaintiff sent a letter to the LWDA on behalf of himself, in compliance
24 with California Labor Code section 2699.3. More than 65 days passed after the letter was sent to the
25 LWDA, and the LWDA has not indicated that it intends to investigate the alleged violations referenced
26 in the letter.

27 17. Counsel for all Parties have thoroughly investigated the facts relating to the claims
28 alleged in the operative complaint and have made a thorough study of the legal principles applicable to

1 the claims asserted against Defendant. Based on their investigation and evaluation of this case,
2 Plaintiff's Counsel has concluded that the settlement is fair, reasonable, and adequate in light of all
3 known facts and circumstances, including the defenses asserted by Defendant, potential adverse findings
4 regarding liability, and numerous potential appellate issues.

5 18. Defendant denied, and continues to deny, each and every claim and contention alleged in
6 the Action, and has always maintained that it never engaged in any unlawful acts regarding any of the
7 matters alleged in the Action.

8 **NOW, THEREFORE**, in consideration of the mutual covenants, promises, and conditions set
9 forth, the Parties agree as follows:

10 **III. NON-ADMISSION OF LIABILITY**

11 19. Based on the factual and legal issues involved, the expense and time necessary to
12 prosecute the Action through trial, the risks, uncertainty and costs of further prosecution, the difficulty of
13 proof necessary to establish a class for purposes of liability, and the relative benefits to the PAGA
14 Settlement Members of an expeditious resolution to the Action, the Parties have concluded that the terms
15 set forth in this Settlement are fair, reasonable, adequate and in the best interests of the PAGA Settlement
16 Members.

17 20. By entering into this Settlement, Defendant denies any liability for any of the claims in
18 the Action, as well as any other potential or unknown claims based on wage and hour violations under
19 state or federal law. Neither this Settlement, nor any document referred to or contemplated herein, nor
20 any action taken to carry out this Settlement, is, may be construed as, or may be used as, an admission,
21 concession, or indication by or against Defendant of any unlawful conduct, fault, wrongdoing or liability
22 whatsoever. Defendant specifically denies that it has engaged in any unlawful or wrongful conduct
23 against Plaintiff or the PAGA Settlement Members.

24 **IV. TERMS OF THE PAGA SETTLEMENT**

25 **A. The Total Settlement Payment**

26 21. Defendants shall pay a settlement payment in a total amount not to exceed \$575,000.00
27 (the "Total Settlement Payment"). This is the maximum payment amount Defendant is required to pay
28 under this Settlement Agreement. The Total Settlement Payment includes the PAGA Fund,

1 Administration Costs, Attorneys' Fees, and Attorneys' Expenses. Defendants represents that there are
2 approximately 30,000 pay periods.

3
4 **B. Plaintiff's Counsel Payment of Attorneys' Fees and Costs**

5 22. Plaintiff's Counsel will apply to the Court for an award of attorneys' fees not to exceed
6 35% of the Total Settlement Payment, and Plaintiff's Counsel will also seek reimbursement of
7 reasonable litigation costs (attorneys' fees and reasonable litigation costs are referred to as "Plaintiff's
8 Counsel Payment"). Attorneys' fees shall not exceed 35% of the Total Settlement Payment, and costs
9 are estimated not to exceed \$15,000.

10 23. Defendant will not oppose or object to Plaintiff's Counsels' application for attorneys'
11 fees, not to 35% of the Total Settlement Payment plus all documented and reasonable litigation costs and
12 expenses.

13 24. Plaintiff's Counsel Payment shall be paid from the Total Settlement Payment. Any
14 reductions by the Court of Plaintiff's Counsel's request for attorneys' fees or costs shall revert to the
15 PAGA Fund.

16 **C. Settlement Administration Fees and Costs**

17 25. Settlement administration shall be done by a qualified, third-party settlement
18 administrator agreed to by the Parties and approved by the Court ("Settlement Administrator"). The
19 Parties agree that the Settlement Administrative Costs shall be paid from the Total Settlement Payment.
20 This includes all fees and costs for postage, envelopes, and computer searches to locate addresses; and
21 expenses of the Settlement Administrator to implement and complete the settlement process according to
22 the terms of this Settlement, to calculate payments to individual PAGA Settlement Members, any cost
23 associated with the escheatment process for any uncashed or undeliverable settlement checks, to prepare
24 any necessary tax documents for PAGA Settlement Members, and any other related fees and costs (the
25 "Settlement Administrative Costs").

26 26. The settlement administration fees and costs shall be paid from the Total Settlement
27 Payment. Any reductions by the Court or any unused amount shall revert to the PAGA Fund.
28

1 **D. PAGA Fund**

2 27. After deducting the Plaintiff’s Counsel Payment, and Settlement Administration Costs,
3 the remainder of the Total Settlement Payment shall be allocated toward payment to the Labor &
4 Workforce Development Agency and PAGA Settlement Members (the “PAGA Fund”).

5 28. Seventy-five percent (75%) of the PAGA Fund will be sent to the LWDA and twenty-
6 five percent (25%) of the PAGA Fund will be allocated among the PAGA Settlement Members, based
7 on his or her proportionate share of the weeks worked during the PAGA Period.

8 **V. COMPUTATION AND DISTRIBUTION OF TOTAL SETTLEMENT FUND**

9 **A. Deposit of Total Settlement Payment**

10 29. The Settlement Administrator shall establish a Qualified Settlement Fund pursuant to
11 Section 468B(g) of the Internal Revenue Code for purposes of administering the Settlement. The
12 Settlement Administrator shall furnish the Qualified Settlement Fund with its own Employer ID Number
13 and calculate all settlement checks and withholdings required under law based on information that will
14 be confidentially furnished by Defendants. There are no payroll deductions to be calculated under this
15 Settlement, since no part of the Settlement will be classified as wages.

16 30. Defendants shall deposit the Total Settlement Payment with the Settlement Administrator
17 within two (2) calendar days of the Effective Date.

18 **B. Formula for Calculating Share of PAGA Fund**

19 31. The portion of the PAGA Fund that is paid to each PAGA Settlement Member shall be
20 determined based on the following formula:

- 21 (a) The payment to PAGA Settlement Members will be based on the number of pay
22 periods worked by each PAGA Settlement Member during the PAGA Period.
- 23 (b) The amount to be paid per pay period worked by a PAGA Settlement Member
24 will be calculated by dividing the value of the portion of the PAGA Fund that will
25 be paid to PAGA Settlement Members by the total number of pay periods worked
26 by all PAGA Settlement Members during the PAGA Period.
- 27 (c) Defendants’ records shall be determinative for purposes of calculating the
28 number of pay periods worked and any payments to PAGA Settlement Members.

1 **C. Distribution of PAGA Fund**

2 32. Defendants shall provide the Settlement Administrator with a list of the names and
3 addresses of the PAGA Settlement Members, to be furnished within thirty (30) days after the Court
4 issues an Order approving the Settlement. The contact information is being provided confidentially to
5 the Settlement Administrator only, and the Settlement Administrator shall treat the information as private
6 and confidential and take all necessary precautions to maintain the confidentiality of contact information
7 of the PAGA Settlement Members. This information is to be used only to carry out the Settlement
8 Administrator's duties as specified in this Settlement.

9 33. Within seven (7) days after the Total Settlement Payment is fully funded, the Settlement
10 Administrator shall pay to the LWDA an amount equivalent to seventy-five percent (75%) of the PAGA
11 Fund, or as otherwise directed by the Court.

12 34. Within seven (7) days after the Total Settlement Payment is fully funded, the Settlement
13 Administrator shall distribute to PAGA Settlement Members their individual portion of the PAGA Fund
14 (the "Individual Payment"), or as otherwise directed by the Court.

15 35. Within seven (7) days after the Total Settlement Payment is fully funded, the Settlement
16 Administrator shall distribute to the Plaintiff's Counsel their court-approved Plaintiff's Counsel Payment
17 and approved litigation costs.

18 36. The Settlement Administrator will send the Individual Payment to the PAGA Settlement
19 Members by postmarked First Class U.S. Mail, along with a letter explaining the settlement in
20 substantially the same form as Exhibit A hereto).

21 37. To provide the best notice and delivery of Individual Payments practicable, any
22 Individual Payment returned to the Settlement Administrator as non-delivered shall be sent by post-
23 marked First Class U.S. Mail to the forwarding address affixed thereto, if any. If no forwarding address
24 is provided for an Individual Payment that is returned as non-deliverable, the Settlement Administrator
25 shall use the best available technology accessible (e.g. skip tracing, address verification, etc.) to the
26 Settlement Administrator or other mutually agreeable method to locate PAGA Settlement Members and
27 will then mail the Individual Payment to the address identified by the best available technology
28 accessible to the Settlement Administrator or other mutually agreeable method. If no current address is

1 located, the Individual Payment for that individual will be deemed undeliverable. If any PAGA
2 Settlement Members cannot be located within two attempts at mailings by the Settlement Administrator,
3 the Individual Payment for that individual will be deemed undeliverable.

4 38. The Settlement Administrator shall maintain a list of the postmark date for the original
5 mailing of the Individual Payment to the PAGA Settlement Members, the postmark date of any
6 subsequent mailing to any PAGA Settlement Members, and a list of PAGA Settlement Members who
7 did not receive the Individual Payment due to the inability to locate a valid address using the procedures
8 described herein or who otherwise could not be located within two attempts at mailing.

9 39. All settlement checks will remain valid and negotiable for 180 days from the date of their
10 mailing by the Settlement Administrator. After 180 days from the date of their mailing by the Settlement
11 Administrator, any uncashed checks will be void and escheat to the California State Controller's Office
12 in the name of the Class Member who did not cash his or her check.

13 40. No later than January 31 of the year following payment of their individual portion of the
14 PAGA Fund, the Settlement Administrator will prepare and issue IRS Form 1099 to PAGA Settlement
15 Members who received a payment.

16 **D. Settlement Administration Payment**

17 41. Within seven (7) days after Total Settlement Payment is fully funded, the Settlement
18 Administrator shall deduct an amount equivalent to the Settlement Administrative Costs.

19 **VI. CLAIMS RELEASED BY PAGA SETTLEMENT MEMBERS**

20 **A. Claims Released by the LWDA and All PAGA Settlement Members**

21 42. Upon the date of entry of an order by the Court in this Action approving this Settlement,
22 and payment of all funds due under this Settlement, the LWDA and PAGA Settlement Members,
23 including Plaintiff, fully release and forever discharge the Released Parties from any and all Released
24 Claims. As a result of this release, the PAGA Settlement Members will be unable to bring a claim under,
25 or recover in any other claim brought under, the California Private Attorneys General Act, California
26 Labor Code § 2698 *et seq.*, for any violations of the Released Claims that took place during the PAGA
27 Period.
28

1 **B. Tax Treatment and Tax Indemnification**

2 43. PAGA Settlement Members will assume any tax obligations or consequences which may
3 arise from this Settlement. PAGA Settlement Members release any and all claims that they have or may
4 have against Defendants for any claims, demands, deficiencies, levies, assessments, executions,
5 judgments, penalties, taxes, indemnification, and any other recoveries related to any payments made
6 under this Settlement or any compensation provided at any time by Defendants or any of the Released
7 Parties. If any state or federal taxing authority contacts, investigates, or pursues any action against any
8 PAGA Settlement Members for their individual share of taxes related to any payments made under this
9 Settlement or any compensation provided at any time by Defendants or any of the Released Parties, each
10 PAGA Settlement Member shall be responsible for their own defense of and payment for any claim of
11 unpaid taxes, interest, or penalties brought by any state or federal taxing authority for the PAGA
12 Settlement Member's share of any state or federal tax obligation. If a PAGA Settlement Member has
13 questions about any liability to any state or federal taxing authority, they shall contact the Settlement
14 Administrator. The PAGA Settlement Members shall not contact Defendants, any of the Released
15 Parties, or Defense Counsel.

16 **VII. MISCELLANEOUS PROVISIONS**

17 **A. Mutual Full Cooperation**

18 44. Plaintiff and Defendants, Plaintiff's Counsel, and Defense Counsel agree to fully
19 cooperate with each other to accomplish the terms of this Settlement, including, but not limited to,
20 execution of such documents and to take such other action as may reasonably be necessary to implement
21 the terms herein. The Parties agree to use their best efforts and any other efforts that may become
22 necessary by Order of the Court, or otherwise, to effectuate this Settlement.

23 **B. Parties' Authority**

24 45. The signatories hereto represent that they are fully authorized to enter into this
25 Settlement.

26 **C. Binding Nature of the Settlement**

27 46. This Settlement shall be binding upon, and inure to the benefit of, the successors or
28 assigns of the Released Parties. Plaintiff represents, covenants, and warrants that he has not directly or

1 indirectly, assigned, transferred, encumbered, any claim, demand, action, cause of action or rights
2 released in the Released Claims in this Settlement. This Settlement also shall be binding upon Plaintiff
3 and the PAGA Settlement Members.

4 47. This Settlement may be amended or modified only by a written instrument. No rights
5 under this Settlement may be waived except in writing.

6 48. This Settlement constitutes the entire agreement between Plaintiff and Defendants
7 relating to the settlement of the PAGA cause of action alleged in this action. All prior or
8 contemporaneous agreements, understandings and statements, whether oral or written, whether express
9 or implied, and whether by a party or its counsel, concerning this Settlement are merged herein. No oral
10 or written representations, warranties or inducements have been made to any party concerning this
11 Settlement other than the representations, warranties and covenants contained and memorialized in such
12 documents.

13 49. Paragraph titles or captions contained herein are inserted as a matter of convenience and
14 for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any of its
15 provisions. Each term of this Settlement is intended to be contractual and not merely a recital.

16 **D. Joint Drafting of Settlement Documents**

17 50. Plaintiff's Counsel and Defense Counsel have arrived at this Settlement as a result of a
18 series of arm's-length negotiations, taking into account all relevant factors, present and potential.

19 51. This Settlement has been drafted jointly by Plaintiff's Counsel and Defense Counsel and,
20 therefore, in any construction or interpretation of this Settlement, the same shall not be construed against
21 any of the Parties.

22 **E. Execution of the Settlement**

23 52. This Settlement may be executed in one or more counterparts and by facsimile. All
24 executed copies of this Settlement and photocopies thereof shall have the same force and effect and shall
25 be as legally binding and enforceable as the original.

26 **F. Continuing Jurisdiction of the Court**

27 53. Pursuant to California Code of Civil Procedure section 664.6, the Parties agree that the
28 Court shall retain jurisdiction over the Parties, and over this Settlement, in order to: (i) monitor and

1 enforce compliance of Settlement, and/or (ii) resolve any disputes over this Settlement or the
2 administration of the benefits of this Settlement.

3 **G. Representations by Plaintiff**

4 54. Plaintiff acknowledges the following:

- 5 (a) Plaintiff has carefully read and fully understand all of the provisions of this
6 Settlement;
- 7 (b) Plaintiff knowingly and voluntarily agrees to all of the terms set forth in this
8 Settlement and have not been coerced, threatened, or intimidated into executing
9 this Settlement;
- 10 (c) Plaintiff was advised, and hereby is advised in writing, to consider the terms of
11 this Settlement and consult with his attorneys before signing this Settlement.
- 12 (d) Other than the fees and costs awarded pursuant to the terms of this Settlement,
13 Plaintiff acknowledges that all parties shall bear their own fees and costs through
14 the conclusion of this action.

15 **H. Representations by Defendants**

16 55. Defendants acknowledge the following:

- 17 (a) Released Parties have carefully read and fully understand all of the provisions of
18 this Settlement;
- 19 (b) Released Parties knowingly and voluntarily agree to all of the terms set forth in
20 this Settlement and have not been coerced, threatened, or intimidated into
21 executing this Settlement;
- 22 (c) Released Parties were advised, and hereby are advised in writing, to consider the
23 terms of this Settlement and consult with their attorney before signing this
24 Settlement.
- 25 (d) Other than the fees and costs awarded pursuant to the terms of this Settlement,
26 Released Parties acknowledge that all parties shall bear their own fees and costs
27 through the conclusion of this action.

28 [*signatures on following page*]

1 AGREED TO BY PLAINTIFF:

2 DATED: 12/2/2021

WINSON HSIEH, individually and on behalf of other
aggrieved employees

DocuSigned by:

Winson Hsieh

802009C57F3F449...

5 AGREED TO BY DEFENDANT:

6 DATED:

TEAM RISK MANAGEMENT STRATEGIES, LLC

Title

10 AGREED TO BY PLAINTIFF'S COUNSEL:

MOON & YANG, APC

DocuSigned by:

Allen Feghali

89521E17A9E14D8...

13 DATED: 12/2/2021

Kane Moon
Allen Feghali
Enzo Nabiev

17 AGREED TO BY DEFENDANTS' COUNSEL:

**GORDON REES SCULLY MANSUKHANI,
LLP**

20 DATED:

Brandon D. Saxon
Lindsay C. David

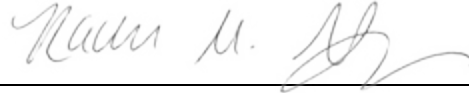
1 AGREED TO BY PLAINTIFF:

2 DATED: WINSON HSIEH, individually and on behalf of other
3 aggrieved employees

4 _____

5 AGREED TO BY DEFENDANT:

6 DATED: TEAM RISK MANAGEMENT STRATEGIES, LLC

7 

8 _____

9 CEO

Title

10 AGREED TO BY PLAINTIFF'S COUNSEL:

11
12 **MOON & YANG, APC**

13 DATED:

14 _____
15 Kane Moon
16 Allen Feghali
17 Enzo Nabiev

18 AGREED TO BY DEFENDANTS' COUNSEL:

19 **GORDON REES SCULLY MANSUKHANI,
20 LLP**

21 DATED:

22 

23 _____
24 Brandon D. Saxon
25 Lindsay C. David