

PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 ET SEQ.)
SETTLEMENT AGREEMENT

GINA BERRETT v. SYNCSTORIES. et al.

(Los Angeles County Superior Court Case No. 20STCV14281)

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned Parties, subject to the approval of the Court, that the settlement of this action shall be memorialized by and subject to the following terms and conditions. Capitalized terms used herein shall have the meanings set forth in Article I or elsewhere in this Private Attorneys General Act (Labor Code § 2698 *et seq.*) (“PAGA”) Settlement Agreement (“Agreement”).

This Agreement is made by and between SYNCSTORIES, and ERIC VASQUEZ (“Defendants”) and Plaintiff GINA BERRETT (“Plaintiff”), for themselves and on behalf of the State of California, (Defendants and Plaintiff as defined herein, are sometimes collectively referred to as the “Parties.”) Subject to the Court’s subsequent approval of the Settlement, this Agreement shall be effective once fully executed by the Parties.

The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and concluded by agreement of Defendant to pay the sum of Two Thousand dollars and zero cents (\$2,000.00), exclusive of the terms and conditions of any prior or subsequent confidential settlement between Plaintiff and Defendants, for settlement of the Private Attorneys General Act (“PAGA”) claim, which shall be inclusive of Plaintiff’s Counsel’s attorneys’ fees and costs related to this PAGA action.

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Article I.

Definitions.

Section 1.01 Definitions.

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

- (a) “Action” shall refer to the lawsuit entitled: *GINA BERRETT v. SYNCSTORIES. et al.*
filed in Los Angeles County Superior Court, Case No. 20STCV14281.
- (b) “Aggrieved Employees” is defined as all non-exempt employees of Defendants who were employed during the Release Period.
- (c) “Court” means the Superior Court for the State of California, County of Los Angeles.
- (d) “Counsel for Defendant is:

Kenneth Spencer, Esq.
Michael J. Weiss, Esq.
Joshua M. Webster, Esq.
ABRAMS GARFINKEL MARGOLIS BERGSON, LLP
3900 Main Street, Suite 2100
Burbank, CA 91505
Phone: (310) 300-2904, Fax: (310) 300-2901
Email: mweiss@agmblaw.com
Email: jwebster@agmblaw.com
- (e) “Effective Date” means the date the Court enters the order approving the Settlement as described in this Agreement.
- (f) “Gross Settlement Amount” refers to Two Thousand dollars and zero cents (\$2,000.00), which shall be paid by Defendants to fund the Settlement, and from which all settlement payments for the Net Settlement Amount, Court approved attorneys’ fees and costs, shall be paid.

- (g) “Net Settlement Amount” means the total sum available for payment of PAGA penalties to the Aggrieved Employees and the LWDA after deducting Plaintiff’s Counsel’s fees and costs, paid to Plaintiff, collectively referenced in Section 3.01(a-d) from the \$2,000.00 Gross Settlement Amount.
- (h) “Plaintiff’s Counsel” is:
- Huy M. Tran
Kring & Chung, llp
38 Corporate Park
Irvine, CA 92606
Telephone: (949) 261-7700
Facsimile: (949) 261-8800
htran@kringandchung.com
<http://www.kringandchung.com>
- (i) “Release Period” means January 15, 2019 to the date of the Court’s approval of this settlement.
- (j) “Released Claims” mean any and all claims relating to any and all facts and claims asserted in the Action or any other claims, under PAGA, that could have been asserted in the Action based on the facts alleged, including but not limited to any and all claims for PAGA penalties for violations of the California Labor Code governing: meal and rest breaks; unpaid wages, including minimum wages, regular wages, overtime and double time wages; wage statement violations; intentional misclassification; and separation of pay violations.
- (k) “Released Parties” means Defendants and its present and former officers, directors, employees, shareholders, agents, trustees, representatives, attorneys, insurers, reinsurers, parent companies, subsidiaries, divisions, affiliates, predecessors, successors, assigns, as well as any individual or entity that could be alleged to be jointly liable with Defendant.

- (l) “Settlement” or “Agreement” refers to the settlement of the PAGA claim reached by the Parties of the Action.

Article II.

Background.

Section 2.01 Background.

- (a) On April 13, 2020, Plaintiff filed the Action in the Superior Court of the State of California for the County of Los Angeles.
- (b) Subsequently, the Parties engaged in an extensive investigation along with informal discovery.

Article III.

Approval and Implementation of Settlement.

Section 3.01 Allocation of the Gross Settlement Amount.

The Parties will cooperate in obtaining through written stipulation or unopposed motion or *ex parte* application, if required, an Order from the Court approving the payment of the Gross Settlement Amount as follows:

- (a) Plaintiff’s Attorneys’ Fees.

Plaintiff’s Counsel may request and be paid up to 40% of the Gross Settlement Amount or \$800 for attorneys’ fees (“Plaintiff’s Attorney’s Fees.”) If Plaintiff’s counsel’s request for 40% of the Gross Settlement Amount is not approved and/or is reduced by the Court, any amount not approved and/or reduced by the Court will be included in the Net Settlement Amount to be paid to the Aggrieved Employees. Defendant agrees not to oppose a fee request by Plaintiff’s counsel in the foregoing amount.

(b) Litigation Costs.

Plaintiff's Counsel may request up to One Hundred Thirty-Five Dollars and Zero Cents (\$135.00) of the Gross Settlement Amount as reimbursement for expenses incurred in the Action ("Litigation Costs.") If Plaintiff's counsel's request for reimbursement of Litigation Costs is not approved and/or is reduced by the Court, any amount not approved and/or reduced by the Court will be included in the Net Settlement Amount to be paid to Aggrieved Employees. Defendant agrees not to oppose a request for reimbursement of Litigation Costs not exceeding the foregoing amount.

(c) Net Settlement Amount.

The Net Settlement Amount shall be determined by deducting Plaintiff's Attorney's Fees, and Litigation Costs as set forth in section 3.01(a) and (b) from the Gross Settlement Amount. The Net Settlement Amount shall be distributed as set forth below in section 3.04(b).

The Parties agree to use their best efforts to expedite the preparation and submission of the settlement documents. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed and shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to the approval and implementation of the payment of PAGA penalties as described in this Agreement.

Section 3.02 Court Approval.

The Parties will seek the Court's approval of the PAGA settlement and the payment of penalties as described in this Agreement by way of an unopposed motion to be filed by Plaintiff's Counsel or as directed by the Court. Plaintiff's Counsel will lodge this Agreement with the Court for its approval. Pursuant to Labor Code section 2699(1)(2), Plaintiff also will submit a copy of this Agreement to the Labor and Workforce Development Agency at the same time it is submitted

to the Court. The Court's approval of the payment of the Gross Settlement Amount as described in this Agreement shall be embodied in a written Order.

Section 3.03 Notice to Aggrieved Employees.

(a) Notice.

Notice shall be provided to the Aggrieved Employees in the following manner:

- (1) No later than thirty-five (35) days after the Effective Date, Defendants shall mail the Notice of PAGA Settlement (attached hereto as Exhibit "A") together with a settlement payment to all Aggrieved Employees by first-class United States mail, postage prepaid, with directions to the Postmaster to forward the Notice of PAGA Settlement and return all undeliverable Notices to the Defendants. For each Notice of PAGA Settlement that is returned as undeliverable, Defendants shall promptly attempt to locate the Aggrieved Employee by performing an additional skip trace and shall re-mail the Notice and settlement check no later than ten (10) days following receipt of the undeliverable Notice.

Section 3.04 Settlement Payment Procedures.

(a) PAGA Payments.

The total sum available for payment of PAGA penalties (the "Net Settlement Amount") shall be calculated by deducting Plaintiff's Attorney's Fees, Litigation Costs, , collectively referenced in Section 3.01(a) and (b) from the \$2,000.00 Gross Settlement Amount. The Net Settlement Amount shall be characterized as 100% civil penalties.

Defendants shall pay seventy-five percent (75%) of the Net Settlement Amount to the LWDA, no later than thirty-five (35) days after the Effective Date. The remaining twenty-five

percent (25%) of the Net Settlement Amount (the “Employee Net Settlement Amount”) shall be paid to Aggrieved Employees based on the following formula:

The Employee Net Settlement Amount shall be divided by the total pay periods worked for Defendant by all Aggrieved Employees during the Release Period to yield the “Employee Settlement Share Value.” Each Aggrieved Employee shall be paid their individual total pay periods worked for Defendant during the Release Period multiplied by the Employee Settlement Share Value.

All Aggrieved Employees who cash their settlement check may receive an IRS Form 1099 for their portion of the settlement, if deemed required by Defendants (in compliance with IRS guidelines).

The settlement checks issued to Aggrieved Employees shall remain valid for one hundred eighty (180) days. Defendants shall mail a check cashing reminder postcard to those Aggrieved Employees who have not negotiated their settlement checks within ninety (90) days of mailing. Thereafter, all unclaimed funds shall escheat to the State of California unclaimed property fund in the name of the Aggrieved Employee.

(b) Plaintiff’s Attorneys’ Fees, Litigation Costs and Service Fees Payment.

No later than thirty-five (35) days after the Effective Date, Defendants shall pay the court approved Plaintiff’s Attorneys’ Fees and Litigation Costs to Plaintiff’s Counsel.

Any Plaintiff’s Attorneys’ Fees or Litigation Costs awarded to Plaintiff’s Counsel and Service Fees awarded to Plaintiff by the Court shall be deducted from the Gross Settlement Amount for the purpose of determining the Net Settlement Amount. The “future” aspect of these amounts includes, without limitation, all time and expenses expended by Plaintiff’s Counsel in defending the Settlement and securing Approval of the Agreement (including any appeals therein).

There will be no additional charge of any kind to the Aggrieved Employees or request for additional consideration from Defendants for such work. This amount shall include all attorneys' fees, litigation costs, service fees, and expenses for which Plaintiff and Plaintiff's Counsel could claim under any legal theory whatsoever.

Section 3.05 Order Approving Settlement and Judgment.

Plaintiff and Defendants will jointly submit, with the documents asking the Court to approve the settlement and this Agreement, an order and judgment based on the Settlement to be entered by the Court granting approval of the PAGA penalties and retaining jurisdiction over all matters relating to the administration, consummation, enforcement, and interpretation of the terms of this Agreement and closing the case after submission of proof by Defendants of the payment of all funds enumerated in the Settlement.

Article IV.

Limitations On Use Of This Settlement.

Section 4.01 No Admission.

Defendants deny liability for any claims alleged by Plaintiff on her own behalf or on behalf of the State of California and any of its agencies, including but not limited to the Department of Industrial Relations, Division of Labor Standards Enforcement, and Labor Workforce and Development Agency, and the Aggrieved Employees upon any claim or cause of action. This Agreement does not constitute, and is not intended to constitute, an admission by Defendant as to the merits, validity, or accuracy of any of the allegations or claims made against it in the Action.

Nothing in this Agreement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the negotiations leading to this Agreement, is intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible in any

way in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. The Parties themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding, as purported evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity, or for any other purpose. Notwithstanding the foregoing, this Agreement may be used in any proceeding before the Court that has as its purpose the interpretation, implementation, or enforcement of this Agreement or any orders or judgments of the Court entered in connection with the Agreement.

None of the documents produced or created by Plaintiff or the Aggrieved Employees in connection with the claims procedures or claims resolution procedures constitute, and they are not intended to constitute, an admission by Defendant of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.

Section 4.02 Non-Evidentiary Use.

Neither this Agreement nor any of its terms shall be offered or used as evidence by any of the Parties, or their respective counsel in the Action or in any other action or proceeding; provided, however, this shall not prevent this Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Agreement and to secure its approval by the Court.

Section 4.03 Nullification.

- (a) If the Court should for any reason refuse to approve the payment of PAGA penalties as described in this Agreement, then (a) this Agreement shall be considered null and void, (b) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect, and (c) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court.
- (b) If the Court does not approve the payment of PAGA penalties as described in this Agreement, the Parties agree to meet and confer to address the Court's concerns.
- (c) Invalidation of any material portion of this Agreement shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

Article V.

Limited Release and Waiver of Claims.

Section 5.01 Limited Release of All PAGA Claims Relating to the Action.

Upon the final approval by the Court of this Settlement, Plaintiff and each Aggrieved Employee, shall, for the Release Period, fully release and forever discharge Released Parties from the Released Claims that arose during the Release Period. It is expressly understood and agreed that this limited release does not release Defendant from liability, if any, to the Aggrieved Employees, excluding Plaintiff, for any claims that they may assert against Defendant, other than a PAGA claim for penalties.

Article VI.

Miscellaneous Provisions.

Section 6.01 Voluntariness.

This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any of the Parties, or of any other person, firm or other entity.

Section 6.02 Amendments.

The terms and provisions of this Agreement may be amended only by a written agreement that is both (a) signed by the Plaintiff and Defendant who executed this Agreement and (b) approved by the Court. Any waiver of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement unless expressly so indicated otherwise.

Section 6.03 Assignment.

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Aggrieved Employee, Plaintiff's Counsel, or Defense Counsel without the express written consent of each other Party and their respective counsel hereto. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement and shall not be construed to confer any right or to avail any remedy to any other person. Plaintiff expressly warrants that he has not transferred to any person or entity any right or cause of action, or claim released by this Agreement.

Section 6.04 Governing Law.

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California.

Section 6.05 Entire Agreement.

This Agreement contains the entire understanding of the Parties hereto in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings among the Parties hereto with respect to the settlement of the Action.

Section 6.06 Waiver of Compliance.

Any failure of any Party, and/or Plaintiff's Counsel hereto to comply with any obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the extent permitted under applicable law, by the Party or Parties and their respective counsel hereto entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

Section 6.07 Counterparts.

This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. A scanned or faxed signature shall be valid as an original signature. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

Section 6.08 Attorneys' Fees and Costs.

Except as expressly provided herein, Defendants and Plaintiff shall each bear their own attorney's fees and costs.

Section 6.09 Dispute(s).

Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, Plaintiff's counsel and Defendant's counsel shall meet and confer in an attempt to reach a resolution. If the Parties are unable to reach a resolution, they agree to submit any such dispute(s) to the Court. Except as expressly provided

herein, this Agreement has not been executed in reliance upon any other written or oral representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary or contradict its terms. In entering into this Agreement, the Parties agree that this Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and enforced under the laws of the State of California, both in its procedural and substantive aspects, without regard to its conflict of laws provisions. Any claim arising out of or relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior Court of the State of California for the County of Los Angeles. The foregoing is only limited to disputes concerning this Agreement and in no way limits or negates the enforceability and effect of any purported underlying arbitration agreements signed by employees of Defendant, specifically including but not limited to Plaintiff, obligating them to arbitrate any and all claims on an individual (and not on a class or collective) basis. Plaintiff, on her own behalf and on behalf of the Aggrieved Employees, and Defendant participated in the negotiation and drafting of this Agreement and had available to them the advice and assistance of independent counsel. As such, neither Plaintiff nor Defendant may claim that any ambiguity in this Agreement should be construed against the other.

Section 6.10 Fair Settlement

Plaintiff, Defendant, Plaintiff's Counsel, and Defendant's Counsel believe that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiation, taking into account all relevant factors, current and potential, and is consistent with public policy, and fully complies with applicable provisions of law.

Section 6.11 Binding.

This Agreement shall bind and inure to the benefit of the Parties hereto and to their respective successors, assigns, legatees, heirs, and personal representatives.

Section 6.12 Waiver of Appeals.

The Parties waive all appeals from the Court's approval of the PAGA penalties, unless the Court materially modifies the settlement and/or the PAGA penalties.

Section 6.13 Continuing Jurisdiction.

The Parties agree that upon the occurrence of the entry of judgment of this case pursuant to the terms of this Agreement, this Agreement shall be enforceable by the Court pursuant to Code of Civil Procedure Section 664.6 and the Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties and Aggrieved Employees to interpret and enforce the terms, conditions and obligations of this Agreement.

Article VII.

Confidentiality

Section 7.01 Confidentiality.

Plaintiff and her Counsel agree that they have not and will not publish the Agreement. In response to any inquiries Plaintiff will state that "the case was resolved and it was resolved confidentially." Plaintiff's Counsel shall not report the Agreement or its content in any medium or in any publication, shall not post or report anything regarding the claims of Plaintiff or the Aggrieved Employees on their website, and shall not contact any reporters or media regarding the Agreement or its content. However, Plaintiff's attorneys are authorized to make a limited disclosure to the Court and the LWDA for the purposes of obtaining the approval of the settlement.

This disclosure is limited to court filings and electronic submission of settlement documents to the LWDA and neither Plaintiff nor her counsel or representatives are permitted to disseminate or publish, distribute, or discuss the information provided to the Court in those filings outside the filings themselves and any hearing held on those filings, unless ordered otherwise by the Court.

IN WITNESS WHEREOF, the Parties have executed this Private Attorneys General Act Settlement Agreement on the date set forth below.

APPROVED AND ACCEPTED.

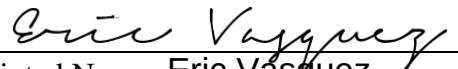
Dated: 7/6/2021

Plaintiff, Gina Berrett

By: 
Gina Berrett

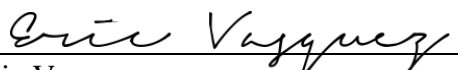
Dated: 07/21/2021

SyncStories

By: 
Printed Name: Eric Vasquez
Title: CEO

Dated: 07/21/2021

Defendant, Eric Vasquez

By: 
Eric Vasquez

**APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONS ONLY**

Dated: July 7 , 2021

KRING & CHUNG LLP



By _____

KYLE D. KRING, ESQ.
KERRI N. POLIZZI, ESQ.
HUY M. TRAN, ESQ.
ATTORNEYS FOR CLAIMANT
GINA BERRETT

Dated: July 22 , 2021

ABRAMS GARFINKEL MARGOLIS
BERGSON, LLP



By _____

MICHAEL J. WEISS, ESQ
JOSHUA M. WEBSTER, ESQ.
Attorneys for Respondents
SYNCSTORIES AND ERIC VASQUEZ