

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

David Johnson v. Double M Trucking, Inc.
Yolo County Superior Court
Case Number CV20-256

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned Parties, subject to the approval of the Court, that the settlement of this action with respect to all claims brought in a representative capacity pursuant to the Private Attorneys General Act ("PAGA") (Labor Code § 2698 *et seq.*) shall be effectuated upon 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 PAGA Settlement Agreement ("Agreement").

This Agreement is made by and between Double M Trucking, Inc. ("Defendant"), on the one hand, and Plaintiff David Johnson ("Plaintiff"), for himself, Aggrieved Employees (defined below), and on behalf of the State of California, on the other hand (Defendant, Plaintiff, and Aggrieved Employees, as defined herein, are sometimes collectively referred to as the "Parties."). This Agreement shall be effective upon the last date upon which it is signed by the Parties.

The Parties agree that all representative claims brought or that could have been brought pursuant to PAGA in Yolo County Superior Court Case Number CV20-256 (the "Litigation" or "Action") shall be, and hereby are, ended, settled, resolved, and concluded by agreement of Defendant to pay the sum of One Hundred Thousand Dollars (\$100,000.00) (hereinafter referred to as the "PAGA Settlement Sum") for settlement of the PAGA claims and penalties sought in the Litigation, which shall be inclusive of Plaintiff's Counsel attorneys' fees and costs in connection with this Agreement and the service payment/general release payment to Plaintiff. The Parties further agree that this Agreement shall also result in the resolution and dismissal of the putative class action claims asserted by Plaintiff. The Parties further agree that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission of liability.

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) "Aggrieved Employees" means all current and former California-based nonexempt truck drivers employed by Defendant at any time between February 13, 2016, and through the date of entry of an Order by the Court in the Action approving this settlement.

- (b) "Complaint" means the operative Complaint filed by Plaintiff in the Litigation, which asserts claims under PAGA predicated on underlying violations of Labor Code §§ 201-203, 221, 223, 226, 226.2, 226.7, 227.3, 512, 516, 1174, 1174.5, 1182, 1194, 1194.2, 1197, 1198, 2802, and Industrial Welfare Commission Wage Order Nine, as well as the anticipated first amended complaint referenced in Article II, § 2.01, subd. (b) below.
- (c) "Court" means the Superior Court for the State of California, County of Yolo.
- (d) "Defense Counsel" is:
- James D. McNairy, Esq.
Kimberly A. Lucia, Esq.
BOUTIN JONES INC.
555 Capitol Mall, Suite 1500
Sacramento, CA 95814
- (e) "Effective Date" means the date the Court approves the settlement of the PAGA penalties as described in this Agreement and dismisses the Action with prejudice.
- (f) "PAGA Letter" means the notice submitted by Plaintiff to the State of California Labor and Workforce Development Agency ("LWDA") on February 13, 2020, which asserts claims under PAGA predicated on underlying violations of Labor Code §§ 201-204, 218.5, 221, 223, 226, 226.2, 226.7, 227.3, 512, 516, 1182.12, 1174.5, 1194, 1197, 2802, and Industrial Welfare Commission Wage Order Nine.
- (g) "Plaintiff's Counsel" is:
- Marcus Bradley, Esq.
Kiley Grombacher, Esq.
Lirit King, Esq.
BRADLEY/GROMBACHER, LLP
31365 Oak Crest Drive, Suite 240
Westlake Village, CA 91361
- Sahag Majarian II, Esq.
LAW OFFICES OF SAHAG MAJARIAN
18250 Ventura Blvd.
Tarzana, CA 91356
- (h) "Release Period" means the time period February 13, 2016, through the date of entry of an Order by the Court in the Action approving this settlement.

Article II.

Background.

Section 2.01 Background.

- (a) On or about March 27, 2019, Plaintiff executed a Settlement Agreement and Release of Claims with Defendant, pursuant to which he released all claims against Defendant and its related entities for violations of the California Labor Code, California Wage Orders, and the California Business & Professions Code, and includes but is not limited to claims for unpaid wages, minimum wages, overtime wages, meal and rest periods, inaccurate pay stubs, untimely payment of wages, either during employment or upon termination, past unreimbursed business expenses, unfair or unlawful business practices, and California Labor Code penalties, including a release pursuant to California Civil Code section 1542 and an agreement to bring no further claims against Defendant on the claims released therein.
- (b) On February 14, 2020, Plaintiff filed a putative class action complaint in the Superior Court of the State of California for the County of Yolo, entitled *David Johnson v. Double M Trucking, Inc.*, Case No. CV20-256, asserting claims on behalf of himself and all other similarly situated nonexempt hourly employees for Defendant's alleged failure to pay minimum wages, failure to pay wages at the designated wage scale, failure to provide meal periods, failure to reimburse for business expenses, failure to provide rest periods, failure to provide compensation for rest and recovery periods and nonproductive time, failure to pay accrued time off, and failure to timely furnish accurate itemized wage statements.
- (c) On or about July 8, 2020, Johnson filed a first amended complaint on behalf of himself, the State of California and other Aggrieved Employees, as a single representative cause of action pursuant to the Private Attorneys General Act of 2004 (Cal. Labor Code § 2698 *et seq.*) based on alleged violations of Labor Code §§ 201-203, 221, 223, 226, 226.2, 226.7, 227.3, 512, 516, 1174.5, 1182.12, 1194, 1194.2, 1197, 1198, 2802, and Industrial Welfare Commission Wage Order Nine, premised on Defendant's alleged failure to pay minimum wages, failure to pay wages at the designated wage scale, failure to provide meal periods, failure to reimburse for business expenses, failure to provide rest periods, failure to provide compensation for rest and recovery periods and nonproductive time, failure to pay accrued time off, and failure to timely furnish accurate itemized wage statements. In connection with filing his first amended complaint, Plaintiff agrees to dismiss the claims brought on behalf of a putative class, leaving the only claim at issue in the Complaint his claims under PAGA.
- (d) On September 17, 2020, Johnson filed a dismissal of causes of action one through ten from the Lawsuit (the "Class Claims") and proceeded with the litigation for remaining PAGA-only cause of action.

- (e) This PAGA Settlement contemplates the entry of an order by the Court dismissing the Class Claims and approving the payment allocated for settlement of the PAGA claims and dismissing the Action with prejudice.

Article III.

Approval and Implementation of Settlement.

Section 3.01 Cooperation.

The Parties will cooperate in obtaining through an unopposed motion an Order from the Court approving the payment of the PAGA Settlement Sum as described in this Agreement at the earliest possible date. Concurrently with the submission of this Agreement to the Court, Plaintiff shall submit it to the LWDA as required by PAGA. 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, 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 the PAGA Settlement Sum as described in this Agreement.

The Court's approval of the payment of the PAGA Settlement Sum as described in this Agreement shall be embodied in a written Order, which shall be transmitted to the LWDA promptly upon entry, as required by PAGA. Should the Court not grant approval of the payment of the PAGA Settlement Sum as described in this Agreement or decline to dismiss the Class Claims or the Action, this Agreement shall be null and void and have no further effect.

Section 3.02 Settlement Payment Procedures.

(a) Payment of PAGA Settlement Sum and Notice to Aggrieved Employees.

- (1) Defendant agrees to pay a total amount of One Hundred Thousand Dollars (\$100,000.00) to settle this matter. This amount, *i.e.*, the PAGA Settlement Sum, shall cover, resolve, and fully satisfy any and all amounts owed to Plaintiff, the Aggrieved Employees, the State of California, and Plaintiff's Counsel, including all amounts allocated to attorneys' fees and costs, in settlement of all claims asserted in the Complaint, or that could have been asserted in the Complaint, by Plaintiff, on behalf of himself and the Aggrieved Employees. The Parties agree that there are no circumstances that would require Defendant to pay any amount greater than the PAGA Settlement Sum in connection with this Agreement. In the event that this Agreement is canceled, rescinded, terminated, voided or nullified, however that may occur, or the settlement is barred by operation of law, invalidated, or ordered not to be carried out by a court of competent jurisdiction, Defendant shall have no obligation to pay any of the PAGA Settlement Sum and the Parties' respective positions shall be restored to positions prior to the negotiations leading to this settlement. Further, in that event, nothing in this Agreement, the negotiations leading to this settlement, nor any papers prepared in connection with this Agreement shall be admissible in any proceeding for any purpose whatsoever.

- (2) The "Net Settlement Fund" shall be calculated by deducting from the PAGA Settlement Sum up to \$33,333.00 for the payment of Plaintiff's Counsel's fees, up to \$18,000.00 for the payment of Plaintiff's Counsel's costs, and up to \$5,250.00 for the payment of the Parties' chosen Settlement Administrator. The Net Settlement Fund will be comprised of approximately \$43,417.00. Seventy-five percent (75%) of the Net Settlement Fund, or approximately \$32,562.75, shall be distributed to the LWDA, and the remaining twenty-five percent (25%) of the Net Settlement Fund, or approximately \$10,854.25, shall be distributed to the Aggrieved Employees.
- (3) The twenty-five percent (25%) of the Net Settlement Fund to be distributed to the Aggrieved Employees will be divided by the total number of workweeks worked by all of them while employed during the Release Period. A total value per workweek will be derived by dividing the twenty-five percent (25%) of the Net Settlement Fund by the total number of workweeks that all Aggrieved Employees worked within the Release Period. Each Aggrieved Employee will have their respective number of workweeks multiplied by the total value per workweek to derive their respective share of the twenty-five percent (25%) of the Net Settlement Fund, subject to a twenty-five dollar (\$25.00) minimum payment. Thus, each of the Aggrieved Employees will receive a pro rata share based on their number of workweeks worked during the Release Period compared to the total workweeks for all Aggrieved Employees during the Release Period, but in no event less than twenty-five dollars (\$25.00).
- (4) No later than fifteen (15) calendar days after the Effective Date, Defendant shall wire to the Settlement Administrator the total PAGA Settlement Sum. Defendant shall also provide a confidential list of all Aggrieved Employees, their contact information, paystubs received and/or dates of employment, and all other necessary information to the Settlement Administrator confidentially to locate Aggrieved Employees and process payments, including, but not limited to, Social Security numbers, and any other information required to effectuate the Agreement.
- (5) The Aggrieved Employees information, and any other data provided by Defendant to the Settlement Administrator, shall be treated as confidential and not subject to disclosure by the Settlement Administrator except as is otherwise necessary for the Settlement Administrator to perform its obligations described in this Agreement. Further, the Settlement Administrator shall ensure that the Notice and any other communications to the Aggrieved Employees shall not include the Aggrieved Employees' Social Security Number, except for the last four (4) digits.
- (6) No later than twenty-five (25) calendar days after the Effective Date, the Settlement Administrator shall transmit the Notice of PAGA Settlement (attached hereto as Exhibit "A"), together with settlement checks containing their individual settlement amounts, with no claims process required, to all Aggrieved Employees by first-class United States mail, postage prepaid, to the last known address of each recipient with directions to the Postmaster to forward the Notice of PAGA Settlement and return all undeliverable Notices.

- (7) For each settlement check and Notice of PAGA Settlement that is returned as undeliverable, the Settlement Administrator shall promptly attempt to locate the Aggrieved Employee by using an address refresher database. The value of checks uncashed more than 180 days after issuance shall be paid to the LWDA.
- (8) No later than twenty-five (25) calendar days after the Effective Date, the Settlement Administrator shall transmit to the LWDA its share of PAGA penalties; to Plaintiff's Counsel its fees and costs; to Plaintiff his service payment/general release payment; and to itself all settlement administration fees incurred.
- (9) 100% of the PAGA Settlement Sum is considered penalties and will not be subject to local, state or federal tax withholdings. All recipients of payments under this PAGA Settlement shall have their payments reported on an IRS Form 1099. The Settlement Administrator shall issue IRS Form 1099s (if required) to the Aggrieved Employees.

Article IV.

Limitations On Use Of This Settlement.

Section 4.01 No Admission.

This Agreement and compliance with this Agreement shall not be construed as an admission by Defendant of any liability whatsoever, or as an admission by Defendant of any violations of Plaintiff's or Aggrieved Employees' rights, violation of any order, law, statute, duty or contract whatsoever. Defendant specifically disclaims any liability to Plaintiff or any other allegedly aggrieved employee for any alleged violation of his/her rights, or for any alleged violation of any order, law, statute, duty or contract. Defendant further denies that, for any purpose other than settling these matters, that this action is appropriate for representative treatment.

Section 4.02 Non-Evidentiary Use.

Neither this Agreement, nor any of its terms, nor any of the negotiations connected with it or proceedings relating to this Agreement, payouts or anything else associated with it, shall be offered or used as evidence by any of the Parties, or their respective counsel in the Litigation or in any other action or proceeding, including to establish any liability or admission on the part of Defendant or any Released Parties or to establish the existence of any condition constituting a violation of, or noncompliance with, federal, state, local or other applicable law; 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. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it or proceedings relating to this Agreement, payouts or other events associated with it, shall be construed as an admission or concession by Defendant or any Released Parties or establishment of any such violation(s) or failure(s) to comply with any applicable law. Defendant specifically retains the right to defend, on the merits, against any non-settled claims brought by any Aggrieved Employees.

Section 4.03 Nullification.

Invalidation of any material provision 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.

Release and Waiver of Claims.

Section 5.01 Limited Release By Aggrieved Employees.

Upon the Effective Date and subject to Defendant's full payment of all sums required by this Settlement, Plaintiff, on behalf of himself, his heirs, executors, and assigns, the Aggrieved Employees, and the State of California, fully release and discharge Defendant, and each of its present and former affiliates, parent companies, subsidiaries, divisions, successors, predecessors, and assigns, and each of its respective past and present shareholders, officers, partners, directors, current and former employees, agents, attorneys, insurers, successors, assigns, representatives, accountants, and all persons acting under, by, through, or in concert with any of them (collectively, "Released Parties") from any and all claims, rights, demands, liabilities, and causes of action of every nature and description, under PAGA, including, but not limited to, attorneys' fees and costs, which were asserted in the PAGA Letter and Complaint or which could have been asserted in the PAGA Letter and Complaint based on the facts pled therein ("Released Claims") that accrued during the Release Period.

Section 5.02 General Release By Plaintiff.

Upon the Effective Date and subject to Defendant's full payment of all sums required by this Settlement, Plaintiff shall be deemed to have fully, finally, and forever released the Released Parties from any and all claims, obligations, demands, actions, rights, causes of action, and liabilities against the Released Parties, of whatever kind and nature, character, and description, whether in law or equity, whether sounding in tort, contract, federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, whether known or unknown, and whether anticipated or unanticipated, including unknown claims covered by Civil Code Section 1542, arising through the Effective Date, for any type of relief, including, without limitation, claims for wages, damages, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief. These claims include, but are not limited to, the Released Claims, as well as any other claims under any provision of the California Labor Code or any applicable California Industrial Welfare Commission Wage Orders, and claims under local, state, or federal discrimination statutes, including, without limitation, the California Fair Employment and Housing Act, California Government Code §§ 12940 *et seq.*; the Unruh Civil Rights Act, California Civil Code §§ 51 *et seq.*; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000 *et seq.*; the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*; the Employee Retirement Income Security Act of 1974, 29 U.S.C.

§§ 1001 *et seq.*; and all of their implementing regulations and interpretive guidelines. With respect to these released claims as described in this Section, Plaintiff shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits he may otherwise have had pursuant to Section 1542 of the California Civil Code, which provides as follows:

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

Plaintiff understands and acknowledges that the significance and consequence of this waiver of California Civil Code Section 1542 is that even if he should eventually suffer injury arising out of or pertaining to the employment relationship, he will be unable to make any claim for those injuries. Furthermore, Plaintiff acknowledges that he consciously intends these consequences even as to claims for injuries that may exist as of the Effective Date but which he does not know exist and which, if known, would materially affect his decision to execute this Agreement, regardless of whether his lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

Article VI.

Miscellaneous Provisions.

Section 5.02 Voluntary Execution.

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 5.03 Amendments.

The terms and provisions of this Agreement may be amended only by a written agreement that is both (a) signed by Plaintiff, Plaintiff's Counsel, Defendant and Defense Counsel 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 5.04 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 5.05 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 5.06 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 Litigation.

Section 5.07 Waiver of Compliance.

Any failure of any Party, Defense Counsel, 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 5.08 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. 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 5.09 Attorneys' Fees and Costs.

With respect to this Agreement, neither Plaintiff's Counsel nor any other attorneys acting for, or purporting to act for, the Aggrieved Employees or Plaintiff may recover or seek to recover any amounts for fees, costs, or disbursements from the Released Parties or the PAGA Settlement Sum except as expressly provided herein. Defendant shall bear its own attorney's fees and costs, and neither Plaintiff's Counsel, Aggrieved Employees nor Plaintiff shall be responsible for Defendant's attorney's fees and costs. If any party moves the Court to enforce this Agreement, the prevailing party shall be entitled to recover from the other party all attorneys' fees and costs incurred to enforce this Agreement.

Section 5.10 Dispute(s).

Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, the Parties agree to submit any such dispute(s) first to mediation, and then, if unsuccessful, to the Court. To the extent any Party seeks

to enforce any of the terms of this Agreement in Court or before the Court, the prevailing party shall be entitled to recover his/her/its/their reasonable attorneys' fees and costs.

Section 5.11 Binding.

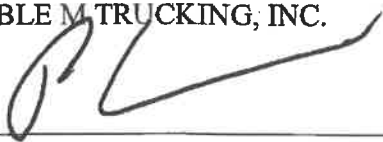
This Agreement shall bind and inure to the benefit of the Parties hereto and to their respective successors, assigns, legatees, heirs, and personal representatives.

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

APPROVED AND ACCEPTED.

Dated: 9-22-20, 2020

DOUBLE M TRUCKING, INC.

By 
Penny Espinoza, Manager

Dated: 10/2/20, 2020

DocuSigned by:

By 8805E2D+8888405...
DAVID JOHNSON

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

Dated: _____, 2020

BRADLEY/GROMBACHER, LLP

By _____
Marcus Bradley, Esq.
Kiley Grombacher, Esq.
Lirit King, Esq.
Attorneys for Plaintiff

Dated: _____, 2020

LAW OFFICES OF SAHAG MAJARIAN

By _____
Sahag Majarian II
Attorney for Plaintiff

to enforce any of the terms of this Agreement in Court or before the Court, the prevailing party shall be entitled to recover his/her/its/their reasonable attorneys' fees and costs.

Section 5.11 Binding.

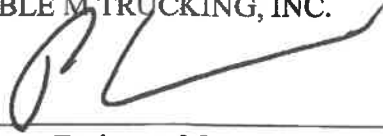
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IN WITNESS WHEREOF, the Parties have executed this Private Attorneys General Act Settlement Agreement on the date set forth.

APPROVED AND ACCEPTED.

Dated: 9-22-20, 2020

DOUBLE M TRUCKING, INC.

By 
Penny Espinoza, Manager

Dated: _____, 2020

By _____
DAVID JOHNSON

APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONS ONLY

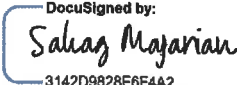
Dated: 10/21, 2020

BRADLEY/GROMBACHER, LLP

By 
Marcus Bradley, Esq.
Kiley Grombacher, Esq.
Lirit King, Esq.
Attorneys for Plaintiff

Dated: 10/1/2020, 2020

LAW OFFICES OF SAHAG MAJARIAN

By 
Sahag Majarian II
Attorney for Plaintiff