

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement”) is made and entered into between Plaintiff Erick Jose Ramirez (Personally and acting as a deputized Private Attorney General capacity) and Defendants Marcarelli Design, Inc. and Cameron Marcarelli.

I. DEFINITIONS

The following terms, when used in this Settlement, shall have the following meanings:

1. “Action” means the matter entitled *Erick Jose Ramirez v. Marcarelli Design, Inc.* et al., Los Angeles Superior Court Case No. 20STCV36898, and encompasses Plaintiff’s correspondence, and claims contained therein, to the California Labor and Workforce Development Agency (“LWDA Letters”) dated March 17, 2020 and March 26, 2020.

2. “Aggrieved Employees” consist of all current and former hourly, non-exempt employees of Defendants, who worked for Defendants in California between March 17, 2019 and September 24, 2020. The Aggrieved Employees, including Plaintiff, worked a total of approximately 427 pay periods between March 17, 2019 and September 24, 2020.

3. “Defendant” means Marcarelli Design, Inc., and Cameron Marcarelli.

4. “Complaint” means the operative Complaint in the Action, originally filed on September 25, 2020.

5. “Court” means the Superior Court of California for the County of Los Angeles where the action is pending, or any other court which may acquire jurisdiction in the future.

6. “Effective Date” means the later of: (a) the date upon entry of an Order by the Court approving the Settlement Agreement; (b) the date on which the time for all appeals from objections to the Settlement has passed, if one or more objections to the Settlement are filed, and not withdrawn; and (c) if an appeal is taken, the date on which the appeal is settled, withdrawn or dismissed, or any reviewing court issues a decision, the time for further appeal has expired and the trial court has regained jurisdiction

7. “Individual PAGA Payment” means the amount to be paid to each Aggrieved Employee based on the formula described herein.

8. “LWDA” means the California Labor and Workforce Development Agency.

9. “Gross Settlement Amount” is the non-reversionary sum of One Hundred Thousand Dollars and No Cents (\$100,000.00), which represents the total amount payable under this Settlement by Defendants, including, without limitation, payments to all Aggrieved Employees, payment to the LWDA, and payment of Plaintiff’s attorneys’ fees and costs.

10. “Distributable Amount” is the amount designated to be paid for PAGA designated claims, with 75% of the funds being remitted to the LWDA and 25% of the fund being distributed, pro rata, based on number of pay periods each employee worked during PAGA Period.

11. "PAGA" means the California Labor Code Private Attorneys General Act, California Labor Code § 2698, *et seq.*

12. "PAGA Period" means the time period from March 17, 2019 to September 24, 2020.

13. "PAGA Released Claims" mean any and all claims for civil penalties under PAGA that are pled in the operative complaint in the Action, or which could have been pled under the PAGA based on the factual allegations in the operative complaint, that arose during the PAGA Period.

14. "Parties" mean Plaintiff and Defendant.

15. "Plaintiff" means Erick Jose Ramirez.

16. "Plaintiff's Counsel" means Pouya B. Chami and Chami Law, PC.

17. "Defendants' Counsel" means Landegger Baron Law Group

II. RECITALS

1. Plaintiff's Complaint alleges the following claims: 1) Unpaid Overtime; 2) Meal Breaks Violations; 3) Rest Breaks Violations; 4) Inaccurate Wage Statements; 5) Waiting Time Penalties; 6) Unfair Business Practices; 7) Penalties Under PAGA; and, 8) Failure to Produce Personnel Records.

2. The action was filed on September 25, 2020.

3. Plaintiff filed the LWDA Letters in compliance with the Labor Code sections 2698, *et seq.*

4. The parties exchanged information and participated in a mediation with Jeff Winikow, on September 24, 2020, where a full settlement settling the personal and representative claims of the Aggrieved Employees was reached.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. **Non-Admission.** Nothing in this Settlement shall be construed to be an admission by Plaintiff that his claims do not have merit or by Defendants of any liability or wrongdoing as to Plaintiff, the Aggrieved Employees or any other person, and Defendants specifically disclaim any such liability or wrongdoing. The Parties have entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses and risks. This Settlement and any related court documents or orders are not and may not be cited or admitted as evidence of liability, except that the agreement may be submitted to the Court to prove its breach or for settlement approval purposes.

2. **Gross Settlement Amount.** Defendants shall pay \$100,000.00 as the Gross Settlement Amount. Defendants will not pay more than the Gross Settlement Amount. The Gross Settlement Amount shall be distributed as follows:

a. **Plaintiff's Attorneys' Fees and Costs.** \$48,684.67 of the Gross Settlement Amount is going to be designated and paid for Attorney's and Costs.

b. **Plaintiff's Individual Settlement.** \$41,315.33 of the Gross Settlement Amount shall be paid to Plaintiff in full satisfaction of his personal and representative capacities, and in exchange for the personal release granted below.

c. **PAGA Penalties.** \$10,000.00 of the Gross Settlement Amount shall be designated and payable for PAGA penalties. Defendants' counsel will process the settlement for the Aggrieved Employees. Defendants' counsel shall provide notice and payment to the Aggrieved Employees. Pursuant to the PAGA (*Labor Code section 2698, et seq.*), Defendants' counsel shall distribute this amount by remitting 75% of the sum to the LWDA and the remainder being distributed pro rata to each Aggrieved Employee, based on pay periods worked by each Aggrieved Employee.

d. **Regarding Enforceability and Effect of Court Approval.** Under no circumstance will Defendant be required to pay more in Gross Settlement Amount, irrespective of the amounts the Court may or may not approve. Moreover, no ruling from the Court as to any request made to the Court that require court approval shall affect the enforceability of the Agreement.

3. **Approval of the Settlement Agreement by the Court.**

Within 10-days of the execution of this Settlement Agreement, the Parties shall execute and submit a stipulation for approval of the Settlement Agreement to the Court. Defendants shall deposit \$40,000.00 with Defendants' counsel, to be held in Defendants' counsel's client trust account, and to be distributed within 5-days of the date Defendants' counsel receives notice of approval of the Settlement Agreement ("the Approval Date").

4. **Disbursal of Settlement Funds/Dismissal of Action.**

Within five (5) calendar days from the Approval Date, Defendants, through their counsel shall:

1. deliver to Plaintiff's Counsel payment of a gross total of THIRTY THOUSAND AND ZERO CENTS (\$30,000.00), by check made payable to CHAMI LAW PC, CLIENT TRUST ACCOUNT; and

2. From the FOURTY THOUSAND DOLLARS (\$40,000) paid under section (3) above, Defendants' Counsel shall distribute TEN THOUSAND DOLLARS AND ZERO CENTS (\$10,000.00) as payment of the PAGA penalties to the Aggrieved Employees and the LWDA, with \$7,500.00 made payable to the LWDA and \$2,500.00 distributed to the Aggrieved Employees.

3. thereafter, Defendants on their own behalf, or through their counsel, shall deliver to Plaintiff's Counsel the remaining SIXTY THOUSAND DOLLARS (\$60,000.00) in twelve (12) monthly installments of FIVE THOUSAND DOLLARS AND ZERO CENTS (\$5,000.00) each, starting thirty (30) calendar days following the Approval Date, with the next installment due each thirty (30) calendar days thereafter for a total of twelve (12) months and until the Gross Settlement Payment is paid in full. All settlement installment payments, except for payment of PAGA penalties, shall be made payable to Chami Law, PC Client Trust Account and delivered to counsel for Plaintiff, at Chami Law, PC.

If the date by which any payment described more fully herein is to be made available to Plaintiff's Counsel falls on a Saturday, Sunday, or legal holiday in the State of California, then the date said payment shall be made available to Plaintiff's Counsel shall be the next following day which is not a Saturday, Sunday, or legal holiday in the State of California.

5. **Allocation of PAGA Penalties Amount.** The amount designated to be paid for PAGA Penalties is to be paid as follows: 75% shall be paid to the LWDA, and the remaining 25% shall be distributed to the Aggrieved Employees, pro rata, based on the proportion of pay periods each employee worked for the Defendants. Defendants shall distribute the PAGA penalties to the LWDA and Aggrieved Employees within 10 days of the agreement and settlement being approved by the Court through regular US Postal Service and forward any returned check, if a forwarding address is available.

6. **Representative PAGA Release.**

- a. In his capacity as a Private Attorney General and/or "aggrieved employee" acting on behalf of himself, the State of California and Aggrieved Employees, and in consideration of the payments awarded to him under this Settlement Agreement, Plaintiff hereby releases Defendant and its former, present and future owners, parents, subsidiaries, franchisors, and all of their current, former and future officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, agents, successors, assigns, accountants, insurers, legal representatives, (collectively, the "Released Parties") from any and all of the PAGA Released Claims that arose during the PAGA Period.
- b. Plaintiff personally agrees to release, in addition to the PAGA Released Claims, all claims, whether known or unknown, under federal law or state law (including his individual wage and hour claims), to the fullest extent permitted by law, against the Released Parties. The Parties understand and agree that Plaintiff is not, by way of this release, releasing any workers' compensation claims nor any other claims which cannot be released as a matter of law. Notwithstanding the foregoing, Plaintiff understands that this release includes unknown claims and that he is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to

exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

7. **PAGA Released Claims.** Plaintiff agrees that upon entry of an Order approving the Settlement, all Aggrieved Employees will release any and all PAGA Released Claims against the Released Parties that arose during the PAGA Period. Upon entry of the Order approving the Settlement and judgment entered thereon, Plaintiff and all Aggrieved Employees will be forever barred from pursuing any and all of the PAGA Released Claims that arose during the PAGA Period against the Released Parties.

8. **Covenants and Representations by Plaintiff and Plaintiff's Counsel.**

a. Plaintiff represents and warrants that he has not assigned or transferred or purported to assign or transfer to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Settlement.

b. Plaintiff acknowledges that he has read this Settlement, that he fully understands his rights, privileges and duties under the Settlement, and enters into this Settlement freely and voluntarily. Plaintiff further acknowledges that he had the opportunity to consult with his attorneys to explain the terms of this Settlement and the consequences of signing this Settlement.

9. **Confidentiality.** Neither Plaintiff nor Plaintiff's Counsel shall issue a press release, hold a press conference, or publish information about the Settlement on any website or through any social media, or otherwise publicize the Settlement, unless ordered by the Court.

10. **Termination of Settlement.** If the Court does not approve the Settlement, if the Court does not enter judgment, as provided for in this Settlement, or if appellate review is sought and, on such review, the Court's decision is materially modified or reversed, or if one or more of the terms of the Settlement is not approved or is materially modified or reversed or found to be invalid, then either of the Parties shall have the right within ten (10) days of written notice thereof to elect to terminate the Settlement, in which case the Settlement shall have no force or effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Settlement. The Parties agree that any and all disclosures and/or exchanges of information in anticipation of mediation shall be covered by the mediation privilege and may not be used unless expressly authorized in writing by Defendant's counsel or if the information is properly obtained in the course of normal discovery. The Parties expressly agree that Plaintiff's counsel may use the disclosures and/or exchanges of information in anticipation of mediation for purposes of obtaining Court approval of the Settlement.

11. **Stipulation and Order.** As part of the Stipulation and Order to approve the Settlement, the Parties shall submit a stipulation and proposed order approving the Settlement and PAGA penalties in the Action in accordance with the terms of the Settlement and which retains jurisdiction over the Action for the purpose of enforcing the terms of the Settlement following approval of the Settlement. This Settlement is expressly conditioned upon the Court executing the Parties' Stipulation and Order Approving the Settlement and PAGA penalties as set forth herein.

The Order will release the claim for civil penalties on as to Plaintiff and Aggrieved Employees under the PAGA as stated above in the definition for the PAGA Released Claims.

V. MISCELLANEOUS PROVISIONS

1. **Drafting.** The Parties agree that the terms and conditions of this Settlement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that neither Plaintiff nor Defendant shall be considered the "drafter" of this Settlement for purposes of having terms construed against that Party.

2. **Successors.** This Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators and successors.

3. **Costs and Fees.** The Parties shall each bear their own costs, attorneys' fees, mediator fees and other fees incurred in connection with this Settlement, the Action and Plaintiff's claims, except as otherwise set forth specifically herein.

4. **Governing Law.** This Settlement shall be construed under and governed by the laws of the State of California. This Settlement shall be deemed to have been entered into in Los Angeles, California, and all questions of validity, interpretation or performance of any of its terms or of any rights or obligations of the Parties to this Settlement shall be governed by California law. If any legal or equitable action is necessary to enforce the terms of this Settlement, it shall be brought in the State of California, County of Los Angeles.

5. **Complete Agreement.** The Parties each acknowledge and represent that no promise or representation not contained in this Settlement has been made to them and acknowledge and represent that this Settlement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the PAGA claim in the Action. This Settlement cannot be amended or modified except by a writing signed by the Parties hereto.

6. **Nullification of Settlement.** In the event that: (i) the Court does not approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then this Settlement and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions.

7. **Judgment and Continued Jurisdiction.** After approval of this Settlement, the Court will have continuing jurisdiction pursuant to California Code of Civil Procedure section 664.6 solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement.

8. **Amendment or Modification.** This Settlement may be amended or modified only by a written instrument, signed by either the Parties or their successors-in-interest or counsel for all Parties.

9. **Authorization to Enter into Settlement.** Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Settlement and to take all appropriate action required or permitted to be taken by such Parties

pursuant to this Settlement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

10. **Execution and Counterparts.** This Settlement is subject only to the execution of all Parties. However, the Settlement may be executed in one or more counterparts. All executed counterparts, and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

11. **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties believe this Settlement is a fair, adequate and reasonable settlement of the Action, and have arrived at this Settlement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

12. **Invalidity of Any Provision.** Before declaring any provision of this Settlement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Settlement valid and enforceable.

13. **Severability.** If any term or provision of this Settlement is held to be invalid or unenforceable, the remaining portions of this Settlement will continue to be valid and will be performed, construed and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

14. **Waiver.** No waiver of any condition or covenant contained in this Settlement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right or remedy.

15. **Enforcement Action.** In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

16. **Mutual Preparation.** The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement. Accordingly, this Settlement will not be construed more strictly against one Party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement.

17. **Representation by Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement, and this Settlement has been executed with the consent and advice of counsel and reviewed in full.

18. **Cooperation and Execution of Necessary Documents.** All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement.

19. **Binding Agreement.** The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement will be fully enforceable and binding on all Parties and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

20. **Denial of Liability.** The Parties expressly recognize that the making of this Settlement does not in any way constitute an admission or concession of wrongdoing on the part of Defendants. Nothing in this Settlement, 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 this Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in 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. Notwithstanding the foregoing, this Settlement may be used in any Court proceeding that has as its purpose the interpretation, implementation or enforcement of the Settlement or any orders or judgments of the Court entered into in connection therewith.

21. **Recitals.** The above mentioned recitals are incorporated into, and made a part of this Agreement.

IN WITNESS THEREOF, the Parties each acknowledge that they have read the foregoing Settlement, accept and agree to the provisions contained in this Settlement and hereby execute it voluntarily and with full understanding of its consequences.

Plaintiff and Deputized Employee

Dated: 10-15, 2020

SERC

Erick Jose Ramirez

Plaintiff, in his personal and representative capacity.

MARCARELLI DESIGN, INC.

Dated: OCT 10TH, 2020

[Signature]

By: Cameron Marcarelli

Its: CEO