

KCSC CASE NO. BCV-20-010552 SETTLEMENT AGREEMENT

PARTIES

1. This agreement, which includes settlement of a California Labor Code Private Attorneys Act of 2004, Labor Code §§ 2698 *et seq.* (“PAGA”) cause of action (“Agreement”) is made and entered into by and between Plaintiff Saul Del Toro (“Plaintiff”), on the one hand, and Defendant Golden State Drilling, Inc. (“Golden State” or “Defendant”) (collectively, the “Parties”). The Parties hereby agree that the representative action styled *Saul Del Toro v. Golden State Drilling, Inc.*, pending in the Superior Court of the State of California, County of Kern, Case No. BCV-20-010552 (hereinafter “Lawsuit”), shall be settled on the terms and conditions set forth in this Agreement, subject to the approval of the Court pursuant to the PAGA.

RECITALS

2. A dispute has arisen between Plaintiff and Defendant arising out of and related to paystubs issued to Plaintiff during his employment with Defendant.

3. On or about March 11, 2020, Plaintiff submitted a notice to the California Labor and Workforce Development Agency (“LWDA”) (“PAGA Notice”), LWDA Case No. LWDA-CM-777828-20, asserting violations of Labor Code sections 226, and 226.3 and seeking civil penalties under those sections.

4. On or about September 20, 2020, in response to the PAGA Notice, Defendant implemented a change in practice to implement an employee number on wage statements (“Policy Change”).

5. On or about July 6, 2020, Plaintiff filed a complaint alleging individual causes of action pursuant to the California Labor Code (“Individual Claims”) seeking statutory penalties, as well as a representative PAGA Action alleging violations of Labor Code as set forth in his PAGA Notice and seeking civil penalties for Labor Code sections asserting violations of Labor Code sections 226 and 226.3 and seeking civil penalties under those sections (“PAGA Claims”).

6. NOW, THEREFORE, in consideration of the mutual covenants, promises, and warranties set forth herein, the Parties agree, subject to the Court’s approval pursuant to Labor Code § 2699(1)(2), to the terms of this Agreement.

SETTLEMENT ALLOCATIONS

7. Gross Settlement Fund: This Agreement requires Defendants to pay a total maximum amount of Twenty-Two Thousand Five Hundred Dollars (\$22,500.00) (“Gross Settlement Fund”) for settlement of the Lawsuit.

8. Settlement Administrator: The Net Settlement PAGA Amount as described below shall be distributed by Defendant with any costs associated paid by Defendant.

9. Non-Monetary Consideration: Defendant has provided a declaration confirming the financial hardship of the company. Defendant shall provide a declaration confirming the implementation of their Policy Change.

10. Payment to Plaintiff for Release of Plaintiff's Individual Claims: As consideration in exchange for Plaintiff's individual release of Plaintiff's Individual Claims and 1542 waiver, Defendant shall pay to Plaintiff, from the Gross Settlement Fund, the sum of One Thousand Five Hundred Forty-Nine Dollars **(\$1,549.00)** ("Individual Release Payment").

11. Alleged Aggrieved Employees: The total group of allegedly aggrieved employees affected by this Agreement is 300, including Plaintiff, who were employed any time from March 11, 2019, to the date of approval by the court ("Aggrieved Employees").

12. PAGA Period and PAGA Claims: The relevant period covering the release of the PAGA Claims is from March 11, 2019, to the date of September 20, 2020, ("PAGA Period") which is the date Defendant implemented the Policy Change.

13. Attorneys' Fees and Costs to Plaintiff's Counsel: Defendant agrees not to oppose a request that the Court approve Attorneys' Fees and Costs to Plaintiff's Counsel, to be paid from the Gross Settlement Fund, the sum of Eight Thousand Seven Hundred Seventy-Five Dollars **(\$8,775.00)** for attorneys' fees, and One Thousand One Hundred Thirty Dollars **(\$1,130.00)** for out-of-pocket litigation costs expended, which include **\$853.35** to date and approximately **\$276.65** anticipated costs by Plaintiff's Counsel for CourtCall, filing a motion for approval of settlement, having one hearing for approval, and a hearing for post distribution status. Should these anticipated costs be less than \$276.65 by the time of court approval, the balance from \$276.65 shall be paid to Plaintiff.

14. Net Settlement PAGA Amount: The Parties agree that all payments for Plaintiff's general releases, Plaintiff's Individual Claims, and all payments to Plaintiff's Counsel for attorney's fees and costs shall be deducted from the Gross Settlement Fund and that the balance remaining after such deductions shall be known as the "Net Settlement PAGA Amount." The Net Settlement PAGA Amount remaining after such deductions will be Eleven Thousand Forty-Six Dollars **(\$11,046.00)**.

As required by Labor Code § 2699(i), in accordance with the terms of this Agreement, the Parties will ask the Court to order that seventy five percent (75%) of the Net Settlement PAGA Amount be paid to the LWDA, and the remaining twenty-five percent (25%) of the Net Settlement PAGA Amount be paid to Plaintiff and the other alleged aggrieved employees. As calculated, 75% of the Net Settlement PAGA Amount to be paid to the LWDA is \$8,284.50, and 25% of the Net Settlement PAGA Amount to be paid to Plaintiff and the Aggrieved Employees is \$2,761.50, which will be paid *pro rata* according to the number of paystubs in which Defendant employed them during the PAGA Period. Within 30 days from the date the court approves this Agreement, Defendant shall provide a declaration, certifying under penalty of perjury, that it has processed the PAGA Amount to the LWDA and the individual amounts to the Aggrieved Employees by sending checks to their last known address...

PAYMENT, DISMISSALS, CONTINGENCY

15. Payment Timing: Defendant shall pay the Gross Settlement Fund to the Plaintiff's Counsel and/or the Aggrieved Employees within 30 days from the date the Court approves this Agreement as follows:

- a. One check for \$8,284.50 shall be made payable to the California Labor and Workforce Development Agency.
- b. Checks made payable to the Aggrieved Employees dividing the sum of \$2,761.50 *pro rata* according to the number of paystubs.
- c. One check for \$1,549.00 shall be made payable to Saul Del Toro for Individual Release Payment.
- d. One check for \$8,775.00 shall be made payable to Gutierrez Derham Law Firm LLP for attorney's fees.
- e. One check for \$1,130.00 shall be made payable to Gutierrez Derham Law Firm LLP for costs.

16. Uncashed Checks: Any checks to the Aggrieved Employees that remain uncashed within 100 days from the date of disbursement shall become null and void. Defendant shall forward the balance from such uncashed checks to the California State Controller for the benefit of the recipients.

17. Judgment and Dismissal: The Parties understand that the court will not approve a dismissal of the PAGA cause of action. Consistent with CRC Rule 3.769(h), which applies to class actions, the court's order granting approval of the settlement will constitute a judgment on the PAGA cause of action. Such judgment, and satisfaction thereof, will have the effect of collaterally estopping Defendant's liability for any claims for civil penalties for alleged violations of the PAGA Claims during the PAGA Period.

Within five court days after the Court approves the settlement of the PAGA claim: Plaintiff will file a request for dismissal of Plaintiff's non-PAGA Individual Claims with prejudice.

18. Non-Approval of the Agreement: If the Court should for any reason not approve this Agreement or fail to enter an order approving the settlement, then this Agreement shall be considered null and void, and neither this Agreement, nor any of the related negotiations or proceedings, shall be of any force or effect and shall be inadmissible for any purpose in any proceeding, and all Parties to this of Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court.

19. Mandatory Disclosures: The Parties understand that pursuant to Labor Code section 2699(l)(2), this Agreement must be submitted to the LWDA and then to the Court for approval. No notice will be provided to the aggrieved employees, but advance notice to the LWDA will be provided and included within the motion seeking court approval.

REPRESENTATIVE PAGA RELEASE

20. Upon the effective date, Plaintiff provides a full release of his PAGA claim on behalf of himself and the Aggrieved Employees to release Defendant, its respective officers, directors, owners, members, employees, and agents ("the PAGA Releasees") from the civil penalties stemming from the alleged violations of the PAGA Claims set forth in the Lawsuit,

during the PAGA Period. This PAGA release is only for the PAGA civil penalties rather than any possible liability to individual claimants for violations of the specified Labor Code statutes of the PAGA Claims.

INDIVIDUAL RELEASES

21. Full Individual General Release: Upon the effective date, in exchange for the Individual Release Payment, Plaintiff, on his own behalf, and on behalf of his grantees, agents, heirs, devisees, trustees, assigns, assignors, or any other entities in which Plaintiff has an interest, (collectively "Plaintiff Releasers"), hereby agrees to release and forever discharge by this Agreement, Defendant as well as each of their past and present agents, employees, representatives, officers, directors, shareholders, attorneys, accountants, insurers, reinsurers, receivers, advisors, consultants, partners, partnerships, parents, divisions, subsidiaries, affiliates, assigns, successors, heirs, from all liabilities, causes of actions, charges, complaints, suits, claims, obligations, costs, losses, damages, rights, judgments, attorneys' fees, expenses, bonds, bills, penalties, fines, and all other legal responsibilities of any form whatsoever whether known or unknown, whether suspected or unsuspected, whether fixed or contingent, including but not limited to those arising from any acts or omissions by Defendant Releasees occurring prior to the effective date of this Agreement (collectively referred to as "Plaintiff Released Matters"). Notwithstanding the foregoing, Plaintiff's Released Claims do not include any claim of breach of the terms of this Agreement or to any other claims that cannot lawfully be released without court approval.

Upon the effective date, in exchange for Plaintiff entering into this Agreement, Defendant on its own behalf, and on behalf of its grantees, agents, heirs, devisees, trustees, assigns, assignors, or any other entities in which Defendants have an interest, (collectively "Defendant Releasers"), hereby agrees to release and forever discharge by this Agreement, Plaintiff as well as each of his past and present agents, employees, representatives, officers, directors, shareholders, attorneys, accountants, insurers, reinsurers, receivers, advisors, consultants, partners, partnerships, parents, divisions, subsidiaries, affiliates, assigns, successors, heirs, from all liabilities, causes of actions, charges, complaints, suits, claims, obligations, costs, losses, damages, rights, judgments, attorneys' fees, expenses, bonds, bills, penalties, fines, and all other legal responsibilities of any form whatsoever whether known or unknown, whether suspected or unsuspected, whether fixed or contingent, including but not limited to those arising from any acts or omissions by Plaintiff Releasees occurring prior to the effective date of this Agreement (collectively referred to as "Defendant's Released Matters"). Notwithstanding the foregoing, Defendant's Released Matters do not include any claim of breach of the terms of this Agreement or to any other claims that cannot lawfully be released without court approval.

22. Civil Code section 1542: With respect to the Parties' released matters described above, the Parties expressly waive any and all rights under 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.

TAX OBLIGATIONS

23. No Tax Advice Provided: Neither counsel for the Parties, Plaintiff, or Defendant intend anything contained herein (or in any other document pertaining to the PAGA Lawsuit) to constitute legal advice regarding the taxability of any amount paid hereunder, nor shall it be relied upon as such. The Parties and the Aggrieved Employees should rely exclusively upon, his, her, or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement and any payments resulting from this Settlement. Plaintiff acknowledges that he is solely responsible for all tax obligations which may arise as a consequence of receipt of the settlement payments to counsel, and will pay any taxes, penalties, or other costs assessed in connection with the payment of the Settlement Payments. Plaintiff shall cooperate in the defense of any tax claims brought against Defendant Releasees, in the event any taxing authority seeks payment of taxes, interest, penalties, or other assessments from Defendant Releasees in connection with the payment of the Settlement Payments.

PARTIES' AUTHORITY

24. The Parties as signatories hereto hereby represent that they are fully authorized to enter into this Agreement and bind the Parties to the terms and conditions hereof.

MUTUAL FULL COOPERATION

25. The Parties agree to cooperate with each other fully to accomplish the terms of this Agreement, including but not limited to: (a) executing such documents and taking such other actions as reasonably may be necessary to implement the terms of this Agreement; and (b) continuing good faith efforts to effectuate settlement should the Court deny approval of the settlement. The Parties to this Agreement shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Agreement and the terms set forth herein.

NO PRIOR ASSIGNMENTS

26. The Parties hereto represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

CONSTRUCTION

27. The Parties agree that the terms and conditions of this Agreement are the result of intensive arm's-length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his, her, or its counsel participated in the drafting of this Agreement. All terms of this Agreement shall be governed by and interpreted according to the laws of the State of California, without giving effect to conflict of laws principles. Should any provisions of the Agreement be declared or determined by a court or other tribunal to be illegal or invalid, the validity of the remaining terms shall not be affected thereby.

CAPTIONS AND INTERPRETATIONS

28. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Agreement or any provision hereof. Each term of this Agreement is contractual and not merely a recital.

MODIFICATION

29. This Agreement may not be changed, altered, or modified, except in writing signed by the Parties. All material changes, alterations, or modifications must be approved by the Court. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto and approved by the Court.

INTEGRATION CLAUSE

30. This agreement contains the entire agreement among the Parties relating to the settlement, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or that party's legal counsel, are merged herein. In entering into this Agreement, none of the Parties has relied on any representation or promise not expressly set forth in this Agreement. No rights hereunder may be waived except in writing.

BINDING ON ASSIGNS

31. This Agreement shall be binding upon and inure to benefit of the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.

COUNTERPARTS

32. This Agreement may be executed in counterparts, and the signature pages may be transmitted by fax, pdf, or other electronic means, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon effective as to all Parties.

ADMISSIBILITY

33. This Agreement is intended to be an enforceable and binding agreement and shall be admissible in evidence to enforce its terms.

ENFORCEMENT

34. Pursuant to Code of Civil Procedure § 664.6, the Parties agree that the Court may retain jurisdiction for the purpose of enforcing full performance of the terms of this Agreement. In the event that one or more of the Parties institutes any motion, legal action, or other proceeding against any other Party or Parties to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, the successful Party or Parties shall be entitled to recover

from the unsuccessful Party or Parties reasonable attorneys' fees and costs incurred in connection with any enforcement actions.

The Parties have read and understand this Agreement, and consent to all of the terms and provisions contained herein.

PARTIES' SIGNATURES TO BE BOUND:

By _____
Saul Del Toro

Dated: 05/19/2021

By _____
Greg Weaver, Vice President
Golden State Drilling, Inc.

Dated: _____

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The Parties have read and understand this Agreement, and consent to all of the terms and provisions contained herein.

PARTIES' SIGNATURES TO BE BOUND:

By _____
Saul Del Toro

Dated: _____

By 
Greg Weaver, Vice President
Golden State Drilling, Inc.

Dated: 5/12/21