

CASE NO. 20STCV19427 PAGA SETTLEMENT AGREEMENT AND PAGA RELEASE

PARTIES

This Settlement Agreement and PAGA Release (hereinafter referred to as “PAGA Agreement”) is made and entered into between Alba Velasco (hereinafter referred to as “Plaintiff”), on the one hand, and Caledonian, Inc. and Guillermo Frias (“Defendants”) on the other hand (Plaintiff and Defendants, collectively referred to as the “Parties”) as of the date last set forth below.

RECITALS

A. Plaintiff alleges that Defendants misclassified her and other tutors as independent contractors. On March 3, 2020, Plaintiff submitted a Notice of alleged Labor Code violations to the California Labor and Workforce Development Agency (“LWDA”), case no. LWDA-CM-776011-20.

B. On May 21, 2020, Plaintiff filed a lawsuit seeking civil penalties under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”) for various alleged violations of the California Labor Code, entitled *Velasco v. Caledonian, Inc. et al.*, Los Angeles County Case No. 20STCV19427 (the “PAGA Lawsuit”). The PAGA Lawsuit asserts violations of Labor Code sections 226.8, 2802, 226(a), 1198, and 204 from March 3, 2020, and ongoing, and seeks civil penalties for those violations as well as penalties available from sections 558, 226.3, 210 (collectively “PAGA Claims”). Defendants dispute the allegations of violations of the California Labor Code alleged therein.

C. The PAGA Lawsuit also includes Plaintiff’s individual causes of action for: Failure to Reimburse and Indemnify for Expenditures; Unpaid Wages and Failure to Pay Minimum Wages; Labor Code § 203 Waiting Time Penalties; Failure to Provide Accurate Itemized Wage Statements; and Labor Code § 1198.5(k) Penalty; Wrongful Termination in Violation of Public Policy; and Retaliation (“Plaintiff’s Individual Claims”). Plaintiff’s Individual Claims are not settled or released by this PAGA Agreement.

D. The Parties now desire to settle fully and finally the PAGA Claims on the terms and conditions set forth herein as of the date of this PAGA Agreement.

E. 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(l)(2), to the terms of this PAGA Agreement.

SETTLEMENT ALLOCATIONS

1. No Admission of Liability: This PAGA Agreement and compliance with it may not be construed as an admission by either Party of any liability whatsoever or as an admission by either Party of any wrongdoing under any common law, statute, or contractual obligation. Defendant specifically disclaims any wrongdoing and disclaims any liability to Plaintiff for any violation of law, regulation, duty, or contract, including but not limited to the facts alleged relating to the Complaint, the claims, or otherwise.

2. Gross PAGA Settlement Fund: This PAGA Agreement requires Defendants to pay a total maximum amount of One-Hundred Eighteen Thousand Dollars (**\$118,000.00**) (“Gross Settlement Fund”) for settlement of the PAGA Claims. Defendants shall pay the Gross PAGA Settlement Fund to Phoenix Settlement Administrators (“Settlement Administrator”).

3. Settlement Administrator: All settlement payments, as described below, shall be distributed by the Settlement Administrator. The Settlement Administrator’s costs of up to **\$2,600.00** shall be paid out of the Gross PAGA Settlement Fund. The settlement payments to the aggrieved employees, as described more fully below, shall be accompanied by a notice that provides a brief explanation for the payments to be agreed upon by the parties.

4. Non-Monetary Consideration: In consideration for the settlement of the PAGA Claims, Defendants shall undertake a self-audit of Labor Code section 2777 to seek maximum compliance with the Labor Code as applied to tutors.

5. Alleged Aggrieved Employees: The total group of allegedly aggrieved employees affected by this PAGA Agreement are the approximately 192 tutors who were classified by Defendants as independent contractors and are residents of California, including Plaintiff, between March 3, 2020, to June 3, 2021 (“Aggrieved Employees”).

6. PAGA Periods: The relevant settlement period for the PAGA Claims is from March 3, 2020, to June 3, 2021 (“PAGA Period”).

7. PAGA Attorneys’ Fees and Costs to Plaintiff’s Counsel: Defendants shall pay to Plaintiff’s Counsel, from the Gross PAGA Settlement Fund, the sum of thirty-three percent (33%) of the Gross PAGA Settlement Fund (**\$38,940.00**) for attorneys’ fees and Five Thousand and One-Hundred Dollars and (**\$5,100.00**) for litigation costs and expenses.

8. Net Settlement PAGA Amount: The Parties agree that all payments for settlement administration, payments to Plaintiff’s Counsel for attorney’s fees and costs shall be deducted from the Gross PAGA 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 no less than Seventy-One Thousand Three-Hundred and Sixty Dollars (**\$71,360.00**).

As required by Labor Code § 2699(i), 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 the Aggrieved Employees. The 25% of the Net Settlement PAGA Amount payable to the Aggrieved Employees shall be allocated pro rata according to the number of workweeks each Aggrieved Employee worked within the PAGA Period.

Within 20 days from the date the Court approves this PAGA Agreement, Defendants shall provide to the Settlement Administrator, the list of the Aggrieved Employees.

PAYMENT, DISMISSAL, CONTINGENCY

9. Effective Date: The Effective Date of this PAGA Agreement shall be the date upon which the Court approves this agreement pursuant to Labor Code § 2699(l)(2).

10. Payment Timing: Within 20 days of the Effective Date, Defendants shall pay the Gross PAGA Settlement Fund to the Settlement Administrator. Thereafter, the Settlement Administrator is authorized to distribute settlement proceeds as soon as practicable as follows:

- a. One check for 75% of the Net Settlement PAGA Amount shall be made payable to the California Labor and Workforce Development Agency.
- b. 192 checks shall be made payable to the Aggrieved Employees in amounts calculated as set forth above.
- c. Thirty-Eight Thousand Nine Hundred and Forty Dollars (\$38,940.00) shall be made payable to Gutierrez Derham Law Firm LLP ("Plaintiff's Counsel") for Plaintiff's attorneys' fees and Five-Thousand One-Hundred Dollars (\$5,100.00) for Plaintiff's costs.

11. Uncashed Checks: Any checks to the Aggrieved Employees that remain uncashed within 100 days from the date of disbursement shall become null and void. The Settlement Administrator shall forward the balance from such uncashed checks, plus any accrued interest, to the California State Controller's Unclaimed Property Fund for the benefit of the recipients.

12. Approval of the PAGA Agreement: Plaintiff shall file a request for approval of this PAGA Agreement. Defendants shall cooperate with the request for approval by including, but not limited to, providing a declaration of their finances for the Court's evaluation. If the Court should for any reason not approve this PAGA Agreement or fail to enter an order approving the settlement, then this PAGA Agreement shall be considered null and void, and neither this PAGA 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 PAGA Agreement shall stand in the same position, without prejudice, as if the PAGA Agreement had been neither entered into nor filed with the Court.

RELEASES

13. Representative PAGA Release: Upon the Effective Date, Plaintiff provides a full release of her PAGA claim on behalf of herself and the Aggrieved Employees to release Defendants, their respective officers, directors, owners, members, employees, and agents ("the PAGA Releasees") from the civil penalties stemming from the alleged violations of the PAGA Claims for 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.

14. No Tax Advice Provided: Neither counsel for the Parties, Plaintiff, or Defendants 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 PAGA Agreement and any payments resulting from this Settlement. Plaintiff acknowledges that she is solely responsible for all tax obligations which may arise as a consequence of receipt of

the settlement payments to her or her 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.

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

16. Mutual Full Cooperation: The Parties agree to cooperate with each other fully to accomplish the terms of this PAGA 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 PAGA Agreement; and (b) continuing good faith efforts to effectuate settlement should the Court deny approval of the settlement. The Parties to this PAGA Agreement shall use their best efforts, including all efforts contemplated by this PAGA Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this PAGA Agreement and the terms set forth herein.

17. No Assignment of Claims: 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.

18. Neutral Interpretation of PAGA Agreement: The Parties agree that the terms and conditions of this PAGA Agreement are the result of intensive arm's-length negotiations between the Parties and that this PAGA 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 PAGA Agreement. All terms of this PAGA 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 PAGA 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.

19. Captions and Headings: 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 PAGA Agreement or any provision hereof. Each term of this PAGA Agreement is contractual and not merely a recital.

20. Modification: This PAGA 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 PAGA 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.

21. Entire Agreement: This agreement contains the entire agreement among the Parties relating to the settlement of the PAGA Claims, 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 PAGA Agreement, none of the Parties has relied on any representation or promise not expressly set forth in this PAGA Agreement. No rights hereunder may be waived except in writing.

22. Binding on Assigns: This PAGA Agreement shall be binding upon and inure to benefit of the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.

23. Counterparts: This PAGA 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 PAGA Agreement, which shall be binding upon effective as to all Parties.

24. Admissibility: This PAGA Agreement is intended to be an enforceable and binding agreement and shall be admissible in evidence to enforce its terms and for no other purpose.

25. Enforcement: 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 PAGA 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 PAGA Agreement or to declare rights and/or obligations under this PAGA 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.

PARTIES' SIGNATURES TO BE BOUND:

Date: 11 / 02 / 2021



ALBA VELASCO

Date:

GUILLERMO FRIAS



By: _____
On behalf of himself and
Caledonian, Inc.

TITLE	Confidential Settlement Agreement
FILE NAME	Velasco%20Settlem...%20D%20signed.pdf
DOCUMENT ID	c1f1f61a9e47dc180e79cfa02823784a88cca917
AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
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VIEWED

11 / 01 / 2021
17:42:17 UTC

Viewed by Cristina Velasco (cristinavelascog@yahoo.co.uk)
IP: 104.32.83.46



SIGNED

11 / 02 / 2021
21:09:45 UTC

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COMPLETED

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The document has been completed.