

STIPULATION FOR SETTLEMENT OF PAGA CLAIM

I. RECITALS

WHEREAS, Defendant UNIX CONSTRUCTION, INC. at all times relevant operated a steel construction company located in Los Angeles, California;

WHEREAS, Defendant ARCHIPRO CONSTRUCTION, INC. at all times relevant operated a construction company located in Norwalk, California;

WHEREAS, Defendant YOUNG SOOK JUNG was at all times relevant a director and officer of UNIX CONSTRUCTION, INC.;

WHEREAS, Defendant HO TAE SEOK aka SCOTT SEOK was at all times relevant an owner, director and officer of Defendant ARCHIPRO CONSTRUCTION, INC.;

WHEREAS, Defendant EUI KYOUNG HWANG aka ELLEN EUIKYOUNG HWANG was at all times relevant a director and officer of Defendant ARCHIPRO CONSTRUCTION, INC.;

WHEREAS, Plaintiff MARCO CALVILLO (hereinafter “Plaintiff Calvillo”) was employed by Defendants UNIX CONSTRUCTION, INC. and/or ARCHIPRO CONSTRUCTION, INC., between approximately May 2019 and December 2019;

WHEREAS, Plaintiff OCTAVIO CARRANZA RIO (hereinafter “Plaintiff Carranza Rio”) was employed by Defendants UNIX CONSTRUCTION, INC. and/or ARCHIPRO CONSTRUCTION, INC., between approximately January 2017 and February 2020;

WHEREAS, on or about May 21, 2020, Plaintiff Calvillo filed a notice letter (“PAGA Notice Letter”) with California’s Labor and Workforce Development Agency (“LWDA”) alleging Defendants UNIX CONSTRUCTION, INC., ARCHIPRO CONSTRUCTION, INC., YOUNG SOOK JUNG, HO TAE SEOK and EUI KYOUNG HWANG (collectively, “Defendants”), committed multiple violations of the Labor Code and Wage Order 16 with respect to Plaintiff Calvillo and other aggrieved employees, including failure to pay minimum and prevailing wages, failure to pay overtime wages, and failure to provide meal and rest periods.

WHEREAS, on December 23, 2020, Plaintiff Calvillo filed his Complaint against Defendants in Los Angeles County Superior Court, Case No. 20STCV48935 (hereinafter, “the Action”);

WHEREAS, in the Complaint filed in the Action, Plaintiff Calvillo individually sought damages, penalties, prejudgment interest, costs, and attorney’s fees and also sought penalties as an “aggrieved employee” under the Private Attorneys General Act of 2004 (“PAGA”), for a total of eight causes of action as follows: (1) Failure to Pay Regular and Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Periods; (5)

Failure to Provide Accurate Itemized Wage Statements; (6) Failure to Provide Employment Records (7) Continuing Wages Penalty; and (8) Civil Penalties Pursuant to PAGA;

WHEREAS, on February 18, 2021, Plaintiff Calvillo filed a First Amended Complaint in Los Angeles County Superior Court, Case No. 20STCV48935 which added Plaintiff Carranza Rio's individual claims to causes of action 1-7 and added a cause of action for Unfair Competition. Under the First Amended Complaint, nine causes of action were asserted as follows: (1) Failure to Pay Regular and Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Periods; (5) Failure to Provide Accurate Itemized Wage Statements; (6) Failure to Provide Employment Records (7) Continuing Wages Penalty; (8) Unfair Competition; and (9) Civil Penalties Pursuant to PAGA.

WHEREAS, Defendants deny the allegations of Plaintiff Calvillo and Plaintiff Carranza Rio (together, "Plaintiffs"), deny that they caused any damage to Plaintiffs and deny all liability and/or wrongdoing asserted against them in the Action, PAGA Notice Letter, or otherwise, and deny that they have committed any misconduct, statutory or regulatory violation, wrongdoing, or any other actionable conduct whatsoever;

WHEREAS, on July 29, 2021, Plaintiffs and Defendants (hereinafter, the "Parties") participated in a full-day private mediation through professional neutral Phillip Cha. The parties reached agreement on terms of settlement, contingent upon the Court's approval, pursuant to a mediator's proposal which was accepted by all Parties.

WHEREAS, as part of the discovery that took place before the mediation, Defendants provided substantive responses to Plaintiffs' form and special interrogatories and requests for production, and supplemental responses thereto; produced hundreds of pages of documents; and provided data for the putative aggrieved employees to facilitate analysis of potential liability under PAGA;

WHEREAS, as part of the discovery that took place before the mediation, Plaintiffs provided substantive responses to Defendant ARCHPRO CONSTRUCTION, INC.'s form and special interrogatories, requests for admissions and requests for production, and supplemental responses thereto;

WHEREAS, to conserve attorney's fees and costs, the Parties now wish to resolve Plaintiffs' claims;

WHEREAS, the Parties are of the opinion that the PAGA Settlement Sum is fair, reasonable, and adequate and is in the best interests of the State of California, the putative Aggrieved Employees, Plaintiffs, and Defendants, in light of all known facts and circumstances and the risks inherent in litigation;

WHEREAS the Parties now hereby enter into this Stipulation for Settlement of PAGA Claim to settle and resolve the PAGA claim in the Action (First Amended Complaint, Cause of Action No. 9), subject to Court approval;

WHEREAS, the Parties agree that settlement of the PAGA claim in the Action is contingent upon the Court's approval of the terms of this Stipulation for Settlement of PAGA Claim;

WHEREAS, the Parties have also entered into a Confidential Conditional Settlement Agreement and Release of the Plaintiff's individual claims (First Amended Complaint, Causes of Action Nos. 1-8); and

NOW THEREFORE, in view of the foregoing, and based on the mutual promises set forth below, the Parties hereto agree as follows:

II. AGREEMENT

1. **Definitions.** As used herein, the following definitions shall apply:

- a. As used herein, the term **"the Action"** means the case of MARCO CALVILLO et al. v. UNIX CONSTRUCTION, INC. et al., Los Angeles Superior Court Case No. 20STCV48935.
- b. The term **"Aggrieved Employees"** means those 101 non-exempt employees of UNIX CONSTRUCTION, INC. and/or ARCHIPRO CONSTRUCTION, INC. who were employed between October 19, 2019 and July 29, 2021 (the "PAGA Claim Period"), plus Plaintiffs Calvillo and Carranza. Defendants represent that the **One Hundred and Three (103)** putative Aggrieved Employees (including Plaintiffs) collectively worked a total of **1354 pay periods** during the PAGA Claim Period. Defendants' representation that this data is accurate is a material term of this Stipulation for Settlement of PAGA Claim.
- c. The term **"Attorneys' Fees and Costs"** means Plaintiffs' attorneys' fees incurred by Plaintiffs' Counsel in the litigation and resolution of the Action, and all costs incurred and to be incurred by Plaintiffs' Counsel in the Action, including, but not limited to, fees and costs associated with court filings, discovery, documenting the settlement and securing the Court's approval of the Settlement. Plaintiffs' Counsel will request attorneys' fees from the Court in an amount not to exceed 35% of the Gross PAGA Settlement Sum i.e. Fifty-Two Thousand Five Hundred Dollars (\$52,500.00), subject to the Court's approval. Plaintiffs' Counsel will also request reimbursement of costs incurred by Plaintiffs' Counsel's litigation and resolution of the Action in the sum of Three Thousand Three Hundred Eighty Five Dollars (\$3,385.00) subject to the Court's approval. Defendants agree not to oppose or otherwise object to Plaintiffs' request or motion for attorneys' fees and costs.
- d. The term **"Confidential Conditional Settlement Agreement and Release"** means the Confidential Conditional Settlement Agreement and Release entered into concurrently herewith.

- e. As used herein, the word “**Defendants**” means UNIX CONSTRUCTION, INC.; ARCHIPRO CONSTRUCTION, INC.; YOUNG SOOK JUNG; HO TAE SEOK; and EUI KYOUNG HWANG.
- f. The term “**Gross PAGA Settlement Sum**” means the gross amount Defendants shall pay in connection with the settlement of the PAGA claim in the Action. Subject to Court approval of this Agreement, the Gross PAGA Settlement Sum Defendants shall be required to pay to settle and resolve the Cause of Action alleged in the Action based on PAGA (First Amended Complaint, Cause of Action No. 9) is **One Hundred Fifty Thousand Dollars (\$150,000.00)**.
- g. The term “**Net PAGA Settlement Sum**” means the total amount that will be paid to the LWDA and the Aggrieved Employees pursuant to Paragraph 4. The Net Settlement Amount is equivalent to the Gross PAGA Settlement Sum less Court-approved deductions for (a) the Settlement Administration Costs and (b) Plaintiffs’ Counsel’s Attorneys’ Fees and Costs.
- h. The term “**PAGA**” means the California Labor Code Private Attorneys General Act of 2004, as amended (Labor Code §§ 2698 *et seq.*);
- i. The term “**PAGA Notice Letter**” means the letter dated May 21, 2020, filed by Plaintiff Calvillo with the LWDA with respect to claims and Labor Code violations alleged in the Action;
- j. As used herein, the term “**the Parties**” means MARCO CALVILLO; OCTAVIO CARRANZA RIO; UNIX CONSTRUCTION, INC.; ARCHIPRO CONSTRUCTION, INC.; YOUNG SOOK JUNG; HO TAE SEOK; and EUI KYOUNG HWANG.
- k. As used herein, the word “**Plaintiffs**” means MARCO CALVILLO and OCTAVIO CARRANZA RIO.
- l. The term “**Settlement Administration Costs**” means the costs payable from the Gross PAGA Settlement Amount to the Settlement Administrator for administering this PAGA Settlement. The Settlement Administration Costs are currently estimated to be no more than One Thousand Nine Hundred Fifty Dollars (\$1,950.00).
- m. The term “**Settlement Administrator**” means Phoenix Settlement Administrators or any other settlement administrator agreed to by the Parties and approved by the Court.
- n. As used herein, the term “**Stipulation for PAGA Settlement**” means this Stipulation for Settlement of PAGA Claim.

2. **Agreement Contingent Upon Court Approval of Settlement of the Action.** This Agreement, and the obligations of the Parties therein, are wholly contingent upon final approval by the Court of the settlement and compromise of the PAGA claim in the Action on the terms set forth in this Stipulation for Settlement of PAGA Claim. The Parties agree to cooperate and use their best efforts to submit a request for Court approval of this Agreement and timely provide requisite notice to the LWDA. Each Party unilaterally reserves the right to withdraw from this Agreement if the Court, the LWDA, or any administrative agency acting within its authority, in any way modifies or fails to approve the Gross PAGA Settlement Sum, Plaintiffs' request for Attorneys' Fees and Costs as outlined in Paragraph 1(c), or any material term(s) of this Stipulation for Settlement of PAGA Claim, unless such modification or rejection is solely due to inadequacy of the Gross PAGA Settlement Sum. In such an event, Defendants shall have the first right to agree to the immediate payment of any necessary increased amount of the PAGA Settlement Sum required to obtain Court approval before any Party may invoke the right to withdraw from this Agreement. An Order or ruling by the Court disapproving or denying this Agreement on the basis of requiring submission of supplemental briefs to clarify a point of law, provide additional facts, or cure evidentiary defects shall not be grounds for any Party to unilaterally withdraw from this Agreement, provided the material terms of this Agreement remain unaffected.
3. **Individual Claims.** The Parties have entered into a separate Confidential Conditional Settlement Agreement and Release of the Plaintiffs' individual claims.
4. **Settlement of Private Attorneys General Act of 2004 ("PAGA") Cause of Action.** Defendants shall, not later than Five (5) days after the Court's approval of this Stipulation for PAGA Settlement, pay the Gross PAGA Settlement Sum of **One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00)** to settle and resolve the ninth cause of action alleged in the Action under PAGA.
 - a. Payment of the Gross PAGA Settlement Sum shall be made by remitting One (1) payment of **\$150,000.00 (One Hundred Fifty Thousand Dollars and Zero Cents)** to the Settlement Administrator, who shall administer the PAGA Settlement in accordance with the terms of this Agreement. The Settlement Administrator will provide payment instructions to Defendants.
 - b. The Settlement Administration Costs shall not exceed **\$1,950.00**, based upon the stipulated aggregate number of **One Hundred Three (103)** putative Aggrieved Employees (including Plaintiffs) who collectively worked a total of **1354 pay periods** during the PAGA Claim Period. The Settlement Administration Costs shall be deducted from the Gross PAGA Settlement Sum. Any additional fees or administration costs arising from inaccurate or inconsistent data provided by Defendants to the Settlement Administrator, shall be the sole responsibility of Defendants and shall not impact or otherwise reduce the Gross PAGA Settlement Sum.

- c. Subject to the Court's approval, Plaintiffs Attorneys' Fees shall be equal to 35% of the Gross Settlement Sum in the amount of **Fifty Two Thousand Five hundred Dollars (\$52,500.00)** and Plaintiffs' Costs shall be in the sum of **Three Thousand Three Hundred Eighty-Five Dollars (\$3,385.00)**. The Attorneys' Fees and Costs shall be deducted from the Gross PAGA Settlement Sum.
- d. After payment of the Settlement Administration Costs and the Attorneys' Fees and Costs, the Net PAGA Settlement Sum shall be administered as follows: the LWDA shall retain **Sixty Nine Thousand One Hundred Twenty Three Dollars and Seventy-Five Cents (\$69,123.75)** (*i.e.*, 75% of \$92,165.00), and **Twenty Three Thousand Forty-One Dollars and Twenty-Five Cents (\$23,041.25)** (*i.e.*, 25% of \$92,165.00) shall be distributed between and among the **103 (One Hundred Three)** putative Aggrieved Employees, as defined above, pro rata based upon the number of pay periods worked during the PAGA Claim Period.
- e. PAGA Payments to all putative Aggrieved Employees shall be characterized as penalties and paid pursuant to an IRS Form 1099.
- f. For purposes of administration and disbursement of the PAGA penalties, Defendants shall, within Five (5) days of the Court's approval of this Stipulation for PAGA Settlement, provide the Settlement Administrator with one consolidated excel file containing the following data for each and every of the Aggrieved Employees, including Plaintiffs, as defined hereinabove: (1) full names; (2) contact information (including last known address, telephone number, and email); (3) start dates and end dates of employment; (4) number of pay periods worked during the PAGA Claim Period; and (5) the total PAGA penalty amount due to each aggrieved employee, pursuant to the formula outlined hereinabove.
- g. The PAGA payment shall be non-reversionary. Any PAGA checks returned to the claims administrator as undeliverable or remaining un-cashed for more than one hundred twenty (120) calendar days after issuance will be distributed to the California State Controller's Office's Unclaimed Property Division. A notice shall accompany the PAGA payments to the putative Aggrieved Employees, in a form to be approved by the Court.
- h. Plaintiffs may choose a Stipulation, Joint Motion, and/or Joinder, to secure Court approval of the settlement of the PAGA cause of action. The Parties shall cooperate in promptly and expeditiously drafting and filing any such Stipulation, Joint Motion and/or Joinder. Alternatively, Plaintiffs may choose at any time to unilaterally draft and file an Unopposed Motion to secure Court approval of the settlement of the PAGA cause of action. Defendants shall not oppose any such Motion(s) by Plaintiffs.
- i. The Parties shall cooperate in good faith to resolve any issues identified by the Court preventing the Court's approval of this Stipulation for Settlement of PAGA Claim. At the time of filing the Stipulation, Joint/Unopposed Motion(s), and/or

Joinder the Parties shall lodge with the Court with a copy of the Confidential Settlement Agreement and Release of the Plaintiffs' individual claims for *in camera* review.

5. **Dismissal.** Within Fifteen (15) days of Court approval of this Stipulation for PAGA Settlement, completion of any final accounting hearings, or similar, as may be set by the Court, and payment of all sums required by this Stipulation for Settlement of PAGA Claim and the Confidential Settlement Agreement and Release, Plaintiffs shall file a request for dismissal of the Action in its entirety as to all Defendants with prejudice Pursuant to California Civil Procedure Code 664.6, the Court shall retain jurisdiction to enforce the terms of this Agreement.
6. **Taxes.** The Parties understand and agree that no Party makes any representations, warranties or agreements or otherwise concerning any tax treatment of the settlement amount or any portion of the settlement amount. The Parties, and all of them, understand and agree that they will be responsible for the payment of any and all taxes, assessments, or other financial obligations, whether federal, state or local, which they owe in connection with the settlement sum.
7. **Reservation of Jurisdiction.** The terms of this Stipulation for Settlement of PAGA Claim may be enforced pursuant to Code of Civil Procedure section 664.6. The prevailing party in any proceeding to enforce this settlement agreement shall be entitled to recover reasonable attorneys' fees and costs.
8. **No Admissions.** Nothing herein shall be deemed or construed to be an admission of any liability or fault in respect of any of the allegations or claims which could have been made by or against any of the Parties to this dispute, for any purpose.
9. **Ambiguities or Uncertainties.** This Stipulation for Settlement of PAGA Claim shall be equally and fairly interpreted and construed without reference to the identity of the Party or Parties who prepared this document, on the express understanding and agreement that the Parties participated equally in the negotiation and preparation of this Stipulation for Settlement of PAGA Claim or have had equal opportunity to do so. Accordingly, this Stipulation for Settlement of PAGA Claim shall be interpreted in accordance with California contract law.
10. **Survival of Executory Provisions.** Except as otherwise stated in this Stipulation for Settlement of PAGA Claim, any and all executory provisions under this Stipulation for Settlement of PAGA Claim shall survive the consummation of this Stipulation for Settlement of PAGA Claim and shall continue in full force and effect until fully performed and satisfied.
11. **Counterparts.** This Stipulation for Settlement of PAGA Claim may be executed in duplicate originals or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one stipulation and agreement. An electronic signature transmitted by email or facsimile shall be deemed valid and binding for all purposes.

12. **Invalidity of Provision.** Wherever possible, each provision in this Stipulation for Settlement of PAGA Claim shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Stipulation for Settlement of PAGA Claim shall be prohibited by or invalid by any such law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision, or the remaining provisions of this agreement.
13. **Successors.** This Stipulation for Settlement of PAGA Claim shall be binding upon the administrators, executors, receivers, trustees, successors, assigns and heirs of the respective Parties.
14. **Further Papers.** Each Party hereto agrees to execute such further papers or documents as shall be necessary or proper in order to fulfill the terms, conditions and intent of this Stipulation for Settlement of PAGA Claim.
15. **Time of Essence.** The parties understand and agree that time is of the essence and that this is a material term of this Stipulation for Settlement of PAGA Claim.

IN WITNESS WHEREOF, the Parties have executed this Stipulation for Settlement of PAGA Claim.

PLAINTIFFS

Dated: 08/18/21

Marco Calvillo
Marco Calvillo (Aug 18, 2021 18:48 PDT)

MARCO CALVILLO

Dated: _____

OCTAVIO CARRANZA RIO

DEFENDANTS

Dated: _____

YOUNG SOOK JUNG

Dated: _____

HO TAE SEOK aka SCOTT SEOK

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PLAINTIFFS

Dated: _____

MARCO CALVILLO

Dated: 08/17/21

Octavio Carranza
Octavio Carranza (Aug 17, 2021 21:27 PDT)

OCTAVIO CARRANZA RIO

DEFENDANTS

Dated: _____

YOUNG SOOK JUNG

Dated: _____

HO TAE SEOK aka SCOTT SEOK

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MARCO CALVILLO

Dated: _____

OCTAVIO CARRANZA RIO

DEFENDANTS

Dated: _____



YOUNG SOOK JUNG

Dated: _____

HO TAE SEOK aka SCOTT SEOK

Dated: _____

EUI KYOUNG HWANG aka
ELLEN EUIKYOUNG HWANG

Dated: _____



YOUNG SOOK JUNG
For UNIX CONSTRUCTION, INC.,

Dated: _____

HO TAE SEOK aka SCOTT SEOK
For ARCHIPRO CONSTRUCTION, INC.

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PLAINTIFFS

Dated: _____

MARCO CALVILLO

Dated: _____

OCTAVIO CARRANZA RIO

DEFENDANTS

Dated: _____

YOUNG SOOK JUNG

Dated: 8/16/21

Ho Tae Seok
HO TAE SEOK aka SCOTT SEOK

Dated: 8/16/21


EUI KYOUNG HWANG aka
ELLEN EUIKYOUNG HWANG

Dated: _____

YOUNG SOOK JUNG
For UNIX CONSTRUCTION, INC..

Dated: 8/16/21


HO TAE SEOK aka SCOTT SEOK
For ARCHIPRO CONSTRUCTION, INC.