

PAGA SETTLEMENT AGREEMENT

THIS PAGA SETTLEMENT AGREEMENT ("Agreement") is entered into by and between Linda J. Merrill and Drake Ingebrigtsen ("Plaintiffs"), on the one hand, and Garry Mauro; Christian Archer; Alicia O'Neill; Spencer Zack; Harold DeLouise; Mauro, Archer, and Associates, PLLC; Mauro Archer O'Neill LLP; Mauro, O'Neill & Archer, LLC; Mauro, Archer and Associates, LLC; Mauro, Archer, & Associates LLP; O'Neill Law, LLP; (collectively, "MAO"); and Mikal C. Watts, Francisco Guerra IV and Watts Guerra, LLP (collectively "Watts Guerra"), on the other hand, and is made with reference to the following facts:

WHEREAS, Plaintiffs were formerly engaged to provide services for MAO and Watts Guerra (collectively, "Defendants"). Plaintiffs were classified as independent contractors and provided with a Form 1099.

WHEREAS, Plaintiffs allege that they and other similarly situated "aggrieved employees" are owed penalties under the Private Attorneys General Act ("PAGA") in connection with services provided to Defendants, including from their alleged misclassification as independent contractors.

WHEREAS, Plaintiffs filed a first amended complaint against Defendants on January 8, 2021 in Sonoma County Superior Court, case number SCV-267502, individually and on behalf of themselves and other current or former employees (the "Action").

WHEREAS, Defendants deny any and all wrongdoing and/or liability alleged by Plaintiffs.

WHEREAS, Plaintiffs and Defendants (collectively, "the Parties") desire to resolve all claims alleged by Plaintiffs, including any and all claims and theories of liability under PAGA that are alleged in the operative complaint or any PAGA letter sent to the LWDA by Plaintiffs in this action, or which could have been alleged based in whole or in part on any facts alleged in this action pertaining to Plaintiffs and the "aggrieved employees."

NOW, THEREFORE, in reliance on the recitals above, and in consideration for the promises of the Parties as set forth herein, the adequacy of which is hereby acknowledged, the Parties agree as follows:

- 1. PAGA Settlement Members and PAGA Period:** The PAGA Settlement Members refers to all individuals who worked for Defendants in the State of California at any time between April 8, 2019 and March 19, 2021.
- 2. PAGA Settlement Amount:** To implement the terms of this PAGA Settlement, Defendants agree to pay \$138,697.98 (the "Gross PAGA Fund"). Defendants shall transfer the Gross PAGA Fund to the Settlement Administrator within 10 calendar days of service of a court order approving the PAGA Settlement on Defendants' counsel. This sum shall include all payments to PAGA Settlement Members, the LWDA Payment, administration costs, approved Incentive Payments, and approved attorney fees and costs. Except as specified in section 10 herein, Defendants shall not be required to fund the Gross PAGA Fund in excess of \$138,697.98. Except as otherwise stated in Section 10 below, once Defendants have transferred the Gross PAGA Fund to the Settlement Administrator, they will be deemed to have satisfied all terms and conditions under this Agreement, shall be entitled to all protections afforded to Defendant

under this Agreement, and shall have no further obligations under the terms of this Agreement regardless of what occurs with respect to those sums.

3. **Incentive Payments:** Defendants will not oppose an application by the named Plaintiffs for \$6,250 incentive or representative enhancement payments each in addition to the PAGA Settlement Share payments they are entitled to under section 7 below, subject to court approval. To the extent the Incentive Payments sought by Plaintiffs are not approved by the court, such amounts will be reallocated to the Net PAGA Fund. Any reduction by the court to the Incentive Payments sought by Plaintiffs shall not be sufficient grounds to void the Settlement.
4. **Net PAGA Fund:** Net PAGA Fund means the Gross PAGA Fund less the Incentive Payments to the named Plaintiffs, the administration costs, and attorney fees and costs. Pursuant to PAGA, the Net PAGA Fund represents the civil penalties to be paid to the LWDA and the PAGA Settlement Members and shall be allocated as follows: 75% shall be distributed to the LWDA (the "LWDA Payment") and the remaining 25% shall be distributed to the PAGA Settlement Members as described below.
5. **Plaintiffs' Counsel's Fees and Costs for PAGA Settlement:** Defendants agree not to oppose Plaintiffs' counsel's application for reimbursement of reasonable litigation costs of up to \$5,000.00 and attorney fees of up to one-third (1/3) of the Gross PAGA Fund. As agreed herein, the Gross PAGA Fund equals \$138,697.98; thus, Defendants will not oppose an application for attorney fees of up to \$46,232.66 in connection with the PAGA settlement. If Plaintiffs' Counsel requests a lesser amount, or if the Court awards attorney fees or costs in an amount less than the amount requested by Plaintiffs' Counsel, only the amount approved by the Court shall be paid to Plaintiffs' Counsel and the difference between the lesser amount and the maximum amount set forth above shall be added back into the Net PAGA Fund to be allocated proportionately between the PAGA Settlement Members. All fees and costs awarded will be paid out of the Gross PAGA Fund. Plaintiffs' counsel will not be entitled to further fees or costs from Defendants if it elects to appeal any reduction in the requested fee or cost award. Any reduction by the Court of Plaintiffs' counsel's claimed attorney fees and/or costs shall not be sufficient grounds to void the Settlement. Plaintiffs and Defendants shall bear their own attorney fees and costs, except as provided herein.
6. **Claims Administration:** The settlement administrator's fees up to \$1,500.00 shall be paid out of the Gross PAGA Fund. Phoenix Settlement Administrators shall serve as the settlement administrator for the PAGA Settlement. Defendants shall timely provide all information needed by the settlement administrator in order to disburse the PAGA Settlement Share payments, including but not limited to the last known names and addresses of PAGA Settlement Members as well as the eligible pay periods for each PAGA Settlement Member. The Parties hereby agree that this Settlement Agreement shall serve as instructions to Phoenix Settlement Administrators regarding the disbursement of the PAGA fund and related administrative tasks.
7. **Payout Calculation to PAGA Settlement Members:** Subject to court approval, the PAGA Settlement Share payments to the PAGA Settlement Members will be calculated by dividing the number of Eligible Pay Periods attributed to the PAGA Settlement Member by all Eligible Pay Periods attributed to PAGA Settlement Members multiplied by the Net PAGA Fund. Otherwise stated, the formula for a PAGA Settlement Member is: (individual's Eligible Pay

Periods ÷ total PAGA Settlement Eligible Pay Periods) x Net PAGA Fund.

- 8. PAGA Released Parties:** The PAGA Released Parties refers to Defendants Garry Mauro, Christian Archer, Alicia O'Neill, Spencer Zack, Mauro, Archer, and Associates, PLLC, Mauro Archer O'Neill LLP, Mauro O'Neill & Archer LLC, Mauro, Archer & Associates LLP, O'Neill Law, LLP, Mauro Archer and Associates, LLC, Harold DeLouise, Mikal C. Watts, Francisco Guerra, IV, and Watts Guerra LLP and their current or former subsidiaries, parents, affiliates, predecessors, insurers, agents, employees, successors, assigns, officers, officials, directors, attorneys, personal representatives, executors, and shareholders, including their respective pension, profit sharing, savings, health, and other employee benefits plans of any nature, the successors of such plans, and those plans' respective current or former trustees and administrators, agents, employees, and fiduciaries.
- 9. Release by PAGA Settlement Members:** Each PAGA Settlement Member will release the PAGA Released Parties of all Released PAGA Claims which may have arisen during the PAGA Period. The Released PAGA Claims include any and all claims and theories of liability under PAGA that are alleged in the operative complaint or any PAGA letter sent to the LWDA by Plaintiffs in this action or which could have been alleged based in whole or in part on any facts alleged in this action pertaining to Plaintiffs and the PAGA Settlement Members. This includes, but is not limited to, PAGA claims based on California Labor Code sections 201, 202, 203, 204, 207, 208, 209, 210, 211, 216, 218, 218.6, 221, 223, 225.5, 226, 226.3, 226.7, 226.8, 246, 246.5, 247, 247.5, 510, 512, 558, 1174, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2810.5, and the applicable provisions in the I.W.C. Wage Orders.
- 10. Size Modification:** As of the date of mediation, Defendants estimate that the PAGA Settlement Members consists of approximately 29 individuals who worked a total of 386 pay periods. If the actual number of pay periods worked by the PAGA Settlement Members exceeds this estimated number of pay periods by more than 10%, the Net PAGA Fund shall be increased by a pro-rata amount for those pay periods above the 10% increase (e.g., if the actual number of Pay Periods is 12% higher than the represented number, the Net PAGA Fund shall be increased by 2%). Any increase in the Net PAGA Fund shall be funded by Defendants and shall have no impact on the Individual Settlement Payments or Incentive Payments allocated to Plaintiffs Linda Merrill and Drake Ingebrigtsen.
- 11. Failure by Court to Approve PAGA Settlement:** If for any reason the Court does not approve the proposed PAGA settlement, the Parties shall work together in good faith to fashion a mutually agreeable revised PAGA settlement to submit to the Court. If the Parties cannot agree upon a revised PAGA settlement to submit to the Court, or the Court never approves any PAGA settlement submitted by the Parties, then this PAGA Settlement Agreement shall be null and void ab initio, the Parties shall have no obligations thereunder (e.g., Defendants shall have no obligation to make any PAGA Settlement Payments, and no releases shall be effective), and the Parties shall proceed to litigate the Action as if these settlement agreements never existed.
- 12. No Admission:** This Agreement and compliance with this Agreement shall not be construed as an admission by Defendants of any liability whatsoever, nor as an admission by Defendants of any violations of PAGA Settlement members' rights, violation of any order, law, statute, duty or contract whatsoever. Defendants specifically disclaim any liability to Plaintiffs or any

PAGA Settlement members for any alleged violation of their rights, or for any alleged violation of any order, law, statute, duty or contract.

- 13. Settlement Checks:** Settlement checks will remain valid for a period of 180 calendar days after they issue and are mailed. Any check not cashed within 180 calendar days will be given to Legal Aid of Sonoma County.
- 14. Submission of Settlement Agreement:**
Within 5 court days of the service on Plaintiffs' counsel of a fully executed copy of the PAGA Settlement, Plaintiffs shall file and serve a motion for approval of the PAGA Settlement and simultaneously submit a copy of the proposed PAGA Settlement to the LWDA.
- 15. Execution of Agreement:** This Agreement may be executed in counterparts and each counterpart, when executed, shall have the efficacy of a second original. Photographic or facsimile copies of any such signed counterparts may be used in lieu of the original for any said purpose.
- 16. Warranties:** The Parties warrant that the settlement memorialized in this Agreement and the execution of this Agreement have been approved and authorized by the Parties to this Agreement, and that the persons who execute and attest this Agreement have been authorized to perform said acts.
- 17. Severability:** Should any provision of this Agreement be held invalid or illegal, such invalidity or illegality shall not render any other portion of the remainder of this Agreement invalid or illegal. Instead, the Agreement shall be construed as if it did not contain the invalid or illegal part, and the rights and obligations of the Parties shall be construed and enforced accordingly.
- 18. Interpretation:** This Agreement shall be construed and enforced pursuant to the laws of the State of California and shall become effective immediately upon execution by the Parties.
- 19. Representation, Preparation, and Voluntary Execution:** The Parties to this Agreement acknowledge that they have been represented by independent legal counsel of their own choosing, that this Agreement was prepared with the joint input of all counsel, and shall not be construed in favor of or against any party to the Agreement by reason of any allegation that the Agreement, or any provision thereof, has been drafted by a particular party. The Parties to this Agreement further acknowledge that this Agreement was executed freely and voluntarily, and with the consent and on the advice of independent legal counsel.
- 20. Further Cooperation:** Each party to this Agreement agrees to execute or cause to be executed any further documents and to take, direct or cause to be taken any further acts which are necessary to effectuate the purpose, intent, effect and substance of this Agreement.
- 21. Binding Effect:** This Agreement shall be binding upon, and its rights and obligations shall inure to the benefit of all who qualify as Releasees under this Agreement.
- 22. Knowing and Voluntary Execution:** Each of the undersigned states that each has carefully read the foregoing Agreement, consulted with counsel regarding the significance of each

PAGA Settlement Agreement

terms, knows the contents thereof and signs the same as his/her own free act.

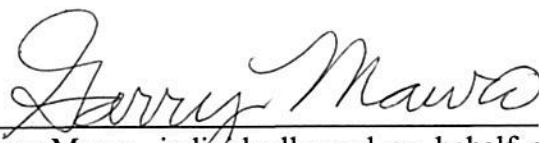
Dated: March _____, 2021

Linda J. Merrill, individually and on behalf of
herself and other current and former
employees

Dated: March _____, 2021

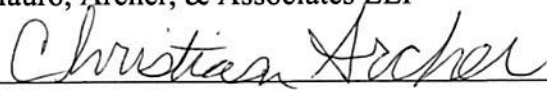
Drake Ingebrigtsen, individually and on behalf
of himself and other current and former
employees

Dated: March 25, 2021



Garry Mauro, individually and on behalf of
Mauro, Archer, and Associates, PLLC,
Mauro Archer O'Neill LLP,
Mauro, O'Neill & Archer, LLC, Mauro,
Archer, and Associates, LLC, and
Mauro, Archer, & Associates LLP

Dated: March 25, 2021



Christian Archer

Dated: March _____, 2021

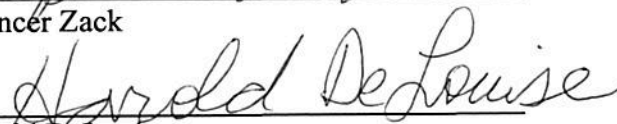
Alicia O'Neill, individually and on behalf of
O'Neill Law, LLP

Dated: March 25, 2021



Spencer Zack

Dated: March 25, 2021



Harold DeLouise

PAGA Settlement Agreement

terms, knows the contents thereof and signs the same as his/her own free act.

Dated: March _____, 2021

Linda J. Merrill, individually and on behalf of
herself and other current and former
employees

Dated: March _____, 2021

Drake Ingebrigtsen, individually and on behalf
of himself and other current and former
employees

Dated: March _____, 2021

Garry Mauro, individually and on behalf of
Mauro, Archer, and Associates, PLLC,
Mauro Archer O'Neill LLP,
Mauro, O'Neill & Archer, LLC, Mauro,
Archer, and Associates, LLC, and
Mauro, Archer, & Associates LLP

Dated: March _____, 2021

Christian Archer

Dated: March 30, 2021

Alicia O'Neill
Alicia O'Neill, individually and on behalf of
O'Neill Law, LLP

Dated: March _____, 2021

Spencer Zack

Dated: March _____, 2021

Harold DeLouise

PAGA Settlement Agreement

Dated: March 30, 2021

Dated: March 30, 2021

Mikal C. Watts by Attorney by
Mikal C. Watts, individually and on behalf of permission
Watts Guerra, LLP
Francisco Guerra IV by Attorney by
Francisco Guerra IV permission

APPROVED AS TO FORM AND CONTENT:

Dated: March _____, 2021

THE LAW OFFICE OF JOSEPH
GRUCHAWKA

By: _____
Joseph Gruchawka
Attorney for Linda J. Merrill and Drake
Ingebrigtsen

Dated: March 31, 2021

FITZPATRICK & SWANSTON

By: _____
B. James Fitzpatrick
Attorneys for Garry Mauro,
Christian Archer, Alicia O'Neill,
Spencer Zack, Harold DeLouise, Mauro,
Archer, and Associates, PLLC, Mauro
Archer O'Neill LLP, Mauro, O'Neill &
Archer, LLC, Mauro, Archer and
Associates, LLC, Mauro, Archer, &
Associates LLP, O'Neill Law, LLP,
Mikal C. Watts, Francisco Guerra IV,
and Watts Guerra, LLP

PAGA Settlement Agreement

terms, knows the contents thereof and signs the same as his/her own free act.

Dated: March _____, 2021

Linda J. Merrill, individually and on behalf of
herself and other current and former
employees

Dated: March 25, 2021



Drake Ingebrigtsen, individually and on behalf
of himself and other current and former
employees

Dated: March _____, 2021

Garry Mauro, individually and on behalf of
Mauro, Archer, and Associates, PLLC,
Mauro Archer O'Neill LLP,
Mauro, O'Neill & Archer, LLC, Mauro,
Archer, and Associates, LLC, and
Mauro, Archer, & Associates LLP

Dated: March _____, 2021

Christian Archer

Dated: March _____, 2021

Alicia O'Neill, individually and on behalf of
O'Neill Law, LLP

Dated: March _____, 2021

Spencer Zack

Dated: March _____, 2021

Harold DeLouise

PAGA Settlement Agreement

Dated: March _____, 2021

Mikal C. Watts, individually and on behalf of
Watts Guerra, LLP

Dated: March _____, 2021

Francisco Guerra IV

APPROVED AS TO FORM AND CONTENT:

Dated: March 25, 2021

THE LAW OFFICE OF JOSEPH
GRUCHAWKA

By: _____
Joseph Gruchawka
Attorney for Linda J. Merrill and Drake
Ingebrigtsen

Dated: March _____, 2021

FITZPATRICK & SWANSTON

By: _____
B. James Fitzpatrick
Attorneys for Garry Mauro,
Christian Archer, Alicia O'Neill,
Spencer Zack, Harold DeLouise, Mauro,
Archer, and Associates, PLLC, Mauro
Archer O'Neill LLP, Mauro, O'Neill &
Archer, LLC, Mauro, Archer and
Associates, LLC, Mauro, Archer, &
Associates LLP, O'Neill Law, LLP,
Mikal C. Watts, Francisco Guerra IV,
and Watts Guerra, LLP

PAGA Settlement Agreement

terms, knows the contents thereof and signs the same as his/her own free act.

Dated: March 22, 2021

Linda J. Merrill
Linda J. Merrill, individually and on behalf of
herself and other current and former
employees

Dated: March _____, 2021

Drake Ingebrigtsen, individually and on behalf
of himself and other current and former
employees

Dated: March _____, 2021

Garry Mauro, individually and on behalf of
Mauro, Archer, and Associates, PLLC,
Mauro Archer O'Neill LLP,
Mauro, O'Neill & Archer, LLC, Mauro,
Archer, and Associates, LLC, and
Mauro, Archer, & Associates LLP

Dated: March _____, 2021

Christian Archer

Dated: March _____, 2021

Alicia O'Neill, individually and on behalf of
O'Neill Law, LLP

Dated: March _____, 2021

Spencer Zack

Dated: March _____, 2021

Harold DeLouise

PAGA Settlement Agreement

Dated: March _____, 2021

Mikal C. Watts, individually and on behalf of
Watts Guerra, LLP

Dated: March _____, 2021

Francisco Guerra IV

APPROVED AS TO FORM AND CONTENT:

Dated: March 25, 2021

THE LAW OFFICE OF JOSEPH
GRUCHAWKA

By: 

Joseph Gruchawka
Attorney for Linda J. Merrill and Drake
Ingebrigtsen

Dated: March _____, 2021

FITZPATRICK & SWANSTON

By: _____

B. James Fitzpatrick
Attorneys for Garry Mauro,
Christian Archer, Alicia O'Neill,
Spencer Zack, Harold DeLouise, Mauro,
Archer, and Associates, PLLC, Mauro
Archer O'Neill LLP, Mauro, O'Neill &
Archer, LLC, Mauro, Archer and
Associates, LLC, Mauro, Archer, &
Associates LLP, O'Neill Law, LLP,
Mikal C. Watts, Francisco Guerra IV,
and Watts Guerra, LLP