

SETTLEMENT AGREEMENT AND GENERAL RELEASE

1. **Parties.** This Settlement Agreement and General Release (hereinafter referred to as “Agreement”) is made and entered into between Richard Cruz (hereinafter referred to as “Plaintiff”) and Henin Services Limited (“Defendant”) (Plaintiff and Defendant, collectively referred to as the “Parties”) as of the date last set forth below.

2. **Recitals.**

a. A dispute has arisen between Plaintiff on the one hand, and Defendant on the other hand, arising out of and related to Plaintiff’s employment and/or alleged employment relationship with Defendant.

b. Plaintiff alleges that Henin discriminated against him by wrongfully terminating his employment. Plaintiff planned to file a lawsuit and/or demand for arbitration against Henin for wrongful termination in violation of public policy, and to seek emotional distress and punitive damages. Henin believes such claims would have been without merit.

c. On May 4, 2020, Plaintiff submitted a Notice of alleged Labor Code violations to the California Labor and Workforce Development Agency (“LWDA”), case no. LWDA-CM-785461-20.

d. On July 10, 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 *Cruz v. Henin Services Limited et al.*, Los Angeles County Case No. 20STCV25980 (the “PAGA Lawsuit”). Henin disputes the allegations of violations of the California Labor Code alleged therein and otherwise.

e. The Parties desire to settle fully and finally the PAGA Lawsuit and all other matters and claims Plaintiff may have against Defendant, including but not limited to claims arising out of or related to Plaintiff’s employment with, compensation during, and separation from Defendant, on the terms and conditions set forth herein as of the date of this Agreement.

f. This Agreement effects the settlement of any disputes between the parties to this Agreement that are denied and contested, and nothing contained herein should be construed as an admission by Defendant of any liability of any kind with respect thereto, such liability being explicitly denied.

3. **Monetary Consideration.** This Agreement requires Defendant to pay a total maximum amount of Twenty-Five Thousand Dollars (\$25,000.00) (“Gross Settlement Amount”). From the Gross Settlement Amount, the sum of Two Thousand Five Hundred Dollars (\$2,500.00) shall be allocated as payment for alleged civil penalties to settle the PAGA Lawsuit (“PAGA Settlement Amount”). 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 PAGA Settlement Amount be paid to the LWDA.

The payments from the Gross Settlement Amount shall be made in the following allocations.

- a. Nine Thousand Seven Hundred and Fifty Dollars and Zero Cents (\$9,750.00) shall be made payable to Gutierrez Derham Law Firm LLP (“Plaintiff’s Counsel”) for Plaintiff’s attorneys’ fees and for Five Hundred Forty-Seven Dollars and Zero Cents (\$547.00) for Plaintiff’s costs.

- b. Twelve Thousand Two Hundred and Three Dollars and Zero Cents (\$12,203.00) shall be made payable to Plaintiff, in two checks, for Plaintiff's claims released under his general release including the potential remedies planned to be sought in a wrongful termination tort claim. The first such check shall be in the amount of One Thousand Two Hundred and Twenty-One Dollars and Zero Cents (\$1,221.00), minus applicable deductions and withholdings, for alleged lost wages, and will be reported on an IRS Form W-2 issued to Plaintiff. The second such check shall be in the amount of Ten Thousand Nine Hundred and Eighty-Two Dollars and Zero Cents (\$10,982.00), with no deductions, and will be reported on an IRS Form 1099 issued to Plaintiff.
- c. Six Hundred Twenty-Five Dollars and Zero Cents (\$625.00) shall be made payable to Plaintiff in payment for Plaintiff's statutorily allocated share of the amount allocated to settlement of the PAGA Lawsuit as set forth above. Defendant will issue to Plaintiff an IRS Form 1099 to reflect this portion of the settlement Amount.
- d. One Thousand Eight Hundred Seventy-Five Dollars and Zero Cents (\$1,875.00) as 75% of the PAGA Settlement Amount shall be paid to the LWDA in payment for the LWDA's statutorily allocated share of the amount allocated to settlement of the PAGA Lawsuit as set forth above.
- e. The above-referenced checks in (a)-(d) shall be collectively referred to as the Settlement Payments. The total of the Settlement Payments shall equal the Gross Settlement Amount. The Settlement Payments shall be delivered to Plaintiff's Counsel and the LWDA within thirty (30) days from the Court's approval of the PAGA Lawsuit settlement.

4. **Non-Monetary Consideration.** In consideration for the settlement of the PAGA Lawsuit, Henin shall explain to its employees that its meal and rest break policy allows its employees to refuse to have their meal and rest breaks be interrupted.

5. **Conditional Provisions.** The dismissal of the PAGA Lawsuit is, by law, conditioned upon Court approval. Within five business days after the Court approves the settlement of the PAGA Lawsuit, Plaintiff will file a dismissal of the Lawsuit with prejudice, with the court to retain jurisdiction to enforce the terms of the settlement.

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.

Other than the PAGA Lawsuit, Plaintiff represents that he has not filed any complaints, charges, or grievances against any one or more of Defendant Releasees (as defined below) with any city, county, state, or federal agency or court that are currently pending and that he will not in the future file any such complaints, charges, or grievances asserting or arising from any claim release by this Agreement.

This Agreement's release provisions exclude claims arising after Plaintiff signs this Agreement; claims for breach of this Agreement; and claims that cannot be waived. Neither the release provisions of this Agreement nor anything else in this Agreement is intended to limit or shall be construed to limit Plaintiff's right to file a charge with any administrative agency, communicate directly with or provide

information to an agency, or otherwise participate in an agency investigation or other administrative proceeding. Plaintiff nonetheless gives up all rights to any money or other individual relief based on any agency or judicial decision, including class or collective action rulings, based on claims arising from or related to Plaintiff's employment with Defendant.

Other than as expressly provided in this Agreement, Defendant and Plaintiff, respectively, shall bear their own costs and attorneys' fees in connection with the PAGA Lawsuit. No party to either such proceeding, or counsel of record in either such proceeding, shall be entitled to collect from any other party thereto any costs or attorneys' fees in connection therewith. Plaintiff shall indemnify and defend Defendant and Defendant Releasees from any lien claims or other claims asserted by any attorney or other party in connection with the PAGA Lawsuit.

6. No Tax Advice Reliance. 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 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 him or his counsel, and will pay any taxes, penalties, or other costs assessed in connection with the payment of the Settlement Payments with the exception of amounts withheld from the first of the two checks referenced in paragraph 3.b above. Defendant Releasees as defined in paragraph 7 below, have no duty to defend or indemnify Plaintiff against any tax claim or assessment associated with the payment of the Settlement Payments. Plaintiff shall cooperate in the defense of any tax claims brought against Defendant Releasees, and shall defend, indemnify and hold harmless 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.

7. Full Individual Release of Claims. In exchange for the consideration provided to Plaintiff in Paragraph 3 of the Agreement, Plaintiff, on his own behalf, and on behalf of his grantees, agents, attorneys, representatives, heirs, devisees, trustees, assigns, assignors, or any other entities in which Plaintiff has an interest, (collectively "Plaintiff Releasors"), hereby agrees to release and forever discharge by this Agreement, Defendant as well as each of its 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, predecessors in interest, joint venturers, commonly controlled corporations and related entities as well as any third parties who interacted with Plaintiff in any way while on the premises of Plaintiff's employment or otherwise, including without limitation, any residents of or visitors to the residence at 9434 Cherokee Lane, Beverly Hills, California (collectively "Defendant Releasees"), 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, including those arising under any theory of law, whether common, constitutional, statutory or other of any jurisdiction, foreign or domestic, whether known or unknown, whether in law or in equity, which he or they had or may claim to have against any of them by reason of any and all matters from the beginning of time to the present (collectively referred to as "Plaintiff Released Matters"). Plaintiff acknowledges that Plaintiff Released Matters include, and thus agrees that Plaintiff Releasors specifically release, claims under all applicable state and federal laws, including but not limited to, Title VII of the Civil Rights Act of 1964 as amended, the Age Discrimination in Employment Act, the Fair Labor Standards Act, the Rehabilitation Act of 1973, the Family Medical Leave Act, the Plaintiff Retirement Income Security

Act, the Consolidated Omnibus Reconciliation Act of 1986, the Equal Pay Act, and the California Fair Employment and Housing Act, the California Labor Code, including sections 200, et seq., 970, and 2699 et seq., the California Civil Code, the California Business and Professions Code, and the California Constitution, as well as all common law claims, whether arising in tort or contract. 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. Plaintiff acknowledges and agrees that he has received all wages owed to him on account of any employment with Defendant prior to, and not conditioned upon, Plaintiff's entry into this Agreement, and accordingly agrees that the Settlement Amount shall provide sufficient consideration for the Plaintiff's releases set forth in this Agreement. Plaintiff further acknowledges and agrees that by entering into this Agreement, that upon the effective date and subject to Court approval, he no longer has standing to bring a PAGA claim against Defendant on behalf of any aggrieved employee.

8. Limited Release of PAGA Claims. Upon the effective date, and subject to Court approval, Plaintiff provides a full release of all PAGA claims that have been or could be asserted by him or with respect to him against any and all Defendant Releasees on behalf of himself and no other alleged aggrieved employees. Nothing in this Agreement operates as a release of claims by any other former or current employees of Releasees aside from Plaintiff. Specifically, the release of the PAGA claim is only a release of Plaintiff's individual right to bring and pursue a PAGA claim and does not bar any other alleged aggrieved employees from bringing or pursuing PAGA claims on behalf of the State. Undersigned counsel for Plaintiff represents and warrants that neither said counsel nor any law firm with which said counsel is affiliated or associated currently represents any other client who alleges to be aggrieved by any of the alleged violations of the California Labor Code asserted in the PAGA Lawsuit or the notice to the LWDA precedent to the PAGA Lawsuit.

9. Civil Code section 1542. With respect to the Plaintiff Released Matters described above, Plaintiff expressly waives any and all rights under Section 1542 of the California Civil Code, and any like provision or principal of common law in any foreign jurisdiction. Section 1542 provides as follows:

SECTION 1542. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of all Plaintiff Released Matters, this Agreement is intended to include, without limitation, claims and causes of action that Plaintiff does not know or suspect to exist in his favor at the time of execution hereof and that this Agreement contemplates extinguishment of all such claims and causes of action.

10. Non-Disparagement.

a. Plaintiff agrees that he will not publish or communicate in any way any statements intended to damage, or reasonably likely to damage the business or personal reputations of Defendant or Defendant Releasees, or any one or more of them. Plaintiff further agrees that he will maintain in confidence any and all confidential or personal information with relation to the Defendant or Defendant Releasees and he will not disclose such information to third parties other than as required by law or otherwise provided herein.

b. Defendant agrees that its officers, directors and managing agents will not publish or communicate in any way any information or opinions intended to damage the business or personal reputations of Plaintiff and that in response to any requests for references concerning Plaintiff, the only information to be provided is (a) the dates of Plaintiff's employment with Henin, and (b) the last employment position held by Plaintiff during the course of his employment with Henin.

11. Full and Independent Knowledge. Plaintiff represents that he has thoroughly read this Agreement; that he fully understands all of the provisions of this Agreement; that he agrees to the terms of this Agreement; and that he is voluntarily entering into this Agreement.

12. Construction of this Agreement.

a. **BINDING AGREEMENT.** This Agreement shall be binding upon the signatories and upon their heirs, administrators, representatives, executors, successors, and assigns, and shall inure to the benefit of Defendant Releasees, and each of them, and to their heirs, administrators, representatives, executors, successors, and assigns, upon whom this Agreement shall also be binding.

b. **CHOICE OF LAW.** This Agreement is made and entered into in the State of California, and shall in all respects be interpreted, enforced, and governed by and under the laws of the State of California.

c. **INVALID AGREEMENT PROVISIONS.** Should any provision of this Agreement become legally unenforceable, no other provision of this Agreement shall be affected, and this Agreement shall be construed as if the Agreement had never included the unenforceable provision.

d. **NO MODIFICATIONS UNLESS IN WRITING.** The parties to this Agreement agree that any modification of this Agreement must be in writing, signed by Plaintiff and Defendant, and must refer specifically to this Agreement and the provisions modified. No other modifications will be valid.

e. **NO OTHER AGREEMENTS. THIS AGREEMENT CONSTITUTES FULL, COMPLETE, AND UNCONDITIONAL SUBSTITUTION FOR ANY AND ALL RIGHTS, CLAIMS, DEMANDS, AND CAUSES OF ACTIONS THAT HERETOFORE EXISTED OR MIGHT HAVE EXISTED ON BEHALF OF PLAINTIFF RELEASORS AGAINST DEFENDANT RELEASEES, WITH THE EXCEPTION OF CURRENTLY-PENDING WORKERS' COMPENSATION CLAIMS. FURTHERMORE, THIS AGREEMENT IS THE ONLY, ENTIRE, AND COMPLETE AGREEMENT OF THE PARTIES RELATING IN ANY WAY TO THE SUBJECT MATTER HEREOF. NO STATEMENTS, PROMISES, OR REPRESENTATIONS HAVE BEEN MADE BY ANY PARTY TO ANY OTHER, OR RELIED UPON, AND NO CONSIDERATION HAS BEEN OFFERED, PROMISED, EXPECTED, OR HELD OUT OTHER THAN AS IS EXPRESSLY PROVIDED HEREIN.**

f. **EXECUTION IN COUNTERPARTS.** This Agreement may be executed and delivered in two or more counterparts, each of which shall be the original, but such counterparts together shall constitute but one and the same instrument. A signature made on a faxed or electronically mailed copy of the Agreement or a signature transmitted by facsimile or electronic mail shall have the same effect as the original signature. This Agreement is not effective until both Plaintiff and the Defendant have signed it.

g. **ATTORNEYS' FEES.** The prevailing party in any action to enforce this Agreement, or for any breach thereof shall be entitled to costs and reasonable attorneys' fees.

13. Continuing Jurisdiction. Pursuant to Code of Civil Procedure section 664.6, the Parties agree that the Court shall retain jurisdiction over the parties to enforce the Agreement until performance in full of the

terms of the Agreement. The Parties may file a motion to enforce this Agreement and the Court, upon motion, may enter judgment pursuant to the terms of the Agreement. The prevailing party on such motion, or action, to enforce this Agreement shall be entitled to reasonable attorney's fees. The Agreement shall be enforceable, binding, and admissible or subject to disclosure for purposes of seeking enforcement.

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. IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

Date: December ²____, 2020



RICHARD CRUZ

Date: December ⁴____, 2020

HENIN SERVICES LIMITED

By: 

Authorized Representative name and title: