

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement”) is made and entered into between Plaintiff Mary Ann Audler (“Plaintiff”), acting in a private attorney general capacity, and Defendant Pegasus Trucking, LLC all of their employee, parents, affiliates and subsidiaries, and successors and assigns (“Defendant”).

I. DEFINITIONS

The following terms, when used in this Settlement Agreement, shall have the following meanings:

1. “Action” means the action originally entitled *Audler v. Pegasus Trucking LLC*, Superior Court of California for the County of Fresno, Case No. 20CECG02641.
2. “Complaint” means the Complaint originally filed by Plaintiff Mary Ann Audler in this Action on or about September 10, 2020.
3. “Court” means the Superior Court of California for the County of Fresno.
4. “Covered Position” means all individuals who worked for Defendant Pegasus Trucking, LLC as a non-exempt employee in a lead, supervisory or management level capacity, including store managers, temporary store managers, assistant store managers, department leads, and keyholders, who worked at least one shift in California from June 16, 2019 to the date of Court approval of the instant Settlement Agreement (the “PAGA Period”).
5. “Defendant” means Pegasus Trucking, LLC, as well as its respective directors, officers, partners, employees, agents, attorneys, successors, and assigns, past and present, and each of them.
6. “Gross Settlement Amount” is the sum of ONE HUNDRED FORTYTHOUSAND DOLLARS (\$140,000.00), for payment of the PAGA Payment, Plaintiff’s Individual Payments, Administration Costs, and Attorneys’ Fees and Costs. The Gross Settlement Amount shall be all-in with no reversion to Defendant.
7. “Individual PAGA Payment” means the amount to be paid to each of the PAGA Settlement Employees out of 25% of the PAGA Payment under Labor Code section 2699 with such individual shares to be based on the number of workweeks during which a PAGA Settlement Employee worked for Defendant during the PAGA Period.
8. “LWDA” means the California Labor Workforce Development Agency.
9. “PAGA” means the California Labor Code Private Attorneys General Act, California Labor Code § 2698 *et seq.* The Sole Cause of Action asserted in the Complaint in the Action is referred to as the “PAGA Action.”

10. “PAGA Payment” means the total amount of Seventy-eight thousand and Three hundred thirty-three dollars and eight cents 78,333.8 to be allocated as detailed herein below.

11. “PAGA Period” means the time period from June 16, 2019 to the date of Court approval of the instant Settlement Agreement.

12. “PAGA Settlement Employees” consists of all individuals employed by Defendant in a Covered Position and who worked at least one shift in California during the PAGA Period, including Plaintiffs, estimated to be 335 employees.

13. “Parties” means Plaintiff Mary Ann Audler and Defendant Pegasus Trucking, LLC.

14. “Plaintiff’s Counsel” means the law firms of Mahoney Law Group, APC, and Employment Rights Law Group, APC.

15. “Released Parties” means Defendant and its past, present and/or future, officers, directors, employees, agents, representatives, attorneys, parents, subsidiaries, affiliates, divisions, predecessors, successors and/or assigns.

16. “Settlement Administrator” means ILYM.

II. RECITALS

1. Plaintiff was employed by Defendant as a non-exempt employee in California during the PAGA Period.

2. On September 10, 2020, Plaintiff filed the Action in state court which asserted one cause of action under PAGA for various violations of the Labor Code.

3. The Parties engaged in two (2) mediation sessions before mediator Chris Barnes on July 22, 2021, and September 17, 2021.

4. As a result of the mediation, the Parties have agreed to fully and finally resolve the PAGA Released Claims as to Plaintiff and the PAGA Settlement Employees as alleged in the PAGA Action pursuant to this Settlement Agreement and Plaintiffs’ individual claims only as alleged in the Action.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. Non-Admission. Nothing in this Settlement Agreement shall be construed to be an admission by Plaintiff that her claims do not have merit or by Defendant of any liability or wrongdoing as to Plaintiff, the PAGA Settlement Employees, or any other person, and Defendant specifically disclaims any such liability or wrongdoing. The Parties have entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the

attendant inconvenience, expenses, and risks. This Settlement Agreement and any related court documents or orders are not and may not be cited or admitted as evidence of liability.

2. Defendant agrees to pay the Gross Settlement Amount of ONE HUNDRED FORTY THOUSAND (\$140,000.00) to the Settlement Administrator as follows: (i) One payment of Forty Thousand Dollars (\$40,000) within thirty (30) days upon entry of the Order approving this settlement and the Order becoming final and no longer subject to appeal; (ii) One payment of Twenty-Two Thousand Dollars (\$22,000) by July 31, 2022; (iii) monthly payments of \$13,000 by the last day of August 2022, September 2022, October 2022, November 2022, December 2022, and January 2023 to satisfy the remainder of the Gross Settlement Amount.

3. Defendant estimates that the PAGA Settlement Employees consist of 335 PAGA Settlement Employees who collectively worked 9,936 pay periods during the PAGA Period. Defendant will provide a declaration under oath as to the number of PAGA Settlement Employees and workweeks worked by the PAGA Settlement Employees prior to the filing of the motion for approval of PAGA Settlement.

4. The Parties agree to the following allocations to be paid from the Gross Settlement Amount:

a. PAGA Payment: \$78,333.8 shall be paid as the PAGA Payment in settlement of the PAGA Released Claims. The PAGA Payment will be subject to Court approval consistent with Labor Code § 2699. Upon approval, the PAGA Payment shall be distributed as follows:

- (1) \$19,583.45, which is 25% of the PAGA Payment, shall be paid to the PAGA Settlement employees pursuant to Labor Code section 2699.
- (2) \$58,750.35, which is 75% of the PAGA Payment, shall be paid to the LWDA pursuant to Labor Code section 2699.
- (3) These penalty settlement payments will be reported on IRS Form 1099s. The parties acknowledge and agree that all payments under this Settlement Agreement as PAGA payments are attributable as penalties. None are attributable as wages. Accordingly, the parties acknowledge and agree that Defendant is not responsible for any employer-side taxes in connection with any PAGA payments under this Settlement Agreement.

b. Attorneys' Fees and Costs: Forty- Six THOUSAND SIX HUNDRED SIXTY SIX DOLLARS AND 66 CENTS (\$46,666.66.00) shall be paid to Plaintiff's Counsel for payment of attorney's fees, and up to EIGHT THOUSAND DOLLARS (\$8,000.00) shall be paid to Plaintiff's Counsel for costs set forth in the client's bill statement (pursuant to a declaration of costs by Plaintiff's Counsel) in prosecuting the PAGA claims. Defendant shall not oppose

Plaintiff's request for attorneys' fees and costs. In the event that Court approval is required and a payment of less than Forty- Six THOUSAND SIX HUNDRED SIXTY SIX DOLLARS AND 66 CENTS in fees or EIGHT THOUSAND DOLLARS (\$8,000.00) in costs to Plaintiff's Counsel is approved, the difference will be added to the PAGA Payment. This payment will be reported on IRS Form 1099 issued to Plaintiff's Counsel. Except as set forth herein, each party shall bear their own costs and fees of this Action.

c. Administration Costs: A Settlement Administrator shall be selected after receipt of a bid. Administration Costs shall include the cost of the Settlement Administrator selected by the Parties to administer the settlement in the amount of FIVE THOUSAND DOLLARS (\$5,000.00). In the event that Court approval of these payments is required and a payment of less than FIVE THOUSAND DOLLARS (\$5,000.00) is approved, or if the actual cost to administer the settlement is less than FIVE THOUSAND DOLLARS (\$5,000.00), the difference will be added to the PAGA Payment.

d. Representative PAGA Release. In her capacity as a private attorney general "aggrieved employee" acting on behalf of herself, the State of California and the PAGA Settlement Employees, and in consideration of the PAGA Payment and the payment to Plaintiff's Counsel for attorney's fees and costs, Plaintiff hereby releases Defendant and the Released Parties from any and all PAGA Released Claims that arose during the PAGA Period.

e. Enhancement Award. Subject to Court approval, Plaintiff Audler receives in her capacity as an aggrieved employee, she will individually receive, an Enhancement Award from the Gross Settlement Fund for her services as the PAGA Representative in the amount of Two Thousand Dollars (\$2,000.00). The PAGA Representative's enhancement award will be distributed by the Settlement Administrator at the time the Settlement Administrator initiates the first distribution to the PAGA Settlement Employees as described in this Agreement and will include the issuance of an IRS Form 1099 in connection with this payment.

5. PAGA Released Claims. Upon entry of the Order approving this settlement and the Order becoming final and no longer subject to appeal, the LWDA, Plaintiff and all PAGA Settlement Employees will release Defendant from any and all PAGA Released Claims which are those claims that arose during the PAGA Period as set forth in the Sole Cause of Action of the Complaint. PAGA Released Claims are: All claims seeking every manner of relief available to the LWDA or any agency acting under the authority of the LWDA under the California Labor Code predicated on the PAGA claims asserted in the Action, during the PAGA Period against the Defendant and the Released Parties, including, but not limited to, all PAGA claims under California Labor Code sections 510, 203, 204, 210, 512 226, 1194, 1197, 1198, 2802, and 2698, 2699 et seq., and any PAGA claim for failure to reimburse Plaintiff and the Aggrieved Employees their reasonable and necessary business expenses from employment by Defendant from June 16, 2019 through the date of the Court approval of this Settlement (hereinafter "PAGA Released Claims"). This Settlement Agreement effectively releases, precludes and bars further prosecution of all PAGA Released Claims against the Defendant and the Released Parties that occurred during the PAGA Period, regardless of whether Plaintiff and/or the Aggrieved Employees cash their settlement award checks, so long as the Gross PAGA Settlement is administered and carried out according to this Settlement Agreement. Beyond the Gross PAGA

Settlement Amount, Defendant shall not owe any further monies to the Aggrieved Employees or to the State of California based upon any claim asserted on behalf of the Aggrieved Employees in the Action or in any complaint filed for PAGA Released Claims that occurred during the PAGA Period. **In no event shall the PAGA Released Claims in this Settlement Agreement release any claim other than the PAGA Released Claims that arose during the PAGA Period of any individual other than the Plaintiffs.**

6. Waiver of Civil Code Section 1542. The Parties represents that they are not aware of any claims each Party may have against other Party other than the claims that are released by this Settlement Agreement. The Parties waive any and all rights and benefits conferred by the provisions of Section 1542 of the Civil Code of the State of California and any similar law of any state or territory of the United States or other jurisdiction. This section provides as follows:

A general release does not extend to claims that the creditor or the 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.

The Parties understand and acknowledge that this Settlement Agreement is meant to include in its effect all Claims which either Party does not know or suspect to exist against the either Party.

7. Covenants and Representations by Plaintiffs.

a. Plaintiff represents and warrants that she has not assigned or transferred or purported to assign or transfer to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Settlement Agreement.

b. Plaintiff acknowledges that she has read this Settlement Agreement, that she fully understand her rights, privileges and duties under the Settlement Agreement, and enters into this Settlement Agreement freely and voluntarily. Plaintiff further acknowledges that she has had the opportunity to consult with her attorneys to explain the terms of this Settlement Agreement and the consequences of signing this Settlement Agreement.

c. The funds received by Plaintiff as Plaintiff's Individual Payments shall be allocated 100% to penalties and interest.

8. No Publicity. Neither Plaintiff nor Plaintiff's Counsel shall issue a press release, hold a press conference, or otherwise publicize the settlement. This paragraph is not intended to nor does this paragraph act to prevent Plaintiff's counsels from performing their duties as counsel in this matter.

9. Court Approval of the PAGA Payment. Subject to Defendant's reviewing, Plaintiff's Counsel shall be responsible for preparing and filing a Motion for Approval of the PAGA Payment.

10. Termination of Settlement Agreement. If the Court does not approve this settlement, or if the Court does not dismiss the Action with prejudice as provided for in this Settlement Agreement as to the PAGA Claims, or if appellate review is sought and on such review the Court's decision is materially modified or reversed, or if one or more of the terms of the Settlement Agreement are not approved or is materially modified or reversed or found to be invalid, then each of the Parties by and through counsel shall have the right within ten (10) days of written notice thereof to elect to terminate the Settlement Agreement, in which event it shall have no force or effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Settlement Agreement.

11. Dismissal. Plaintiff shall submit to the Court a proposed Judgment which dismisses the PAGA claims with prejudice as asserted in the Complaint, to be filed no later than fourteen (14) days after the Court approves the Individual and PAGA Payments. This Settlement Agreement is expressly conditioned upon the Court entering the Judgment dismissing of the Complaint in its entirety with prejudice. **This Judgment will not release or bar any claims other than the Plaintiff's individual claims and the PAGA Released Claims.**

IV. ADMINISTRATION OF SETTLEMENT

1. After the execution of this Settlement Agreement, Plaintiff shall file a motion for approval of the PAGA Payment, and will serve the motion on the LWDA consistent with Labor Code § 2699(1)(2).

2. The Settlement Administrator will administer the settlement and shall be paid for Administration Costs, which are expected not to exceed FIVE THOUSAND DOLLARS (\$5,000.00.)

3. Within fifteen (15) days after receipt of the Gross Settlement Amount from Defendant, the Settlement Administrator will issue to each PAGA Settlement Employee a check for their Individual PAGA Payment to their last known home address along with an explanatory letter which will be mutually approved by the parties. Defendant will provide the necessary information about the PAGA Settlement Employees to the Settlement Administrator. Checks will remain negotiable for one hundred eighty (180) days. Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address or Social Security number of the PAGA Settlement Employee involved, and will then perform a single re-mailing. Funds represented by settlement checks returned as undeliverable and those settlement checks remaining un-cashed for more than 180 days after issuance of the payment will be delivered by the Settlement Administrator to the Unclaimed Property Fund maintained by the Comptroller. The Individual PAGA Payments are 100% penalties and shall be reported using IRS tax form 1099.

4. Within fifteen (15) days after receipt of the Gross Settlement from Defendant, the Settlement Administrator will pay the Plaintiff's Individual Payment from the Gross Settlement Amount.

5. Within fifteen (15) days after receipt of the Gross Settlement from Defendant, the Settlement Administrator will pay the LWDA the amount allocated to the LWDA along with the payment of attorneys' fees and costs, and Administration Costs as approved by the Court from the Gross Settlement Amount.

6. The Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid out.

7. Defendant makes no representations or warranties with respect to tax consequences of any payment under this Settlement Agreement.

V. MISCELLANEOUS PROVISIONS

1. Drafting. The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that neither Party shall be considered the "drafter" of this Settlement Agreement for purposes of having terms construed against that Party.

2. No Impact on Benefit Plans. Neither the Settlement Agreement nor any amounts paid to Plaintiff or any PAGA Settlement Employee under the Settlement Agreement will modify any previously credited hours or service under any employee benefit plan, policy, or bonus program sponsored by Defendant. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under Defendant's sponsored benefit plans, policies, or bonus programs. The payments made under the terms of this Settlement Agreement shall not be applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other form of compensation for the purposes of any Defendant benefit plan, policy, or bonus program. Defendant retains the right, if necessary, to modify the language of its benefit plans, policies and bonus programs to effect this intent, and to make clear that any amounts paid pursuant to this Settlement Agreement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies and bonus programs for purposes of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Settlement Agreement.

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

4. Costs and Fees. The Parties shall each bear their own costs, attorneys' fees, mediator fees, and other fees incurred in connection with this Settlement Agreement and in connection with the Action and Plaintiff's claims, except as otherwise set forth specifically herein.

5. Authority. Defendant represents and warrants that the undersigned has the authority to act on behalf of Defendant and to bind Defendant to the terms of this Settlement Agreement. Plaintiff represents and warrants that she has the capacity to act on her own behalf and on behalf of all who might claim through her to bind her to the terms and conditions of this

Agreement.

6. **Governing Law.** This Agreement shall be construed under and governed by the laws of the State of California. This Agreement shall be deemed to have been entered into in Fresno County, California and all questions of validity, interpretation or performance of any of its terms or of any rights or obligations of the parties to this Agreement shall be governed by California law. If any legal or equitable action or arbitration is necessary to enforce the terms of this Agreement, it shall be brought in the State of California, County of Fresno.

7. **Complete Agreement.** The Parties each acknowledge and represent that no promise or representation not contained in this Settlement Agreement has been made to them and acknowledge and represent that this Settlement Agreement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the claims. This Settlement Agreement cannot be amended or modified except by a writing signed by the Parties hereto or their successors-in-interest.

8. **Nullification of Settlement Agreement.** In the event that: (i) the Court does not approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions.

9. **Judgment and Continued Jurisdiction.** After approval of this settlement, the Court will have continuing jurisdiction pursuant to California Code of Civil Procedure section 664.6 solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-judgment matters as may be appropriate under court rules or as set forth in this Settlement.

10. **Authorization to Enter Into Settlement Agreement.** Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the mediator to resolve such disagreement.

11. **Execution and Counterparts.** This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including electronic, facsimile, and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

12. **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties believe

this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

13. **Invalidity of Any Provision.** Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

14. **Waiver.** No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

15. **Severability.** If any term or provision of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will continue to be valid and will be performed, construed, and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

16. **Mutual Preparation.** The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

17. **Representation By Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

18. **Cooperation and Execution of Necessary Documents.** All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

19. **Binding Agreement.** The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

20. **Denial of Liability.** The Parties expressly recognize that the making of this

agreement does not in any way constitute an admission or concession of wrongdoing on the part of Defendant or an admission or concession regarding the validity of Plaintiffs' claims by Plaintiffs. Nothing in this Settlement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of this Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation or lack of violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this agreement may be used in any proceeding in the Court that has as its purpose the interpretation, implementation, or enforcement of the Settlement or any orders or judgments of the Court entered into in connection therewith.

IN WITNESS THEREOF, the Parties each acknowledge that he/it has read the foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement and hereby executes it voluntarily and with full understanding of its consequences.

PLAINTIFF:

Dated: 04 / 05 / 2022



MARY ANN AULDER

DEFENDANT:

Dated: 4/7/2022

By: 

Michael Fallas, on behalf of
PEGASUS TRUCKING, LLC