

SETTLEMENT AGREEMENT

Dones. v. Serenity of Silicon Valley Inc., et al.

(Santa Clara County Superior Court Case No. 20CV366291)

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned Parties, subject to the approval of the Court, the settlement of this action shall be effectuated upon and subject to the following terms and conditions. Capitalized terms used herein shall have the meanings set forth in Article I or elsewhere in the Private Attorneys' General Act of 2004 (Labor Code Section 2698, *et seq.*) or this Settlement Agreement ("Agreement").

This Agreement is made by and between Defendants SERENITY OF SILICON VALLEY INC. and THUC OANH N. TRINH (referred to jointly as "Defendants"), and Plaintiff ENONE DONES (referred to as "Plaintiff"), for themselves and on behalf of the State of California, and the law firms defined below as "Plaintiff's Counsel" and "Defense Counsel". (Defendants, Plaintiff and Aggrieved Employees, as defined herein, are sometimes collectively referred to as the "Parties"). This Agreement shall be effective upon the last date upon which it is signed by the Parties.

The Parties agree that the Litigation shall be, and hereby is, ended, settled, resolved, and concluded by agreement of Defendants to pay the sum of Ninety Thousand Dollars and No Cents (\$90,000.00) (hereinafter referred to as the "Gross Settlement Amount") for settlement of Plaintiff's individual claims and the Private Attorneys' General Act ("PAGA") Penalties sought through the Litigation, which shall be inclusive of Plaintiff's Counsel's attorneys' fees and costs. Under no circumstances shall Defendants be obligated to pay more than \$90,000.00 under this Agreement.

Article I.

Definitions.

Section 1.01 Definitions.

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

- (a) "Aggrieved Employees" means Plaintiff and all other non-exempt caretakers employed by Defendants in the State of California at any time between April 27, 2019 and June 15, 2022, inclusive. Defendants represent there are no more than 10 Aggrieved Employees.
- (b) "Complaint" means the operative Complaint, filed by Plaintiff on April 27, 2020 in the Santa Clara County Superior Court (Case No. 20CV366291).
- (c) "Court" means the Superior Court of the State of California in and for the County of Santa Clara.
- (d) "Defense Counsel" or "Counsel for Defendants" is:

Hai H. Lai, SBN 193357
Law Office of Hai H. Lai
9550 Warner Ave., Suite 250
Fountain Valley, CA 92708
Tel. (714) 593-5800
Fax (714) 200-0221
attorney_lai@yahoo.com

- (e) “Effective Date” means the date on which the Court approves the settlement of the PAGA penalties as described in this Agreement.
- (f) "Litigation" refers to all proceedings relating to the Complaint filed by Plaintiff.
- (g) “Plaintiff’s Counsel” is:

Daniel A. Menendez, SBN 260822
Law Office Of Daniel A Menendez
1261 Lincoln Avenue, Suite 208
San Jose, California 95125
Tel. (408) 479-4969
daniel@siliconvalleylegal.com

- (h) “Release Period” means the time period between April 27, 2019 and June 15, 2022, inclusive.
- (i) “Released Claims” means any and all claims for civil penalties pursuant to PAGA based on underlying violations of Labor Code §§ 201-204, 226, 226.7, 512, 510, 558, 1174, 1194, 1194.2, 1197, 1198, 2926, and 2927, as well as any other alleged violations in the Complaint.
- (j) “Additional Released Claims by Plaintiff” refers to the additional release being provided by Plaintiff (*see, infra*, Section 5.02) in exchange for payment of Plaintiff’s Individual Settlement Award (*see, infra*, Section 3.01(iv)).
- (k) “Released Parties” means Defendants and their former and present parent, subsidiaries and affiliated corporations and their officers, directors, employees, managers, partners, shareholders, agents, insurers, and any other successors, assigns, or legal representatives.

Article II.

Background.

Section 2.01 Background.

- (a) On April 27, 2019, Plaintiff filed a Complaint in the Superior Court of the State of California for the County of Santa Clara and entitled *Enone Dones v. Serenity of Silicon Valley Inc.; Thuc Oanh N. Trinh; and DOES 1 through 20, inclusive*, designated as Case No. 20CV366291. Plaintiff alleged Defendants failed to compensate her and all hours

worked, failed to provide compliant meal/rest periods or pay due meal/rest premiums, failed to provide accurate itemized wage statements, failed to maintain accurate time records, failed to pay due wages at separation of employment, unfair competition, and recovery under PAGA.

- (b) On June 14, 2022, the parties reached an agreement for settlement of both Plaintiff's individual and PAGA claims, and entered into a Memorandum of Understanding capturing the basic terms of their agreement.
- (c) This settlement contemplates the (1) entry of an order by the Court approving the payment allocated for settlement of the PAGA Penalties; (2) dismissal of the Litigation with prejudice; and (3) all parties bearing their respective fees and costs except as expressly provided in this Agreement. Separate and apart from this Agreement, Plaintiff has entered into a full general release of all claims against Defendants.

Article III.

Approval and Implementation of Settlement.

Section 3.01 Allocation of the Gross Settlement Amount.

The Parties will cooperate in obtaining through written stipulation or unopposed motion or *ex parte* application, if required, an Order from the Court approving the payment of the Gross Settlement Amount as follows.

- i) Plaintiff's Counsel's Fees: Plaintiff's Counsel may request and be paid up to 40% of the Gross Settlement Amount or Thirty-Six Thousand Dollars (\$36,000.00) for attorneys' fees. If Plaintiff's counsel's request for 40% of the Gross Settlement Amount is not approved and/or is reduced by the Court, any amount not approved and/or reduced by the Court will be included in the Net Settlement Amount.
- ii) Plaintiff's Counsel's Costs: Plaintiff's Counsel may request and be paid up to Ten Thousand Dollars (\$10,000.00) of the Gross Settlement Amount as reimbursement for expenses incurred in the Action. If Plaintiff's counsel's request for reimbursement of litigation costs is not approved and/or is reduced by the Court, any amount not approved and/or reduced by the Court will be included in the Net Settlement Amount.
- iii) Payment to the LWDA and Aggrieved Employees: The total sum available for payment of PAGA penalties shall be \$5,000.00, allocated as described in Section 3.04(b).
- iv) Plaintiff's Individual Settlement Award: Plaintiff shall receive the Net Settlement Amount in consideration for the Additional Release by Plaintiff (*see, infra*, Section 5.02 herein).
- v) Net Settlement Amount: The Net Settlement Amount shall be determined by deducting Plaintiff's Counsel's Fees, Plaintiff's Counsel's Costs, and the PAGA

payment to the LWDA and Aggrieved Employees, set forth in section 3.01(i), (ii), (iii), and (iv) from the Gross Settlement Amount.

The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating to, or are otherwise necessary to the approval and implementation of the payment of PAGA penalties as described in this Agreement.

Section 3.02 Court Approval.

The Parties will seek to obtain the Court's approval of the settlement and the payment of PAGA Penalties as described in this Agreement by way of a stipulation or unopposed motion or *ex parte* application to be filed by Plaintiff's Counsel. Plaintiff's Counsel and Defense Counsel will jointly lodge this Agreement with the Court for its approval. Pursuant to Labor Code Section 2699(l)(2), Plaintiff shall also submit a copy of this Agreement to the Labor and Workforce Development Agency ("LWDA") at the same time submitted to the Court. The Court's approval of the payment of PAGA Penalties as described in this Agreement shall be embodied in a written Order. Should the Court not grant approval of the payment of PAGA Penalties as described in this Agreement then the entirety of this Agreement shall be null and void. Any and all statute of limitations or other deadlines regarding the filing or prosecution of this Litigation shall be stayed from the date this Settlement is executed until such time as the Court has made a final decision to approve this Settlement or not.

Section 3.03 Disclosure of Aggrieved Employees.

No later than thirty (30) calendar days after signing this Agreement, Defendants shall provide Plaintiff's Counsel a list of all Aggrieved Employees ("Aggrieved Employees List"). The Aggrieved Employees List shall state the first name and last name in separate columns for each Aggrieved Employee, the last known home address for each such Aggrieved Employee, each Aggrieved Employee's social security number, and the number of pay periods worked by each Aggrieved Employee during the Release Period. Defendants represent there are no more than 10 Aggrieved Employees. Exceeding 10 Aggrieved Employees will render this entire agreement null and void. No release of PAGA-related claims under Section 5.01 will apply to any person not disclosed pursuant to this Section 3.03.

Section 3.04 Settlement Payment Procedures.

(a) Payment to Plaintiff.

Ten (10) calendar days following the Effective Date, Defendants shall issue the Plaintiff's Individual Settlement Award in two checks. The first check shall be for 50% of the Net Settlement Amount, subject to wage withholdings, and defendant Serenity of Silicon Valley Inc. shall issue Plaintiff an IRS Form W-2 for that amount. The second check shall be for 50% of the Net Settlement Amount, represent penalties and interest, and defendant Serenity of Silicon Valley Inc. shall issue Plaintiff an IRS Form 1099 for that amount. These shall be delivered to Plaintiff's Counsel via physical checks.

(b) Payment of PAGA Penalties.

For purposes of distributing the portion PAGA penalties allocated to Aggrieved Employees, all distribution payments will be made to all Aggrieved Employees according to the number of pay periods worked by each Aggrieved Employee during the Release Period, with each Aggrieved Employee being entitled to a share of the PAGA penalties allocated to Aggrieved Employees based upon the Aggrieved Employee's number of pay periods employed with Defendants during the Release Period as a numerator and the total number of pay periods for all Aggrieved Employees employed with Defendants in California during the Release Period as the denominator.

Seventy-five percent (75%) of the Payment to the LWDA and Aggrieved Employees shall be distributed to the State of California Labor Workforce and Development Agency ("LWDA") and the remaining twenty-five percent (25%) shall be distributed to the Aggrieved Employees. The amount allocated to Aggrieved Employees (including Plaintiff in their capacity as Aggrieved Employees) shall be according to the pro rata pay periods methodology set forth above.

100% of the PAGA payments are considered penalties and will not be subject to local, state or federal tax withholdings. All Aggrieved Employees who cash their settlement check may receive an IRS Form 1099 for their portion of the settlement. Defendants shall be responsible for issuing any IRS Form 1099s required by this Agreement.

Defendants shall mail settlement checks to Aggrieved Employees via first-class United States mail within ten (10) days of the Effective Date, with the exception of Plaintiff to whom the PAGA payment check will be mailed to Plaintiff's Counsel. The settlement checks sent to the Aggrieved Employees shall remain valid for one hundred eighty (180) days. Thereafter, all uncashed checks shall be voided and the funds thereafter paid to one or more court approved *cy pres*. The Parties propose that the following organizations act as *cy pres*: Katharine and George Alexander Community Law Center.

(c) Attorneys' Fees and Costs.

Ten (10) calendar days following the Effective Date, Defendants shall pay the attorneys' fees and costs to Plaintiff's Counsel.

Section 3.05 Submission of Judgment.

Upon approval of this Agreement by the Court, Plaintiff and Defendants will jointly submit a Judgment to be entered by the Court to enforce this Agreement and the Order granting approval of the PAGA penalty payments called for herein. Upon payment of the entire Gross Settlement Amount by Defendants in accordance with this Agreement, Plaintiff by and through their counsel shall promptly file a request to dismiss this Litigation with prejudice.

Article IV.

Limitations On Use Of This Settlement.

Section 4.01 No Admission.

This Agreement and compliance with this Agreement shall not be construed as an admission by Defendants of any liability whatsoever, or as admission by Defendants of any violations of Plaintiffs' rights, violation of any order, law, statute, duty or contract whatsoever. Defendants specifically disclaims any liability to Plaintiff or any other allegedly aggrieved employee for any alleged violation of his/her rights, or for any alleged violation of any order, law, statute, duty or contract.

Section 4.02 Non-Evidentiary Use.

Neither this Agreement nor any of its terms shall be offered or used as evidence by any of the Parties, or their respective counsel in the Litigation or in any other action or proceeding; provided, however, this shall not prevent this Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Agreement.

Section 4.03 Nullification.

- (a) If the Court should for any reason fail to approve the payment of PAGA penalties as described in this Agreement and or the other condition precedent set forth in Section 3.03 above is not met, then (a) this Agreement shall be considered null and void, (b) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect, and (c) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court.
- (b) Invalidation of any material portion of this Agreement shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

Article V.

Release and Waiver of Claims.

Section 5.01 Release.

Upon entry of the Order approving payment of the PAGA penalties as described in this Agreement, Plaintiff, all Aggrieved Employees, and the State of California shall be bound by this Agreement and shall have recourse exclusively to the benefits, rights, and remedies provided hereunder. Plaintiff, all Aggrieved Employees, and the State of California shall be deemed to have, and by operation of the Order granting approval of the payment of PAGA penalties as described in this Agreement, fully, finally, and forever released, relinquished, and discharged each and all of the Released Parties from the Released Claims arising during the Release Period.

Section 5.02: Additional Release by Plaintiff

- (a) Upon entry of the Order approving payment of the PAGA penalties as described, and in addition to the Release being provided by Aggrieved Employees, also referenced above, Plaintiff ENONE DONES, in consideration for Plaintiff's Individual Settlement Award payment, hereby releases the Released Parties (defined herein) from any and all claims that relate in any way to their employment with Defendants, whether under the laws of the State of California or federal law, including, without limitation, statutory,

constitutional, contractual, and/or common law claims for wages, damages, restitution, unreimbursed expenses, equitable relief, penalties, liquidated damages, and/or punitive damages (including, without limitation, claims under any applicable Industrial Welfare Commission Wage Order, the California Private Attorneys General Act, or any other provision of the California Labor Code); Title VII of the Civil Rights Act of 1964; 42 U.S.C. § 1981; the Americans With Disabilities Act; Sections 503 and 504 of the Rehabilitation Act of 1973; the Family Medical Leave Act; the Fair Labor Standards Act; the Employee Retirement Income Security Act; the Occupational Safety and Health Act; the Worker Adjustment and Retraining Notification Act, as amended; the California Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 *et seq.*); the California Fair Employment and Housing Act; any state, civil, or statutory laws, including any and all human rights laws and laws against discrimination; any other federal, state, or local statutes, codes, or ordinances; any common law, contract law, or tort law cause of action; and any claims for interest, attorneys' fees, and/or costs (referred to as the "Additional Release by Plaintiff").

As to the release contemplated by this paragraph, Plaintiff waives the provisions of California Civil Code Section 1542 which states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR 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 Additional Release by Plaintiff does not include claims unrelated to Plaintiff's employment with Defendants or claims that cannot be released as a matter of law, such as claims for workers compensation.

Article VI.

Miscellaneous Provisions.

Section 6.01 Voluntariness.

This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any of the Parties, or of any other person, firm or other entity.

Section 6.02 Amendments.

The terms and provisions of this Agreement may be amended only by a written agreement that is both (a) signed by the Plaintiff, Plaintiff's Counsel, Defendants and Defense Counsel who executed this Agreement and (b) approved by the Court. Any waiver of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement unless expressly so indicated otherwise.

Section 6.03 Assignment.

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Aggrieved Employee, Plaintiff's Counsel, or Defense Counsel without the express written consent of each other Party and their respective counsel hereto. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement, and shall not be construed to confer any right or to avail any remedy to any other person. Plaintiff expressly warrants they have not transferred to any person or entity any right or cause of action, or claim released by this Agreement.

Section 6.04 Governing Law.

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California.

Section 6.05 Entire Agreement.

This Agreement contains the entire understanding of the Parties hereto in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings among the Parties hereto with respect to the settlement of the Litigation.

Section 6.06 Waiver of Compliance.

Any failure of any Party, Defense Counsel, and/or Plaintiff's Counsel hereto to comply with any obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the extent permitted under applicable law, by the Party or Parties and their respective counsel hereto entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

Section 6.07 Counterparts.

This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

Section 6.08 Attorneys' Fees and Costs.

Neither Plaintiff's Counsel nor any other attorneys acting for, or purporting to act for the Aggrieved Employees, or Plaintiff may recover or seek to recover any amounts for fees, costs, or disbursements from the Released Parties or the Gross Settlement Amount except as expressly provided herein. Defendants shall bear their own attorney's fees and costs, and neither Plaintiff's Counsel, Aggrieved Employees nor Plaintiff shall be responsible for Defendants' attorney's fees and costs.

Section 6.09 Dispute(s).

Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, the Parties agree to submit any such dispute(s) to the Court. To the extent any Party seeks to enforce any of the terms of this Agreement in Court or before the Court, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

Section 6.10 Binding.

This Agreement shall bind and inure to the benefit of the Parties hereto and to their respective successors, assigns, legatees, heirs, and personal representatives.

Section 6.11 Continuing Jurisdiction.

The Parties agree that upon the occurrence of the dismissal of the Litigation and entry of Judgment pursuant to the terms of this Agreement, this Agreement shall be enforceable by the Court to the fullest extent permitted by law. The Parties shall request that the Court retain jurisdiction over this Litigation to interpret and enforce the terms, conditions and obligation of the Agreement. The Court's refusal to issue an Order retaining continuing jurisdiction over this Litigation shall not otherwise affect the validity or enforceability of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Private Attorney General Act Settlement Agreement on the date set forth.

APPROVED AND ACCEPTED.

DEFENDANTS

SERENITY OF SILICON VALLEY INC.

Dated:

By_____

Title:

Dated:

By _____
THUC OANH N. TRINH
Title:

Dated: October 7, 2022

PLAINTIFF

By _____
ENONE DONES

**APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONS ONLY**

Dated: October 7, 2022

LAW OFFICE OF DANIEL A. MENENDEZ

By _____
Daniel A. Menendez
Attorney for Plaintiff

LAW OFFICE OF HAI H. LAI

Dated:

By _____
Hai H. Lai
Attorneys for Defendants

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APPROVED AND ACCEPTED.

DEFENDANTS

SERENITY OF SILICON VALLEY/INC.

Dated:

09/27/22

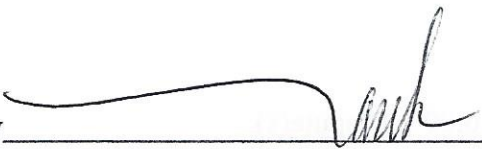
By



Title:

CEO

Dated: 09/27/22

By 
THUC OANH N. TRINH
Title: CEO

Dated:

PLAINTIFF

By _____
ENONE DONES

**APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONS ONLY**

Dated:

LAW OFFICE OF DANIEL A MENENDEZ

By _____
Daniel A. Menendez
Attorney for Plaintiff

LAW OFFICE OF HAI H. LAI

Dated:

By _____
Hai H. Lai
Attorneys for Defendants

Dated:

By _____
THUC OANH N. TRINH
Title:

Dated:

PLAINTIFF

By _____
ENONE DONES

**APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONS ONLY**

Dated:

LAW OFFICE OF DANIEL A MENENDEZ

By _____
Daniel A. Menendez
Attorney for Plaintiff

LAW OFFICE OF HAI H. LAI

Dated:

10/5/2022

By _____
Hai H. Lai
Attorneys for Defendants