

**PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release ("Agreement") is made by and between Plaintiff Dana Lipken ("Plaintiff"), for himself and on behalf of other aggrieved employees and the Labor and Workforce Development Agency pursuant to Sections 2698 et seq. of the California Labor Code, and Defendant Reynolds Packing Co. dba M&R Company ("Defendant" or "M&R"). Plaintiff and Defendant are sometimes collectively referred to herein as "Parties," and may be individually referred to as "Party," as follows:

RECITALS

A. WHEREAS, Plaintiff was employed by M&R from August 20, 2018 to March 20, 2020; and

B. WHEREAS, Plaintiff brought a civil action in the Superior Court of California, County of San Joaquin, Case No. STK-CV-UWT-2020-0005673, against M&R for: (1) Failure to Pay Accrued and Unused Vacation Wages in Violation of Labor Code § 227.3; (2) Failure to Timely Pay Final Wages in Violation of Labor Code §§ 201-203; and (3) Wrongful termination; and

C. WHEREAS, on September 14, 2020, Plaintiff filed a First Amended Complaint ("FAC" or "the Action") in the Superior Court of California, County of San Joaquin, Case No. STK-CV-UWT-2020-0005673, against M&R for: (1) Failure to Pay Accrued and Unused Vacation Wages in Violation of Labor Code § 227.3; (2) Failure to Timely Pay Final Wages in Violation of Labor Code §§ 201-203; (3) Wrongful termination; (4) Failure to Provide Compliant Itemized Wage Statements in Violation of Labor Code § 226; and (5) a representative action pursuant to the Private Attorneys General Act pursuant to Labor Code § 2699, et seq. to recover civil penalties for violations of Labor Code § 226 ("PAGA Claims"); and

D. WHEREAS, M&R denies all of the allegations in the FAC and denies it committed any misconduct, statutory or regulatory violation, wrongdoing, or any other wrongful conduct; and

E. WHEREAS, M&R and Plaintiff informally exchanged information and documents regarding Plaintiff's employment to allow the Parties to make informed decisions regarding settlement; and

F. WHEREAS, on January 14, 2021, the Parties participated in a full-day mediation with Russ Wunderli, Esq.; and

G. WHEREAS, as a result, the Parties wish to finally settle and resolve all alleged grievances, disputes, controversies, claims, actions, and potential actions between them concerning Plaintiff's individual claims under the Labor Code and the PAGA Claims alleged in the FAC in order to avoid further litigation and the expenses and costs incident thereto.

NOW, THEREFORE, AND SUBJECT TO AND CONTINGENT UPON COURT APPROVAL, the Parties agree as follows:

1. Non-Admission of Liability, Wrongdoing, or Status as a Representative Action: The Parties agree that this Agreement does not constitute an admission by M&R or any of the Released Parties as defined below of any of the matters, alleged in the FAC or of any violation by any of them of any federal, state or local law, ordinance or regulation, or of any violation of any policy or procedure, or of any liability or wrongdoing whatsoever. Neither this Agreement nor anything in this Agreement shall be construed to be or shall be admissible in any proceeding as evidence of liability or wrongdoing by Plaintiff, M&R, or the Released Parties.

2. Effective Date: The effective date of the release of Plaintiff and aggrieved employees' PAGA Claims shall be the date the Court approves this Agreement and the PAGA Settlement set forth herein ("Effective Date").

3. PAGA Settlement Payment: In consideration for the covenants, promises, waivers, and releases contained in this Agreement, and subject to Court approval, within 14 days of the Court granting final approval of the PAGA Settlement as set forth in section 6 of this Agreement, M&R will pay, by submitting to the agreed upon claims administrator, the sum of Forty-Five Thousand Dollars and Zero Cents (\$45,000) ("PAGA Settlement Payment") in full and final settlement of the PAGA Claims. As set forth in more detail below, and less all court approved attorneys' fees and costs set forth in section 6 below, 75% of the amount remaining after subtraction of court approved attorneys' fees and costs from the PAGA Settlement Payment will be paid to the LWDA and 25% of the of the amount remaining after subtraction of the court approved attorneys' fees and costs from the PAGA Settlement Payment will be paid to the PAGA Aggrieved Employees (the PAGA Group Payment) as defined below. Each member of the PAGA Aggrieved Employees will receive a pro-rata share of the PAGA Group Payment based upon their number of workweeks worked from July 2019 to the present compared to the total workweeks worked of the entire PAGA Aggrieved Employees.

i. PAGA Aggrieved Employees: PAGA Aggrieved Employees shall mean: Current and former M&R employees from July 2019 to the present that are within the scope of the PAGA Claims made, expressly including but not limited to claims made for noncompliant wage statements in violation of Labor Code section 226.

ii. Release of PAGA Claims: For and in consideration of the mutual promises and consideration set forth in this Agreement, Plaintiff and the PAGA Aggrieved Employees, on behalf of themselves, and their heirs, successors, assigns, attorneys and agents, hereby release and forever discharge M&R and each of M&R's officers, shareholders, directors, agents, employees, attorneys, and insurers (collectively and individually "Released Parties"), from any and all noncompliant wage statement claims that were asserted under California Labor Code section 2698, et seq. ("PAGA"), in the San Joaquin Superior Court Case No. STK-CV-UWT-2020-0005673, or that could have been brought based on the facts alleged in the San Joaquin Superior Court Case No. STK-CV-UWT-2020-0005673, including those wage statement claims relating to full social security numbers alleged as part of the PAGA Claims, and any resulting claim for attorneys' fees and costs under PAGA.

4. Contingency of the Settlement: The Parties agree that all of the promises and obligations under this Agreement are contingent upon the Court granting final approval of the Parties' PAGA Settlement as further set forth in section 6 below.

5. PAGA Settlement Payment Procedures: The Parties agree that Phoenix Class Action Administration Solutions has been selected as the claims administrator to process and distribute the PAGA Settlement Payment in accordance with the Agreement. M&R will pay the costs of administration to distribute checks to the LWDA and PAGA Aggrieved Employees, up to \$2,500. If there are administrative costs above \$2,500, the costs will be paid out of the \$45,000 PAGA Settlement amount. If any checks remain uncashed after 180 days, the related funds shall be paid to cy pres recipients pursuant to Civil Code section 384. M&R will deposit the PAGA Settlement Payment with the administrator within 14 calendar days of Court approval of the Agreement. In addition, M&R will pay the costs of the mediator beyond the initial \$500 payment made by both parties.

6. Court Approval: Plaintiff will file a motion for approval of the PAGA Settlement and Agreement in cooperation with and receiving input and support of M&R and its counsel, including a declaration from M&R that sets forth approximately 100 employees received approximately 1,650 wage statements that contained full social security numbers. Should the Court not approve this Agreement, the Parties will work jointly to attempt to remedy the issue in order to obtain the Court's approval. The Parties agree that Woodall Law Offices shall receive 33% of the PAGA Settlement Payment, along with reimbursement of costs from the PAGA Settlement Payment. M&R will not contest Plaintiff's application to the court for attorney's fees of 33% of the PAGA Settlement Payment, plus costs incurred by Plaintiff's counsel. If final approval of the PAGA settlement is not achieved, this Agreement will have no effect whatsoever.

7. Plaintiff Settlement Payment:



8. General Release by Plaintiff and/or M&R: In consideration of the promises and covenants contained in this Agreement, Plaintiff and M&R agree to the following releases:

i. Specific Release of Statutory Claims: Plaintiff understands and acknowledges that Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, the Americans With Disabilities Act, the Vietnam Era Veterans Readjustments Assistance Act of 1974, the California Family Rights Act of 1991, the Federal Family and Medical leave Act of 1993, the California Fair Employment and Housing Act, as amended, and applicable provisions of California's Labor Code provide the right to bring charges, claims or complaints if an individual

believes he/she has been discriminated against on a number of bases, including race, ancestry, color, religion, sex, marital status, national origin, age, status as a veteran of the Vietnam era, request or need for family or medical leave, physical or mental disability, medical condition, or sexual preference, and other protected classifications provided by applicable federal, state, and local laws. Plaintiff, with full understanding of the rights afforded him under these federal, state, and local laws, agrees that he will not file, or cause to be filed against either M&R or any entity or person affiliated or associated with, or employed by M&R, any charges, complaints, or actions based on any alleged violation of these federal, state, or local laws, or any successor or replacement federal, state, or local laws. Plaintiff hereby waives any right to assert a claim for relief available under these federal, state, or local laws including, but not limited to, back pay, attorneys' fees, damages, reinstatement, or injunctive relief, which Plaintiff may otherwise recover based on any alleged violation of these federal and state laws, or any successor or replacement federal or state laws.

ii. General Release: Except for the obligations expressly set forth in this Agreement, each Party must and hereby does release and forever discharge the other Party and all of its owners, shareholders, predecessors, successors, heirs, assigns, executors, administrators, agents, employees, managers, representatives, insurers and its directors and officers, attorneys, affiliates, subsidiaries, related entities, and any and all past or present officers and/or directors, and any of them, as well as any and all persons and/or entities acting or allegedly acting by, under, through, or in concert with any of them, (hereinafter referred to as "Related Parties"), against any and all claims, damages, actions, causes of action, liabilities, judgments, liens, contracts, agreements, rights, debts, suits, obligations, promises, acts, costs, and expenses (including, but not limited to, attorneys' fees), damages, and charges of whatsoever nature, whether known or unknown, suspected or unsuspected, foreseen, or unforeseen, fixed or contingent, or ever filed or prosecuted (hereinafter, collectively referred to as "Claims") which either Party may now have, or claims to have, or at any time heretofore had, or claimed to have had, against any or all Party and/or Related Parties as a result of any acts and/or omissions undertaken, said, stated, or done by any Party and/or Related Parties. The Parties further agree that there is a substantial basis for a difference of opinion as to the amount of any claim for any unpaid wages (if any), liquidated damages (if any), waiting time penalties (if any), or overtime (if any) due Plaintiff from M&R and Plaintiff expressly agrees that by this Agreement, Plaintiff is finally and forever releasing M&R and Related Parties from all such claims for unpaid wages, liquidated damages, penalties, overtime, and any other claims related thereto. Notwithstanding the above, the Parties agree this release in Paragraph 8 and its subsections pertains to Plaintiff's and Defendant's Claims, not the PAGA Claims applicable to the other PAGA Aggrieved Employees, which release is addressed in Paragraph 3.

iii. Waiver of Unknown and Unanticipated Claims. It is understood and agreed that the releases of Claims referred to in paragraph i and ii above and iv below are full and final releases by the Parties and Related Parties, and that such full and final releases include, without limitation, all unknown and unanticipated Claims, as well as those now known or disclosed. The Parties acknowledge, understand, and agree that the releases set forth above are general releases. With respect to any Claims by either Party against the other Party, the Parties expressly waive the provisions of California Civil Code section 1542, which provides as follows:

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.

In that connection, the Parties realize and acknowledge that one or more Claims may include losses sustained by one Party on account of the other Party or Related Parties that are presently unknown or unsuspected, and that such losses as were sustained may give rise to additional losses and expenses in the future, which are not now anticipated. Nevertheless, the Parties acknowledge that this release has been negotiated and agreed upon and that in consideration for the rights and benefits under this Agreement, each Party intends and hereby does release, acquit and forever discharges the other Party and Related Parties, as set forth above, from any and all Claims, including those that are unknown, unsuspected, or unforeseen.

iv. Specific Release of Age Discrimination Claim: By the terms of this Agreement, Plaintiff acknowledges he understands that the Age Discrimination in Employment Act of 1967, as amended, provides him the right to bring a claim against M&R and Related Parties if Plaintiff believes he has been discriminated against on the basis of age. Plaintiff specifically releases M&R and/or Related Parties from any claims, actions, or causes of action based on the Age Discrimination in Employment Act of 1967, as amended, arising prior to the date of this Agreement. Plaintiff specifically waives and releases any right to assert a claim for relief under this Act, including but not limited to, claims for back pay, attorney's fees, damages, reinstatement, or injunctive relief. This Agreement does not prohibit Plaintiff from testifying, assisting, or participating in an investigation, hearing, or proceeding conducted by the Equal Employment Opportunity Commission.

v. Older Workers' Benefit Protection Act: Pursuant to the terms of the Older Workers' Benefit Protection Act (OWBPA), Plaintiff acknowledges he has twenty-one (21) days from the date this Agreement is presented to him in which to consult with an attorney regarding the terms and conditions of this Agreement. Plaintiff acknowledges that, by the terms of this Agreement, he has been advised in writing that during the aforementioned twenty-one (21) day period, he should consult with an attorney regarding the terms and conditions of this Agreement. Plaintiff further acknowledges that by his execution of this Agreement, he is waiving the aforementioned twenty-one (21) day waiting period. Plaintiff further acknowledges that, by the terms of this Agreement, he has been advised that following his execution of the Agreement, he has seven (7) days ("Revocation Period") in which he may revoke this Agreement, and this Agreement will not become effective or enforceable until the Revocation Period has expired. To effectively revoke this Agreement, Plaintiff must communicate his revocation within the required time period set forth above in writing to Donna Reynolds, Vice President and Secretary, by e-mailing his revocation to donna.l.reynolds@mandrpacking.net AND mailing his revocation to Donna Reynolds at the following address: M&R Company, Donna Reynolds, 33 E. Tokay Street, Lodi, California, 95240.

9. Dismissal with Prejudice: Within 15 days of payment by M&R of the PAGA Settlement Payment to the claims administrator and the Individual Settlement Payment to the Plaintiff, Plaintiff will file a request that the Court grant a judgment of dismissal with prejudice of the entire Action, expressly including but not limited to the PAGA Claims and all other claims set forth in the First Amended Complaint.

10. Entire Agreement: This document constitutes the entire Agreement between the Parties, all oral agreements being merged herein, and supersedes all prior representations or agreements by or between the Parties. There are no representations, agreement, arrangements, or understandings, oral or written, between or among the Parties relating to the subject matter of this Agreement that are not fully expressed herein.

11. Waiver: Any of the terms or conditions of this Agreement may be waived in writing at any time by the party entitled to the benefit thereof, but no such waiver will affect or impair the right of the waiving party to require observance, performance, or satisfaction either of that term or condition as it applies on a subsequent occasion or of any other term or condition hereof.

12. Amendment: The terms and conditions of this Agreement may be modified or amended at any time by agreement of the Parties. Any such amendment or modification as hereinafter may be made, will be ineffective to modify this Agreement in any respect unless in writing and signed by the party or parties against whom enforcement of the modification or amendment is sought.

13. Representation By Counsel: The Parties have carefully read this Agreement and the contents hereof are known and understood by all Parties. The Parties acknowledge that each has had an adequate period of time in which to consider the terms and conditions of this Agreement. The Parties have each received independent legal advice from attorneys of their choice with respect to the preparation, review, and advisability of executing this Agreement. Prior to the execution of this Agreement by each party, that party's attorneys reviewed the Agreement, and the Parties acknowledge that they have executed this Agreement after independent investigation and without fraud, duress, or undue influence.

14. Severability: If any provision of this Agreement is adjudicated by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement which can be given full force and effect without the invalid provision will continue in full force and effect and will in no way be impaired or invalidated, unless expressly stated otherwise in this Agreement.

15. Succession: Subject to the provisions otherwise contained in this Agreement, this Agreement will inure to the benefit, and be binding upon, the successors and assigns of each of the respective Parties hereto.

16. Governing Law: This Agreement will be governed in all respects by the laws of the State of California as such laws are applied within California, without regard to conflicts of law.

17. Representation of Authority to Settle: Each party hereto warrants and represents that he, she or it has the power and authority to settle the Claims as set forth herein and

that, in the case of corporate entities, its signatory is duly authorized and empowered to sign this Agreement on its behalf. Each party further warrants that he, she or it has not transferred, assigned, hypothecated, or sold any Claims released by this Agreement.

18. Covenant Not to Sue: Plaintiff covenants and agrees never to commence or prosecute, or to continue prosecuting claims against M&R or Related Parties in any legal action or other proceeding, in any forum, for the claims and issues released in this Agreement. This Agreement may be pled as a full and complete defense to any action or proceeding, as a basis for abatement of, or injunction against, such action. This section does not apply to any action or proceeding to enforce this Agreement.

19. Terms Confidential: In further consideration for the rights and benefits provided by this Agreement, the Parties agree that they will keep the terms, Individual Settlement Payment, and conditions of this Agreement confidential and that they will not disclose, or encourage or assist others to disclose, the terms, the Individual Settlement Payment, and conditions of this Agreement to third parties to this Agreement. Notwithstanding this confidentiality provision, the Parties may submit this Agreement to the Court to obtain approval for the PAGA Settlement so long as the Individual Settlement Payment is redacted from the Agreement submitted to the Court. The parties may allow the payment to be submitted to the Court by mutual agreement at a later date if necessary to obtain settlement approval. The Parties may also disclose the terms and conditions of this Agreement as necessary to their accountants for tax reporting purposes, to their attorneys, to their spouses, or as may be compelled pursuant to legal process issued in a court/arbitration of competent jurisdiction. This confidentiality provision does not prohibit disclosure of any material facts underlying the settlement for which an agreement for non-disclosure is prohibited by law. If asked about the status of the Parties' legal dispute, they can only say that the matter has resolved, and that the terms of the resolution are confidential.

20. Counterparts/Facsimiles/Email: This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one in the same document. Facsimiles and signatures delivered by email will be deemed originals.

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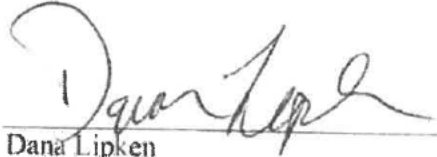
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IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized attorneys, as of the day and year herein set forth.

PLAINTIFF:

Dated: January 29, 2021

By


Dana Lipken
Plaintiff

DEFENDANT:

REYNOLDS PACKING CO. DBA M&R
COMPANY

Dated: January __, 2021

By

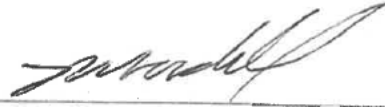
Its Vice President and Secretary

APPROVED AS TO CONTENT AND FORM:

DATED: January 29, 2021

WOODALL LAW OFFICES

By:


Kevin Woodall
Attorneys for Plaintiff and Aggrieved Employees

DATED: January __, 2021

KRONICK, MOSKOVITZ, TIEDEMANN &
GIRARD
A Professional Corporation

By:

Christopher Onstott
Attorneys for Defendant Reynolds Packing Co.
dba M&R Company

IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized attorneys, as of the day and year herein set forth.
PLAINTIFF:

Dated: January __, 2021

By _____
Dana Lipken
Plaintiff

DEFENDANT:

REYNOLDS PACKING CO. DBA M&R
COMPANY

Dated: January 19, 2021

By Danua J. Reynolds
Its Vice President and Secretary

APPROVED AS TO CONTENT AND FORM:

DATED: January __, 2021

WOODALL LAW OFFICES

By: _____
Kevin Woodall
Attorneys for Plaintiff and Aggrieved Employees

DATED: January 29, 2021

KRONICK, MOSKOVITZ, TIEDEMANN &
GIRARD
A Professional Corporation

By: Christopher Onstott
Christopher Onstott
Attorneys for Defendant Reynolds Packing Co.
dba M&R Company