

Memorandum of Understanding

On August 11, 2021, the parties to the case entitled *Ortiz v. Tempo Communications, Inc.* (Case No. 37-2020-00031339-CU-OE-CTL), pending in San Diego County Superior Court, reached the following resolution which, subject to Court approval, is intended to be a full and final resolution of the Action:

1. The Gross Settlement Amount shall be \$125,000.00.
2. The Gross Settlement Amount shall be used to pay the PAGA Settlement (\$125,000.00), consisting of administration costs, plaintiff's attorneys' fees and costs, and the PAGA Payment.
3. The PAGA Payment is the net amount remaining after deduction of the court-approved administration costs, and plaintiff's attorneys' fees and costs.
4. The LWDA shall receive 75% of the PAGA Payment. The remaining 25% shall be allocated to the PAGA Settlement Employees on a pro-rata basis based on the number of pay periods they worked during the PAGA Period.
 - a. PAGA Settlement Employees consists of all current and former non-exempt employees who worked in California during the PAGA Period.
 - b. PAGA Period means the time period from July 5, 2019 through the Date of Settlement Approval.
5. Plaintiff's counsel will petition the Court for their attorney's fees and costs. Defendant will not oppose a fee request of up to one third (1/3) of the PAGA Settlement Amount plus actual costs of litigation. Should the Court award a lesser sum for attorneys' fees and costs, the residual will be included in the PAGA Payment.
6. The parties will select a mutually agreeable settlement administrator.
7. Plaintiff will release, and the State of California and all PAGA Settlement Employees will be deemed to release, all PAGA claims or causes of action for civil penalties, attorneys' fees or costs under PAGA alleged in the Action, or that could have been alleged in the Action, that are based on the alleged meal and rest break, minimum wage, overtime compensation, wage statement, unreimbursed business expenses and final pay violations, and any resulting claim for penalties under PAGA alleged to have been violated in the Action through the Date of Settlement Approval.
8. Neither party nor their/its counsel will issue a press release concerning the settlement.

9. Plaintiff's counsel will prepare and file an *ex parte* application for approval of the settlement agreement. Defendant's counsel will prepare a long form of settlement agreement consistent with this MOU within 3 business days of the execution of the MOU.
10. The effective date of the release of the Released Claims shall be the date the Court approves this Settlement.
11. Defendant will fund the PAGA Settlement within 30 calendar days of the Effective Date. The "Effective Date" is once the Court has (1) approved the settlement terms and (2) issues a Judgment in the action.
12. Defendant represents that its business is solvent, and Defendant is able to pay the Settlement Amount within the time frames set forth herein. Specifically, Defendant has reviewed its financial status in contemplation of this Settlement Agreement and Defendant has determined it is able to comply with the Settlement Installment Payment Plan. Defendant agrees that the failure to review its financial status before entering this Settlement Agreement shall be deemed an intentional misrepresentation. Defendant further affirms that it has not consulted or retained bankruptcy counsel or have contemplated a bankruptcy filing as of the date of this Settlement.
13. Defendant represents that, as of August 11, 2021, there were approximately 100 PAGA Settlement Employees. If, as of the end date of the PAGA Period, the number of PAGA Settlement Employees increases by more than five percent Defendant shall increase the Total Settlement Amount proportionally (i.e. for an increase of six percent in employees, Defendant shall add an extra 1% to the Settlement Amount, for a ten percent increase in employees Defendant shall add an extra 5% to the Settlement Amount).
14. Plaintiff shall be responsible for paying all taxes due as a result of this settlement and shall indemnify Defendant from any liability for the failure to withhold or make contributions on behalf of Defendant as a result of the monies being paid hereunder.
15. The Parties agree that the fact and terms of this settlement are strictly confidential and shall not be disclosed to any other person except their attorneys, tax advisors and others who have a need to know.
16. The Parties agree that they will not knowingly nor intentionally disparage the reputation of each other to any third party, orally or in writing.
17. This Agreement shall not be construed as an admission of liability or wrongdoing.

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18. In the event the parties are unable to agree on final terms in a settlement agreement, this MOU will be enforceable and admissible in Court pursuant to Code of Civil Procedure section 664.6.

Dated: August 19, 2021



Ryan Kuhn
Counsel for Plaintiff