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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO

JACOB ORTEGA, as an aggrieved employee
pursuant to the Private Attorneys General Act
("PAGA"), on behalf of the State of California
and other aggrieved employees,

Plaintiff,

vs.

CARBON, INC., WHICH WILL DO
BUSINESS IN CALIFORNIA AS
CARBON3D, INC., a Delaware corporation;
and DOES 1 through 10, inclusive,

Defendants.

Case No. 20-CIV-04803

PAGA SETTLEMENT AGREEMENT

PAGA SETTLEMENT AGREEMENT

Subject to Court approval by the Superior Court of the State of California for the County of San Mateo ("Court"), Plaintiff Jacob Ortega ("Plaintiff") and Defendant Carbon, Inc., dba Carbon 3D, Inc. ("Defendant") (collectively with Plaintiff, the "Parties") hereby agree to the following binding settlement ("Settlement" or "Settlement Agreement") of the action entitled *Jacob Ortega v. Carbon, Inc.*, No. 20-CIV-04803 (San Mateo County Superior Court) (the "Action").

DEFINITIONS

The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

1. "Action" means *Jacob Ortega v. Carbon, Inc.*, No. 20-CIV-04803 (San Mateo County Superior Court).
2. "Aggrieved Employees" means all current and former California non-exempt employees who worked at any time during the Settlement Period for Defendant.
3. "LWDA" means the California Labor and Workforce Development Agency.
4. "Maximum Settlement Amount" means the maximum settlement amount of Two Hundred Ninety Five Thousand Dollars (\$295,000.00) to be paid by Defendant in full satisfaction of all Settled Claims arising from the Action, which includes all payments to Aggrieved Employees, the Service Award to the Plaintiff, the attorneys' fees and costs to Plaintiff's Counsel, all amounts due to the LWDA, and the costs of the Settlement Administrator.
5. "PAGA Penalties Fund" means the Maximum Settlement Amount less the Attorneys' Fees and Costs, Service Award, and Settlement Administrator Costs.
6. "Plaintiff's Counsel" means Capstone Law APC.
7. "Released Parties" means Defendant and each of its past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, joint venturers and any other person or entity who could be deemed a joint employer of the Aggrieved Employees.
8. "Service Award" means the amount to be paid to Plaintiff as payment for his service on

1 behalf of the LWDA and Aggrieved Employees and for a general release of all claims arising out of his
2 employment with Defendant.

3 9. "Settled Claims" means all claims seeking civil penalties under the PAGA that are based
4 on the alleged violations asserted in Plaintiff's Notice to the LWDA ("Notice") and his Complaint on file
5 with the Court, which include but are not limited to: (a) failure to pay minimum wages; (b) failure to pay
6 overtime wages; (c) failure to provide all meal periods and failure to properly provide premium pay in
7 lieu thereof; (d) failure to authorize and permit rest breaks and failure to properly provide premium pay
8 in lieu thereof; (e) improper and/or inaccurate wage statements; (f) failure to maintain records; (g) failure
9 to timely pay all earned wages upon termination; (h) failure to timely pay all earned wages during
10 employment; (i) failure to pay reporting time pay; (j) failure to reimburse business expenses; (k) any and
11 all violations of Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 558, 1174(d),
12 1182.12, 1194, 1197, 1198, 2802, and any other Labor Code Section cited in Plaintiff's Notice or
13 Complaint, and release of any Labor Code violations based on identical factual predicates as the
14 violations alleged in the Notice or the Complaint, during the Settlement Period against the Released
15 Parties.

16 10. "Settlement Period" means August 24, 2019 to the earlier of September 15, 2021 or the
17 date of entry of the Order and Judgment.

18 TERMS

19 11. Maximum Settlement Amount. In consideration for Plaintiff's promises and
20 representations described in this Settlement Agreement, and subject to all of the conditions of the
21 Settlement being met, Defendant will to pay a maximum amount of Two Hundred Ninety Five
22 Thousand Dollars (\$295,000) ("Maximum Settlement Amount"), which represents the maximum
23 amount payable in this Settlement by Defendant, and includes all attorneys' fees, litigation costs and
24 expenses, Service Awards, Settlement Administration Costs, and payments to Aggrieved Employees and
25 the LWDA for their share of the PAGA Penalties Fund. No portion of the Maximum Settlement
26 Amount will be retained by, or revert to, Defendant.

27 12. PAGA Penalties Fund. The PAGA Penalties Fund will be paid to Aggrieved Employees
28 and the LWDA in full satisfaction of all Settled Claims for PAGA civil penalties under the California

1 Labor Code, Wage Orders, regulations, and/or other provisions of law alleged to have been violated in
2 the Action with respect to Aggrieved Employees. Pursuant to PAGA, Seventy-Five Percent (75%) of the
3 PAGA Penalties Fund will be paid to the LWDA, and the remaining Twenty-Five Percent (25%) will be
4 paid to all Aggrieved Employees according to the following formula:

5 12(a) Defendant will calculate: (i) the total number of pay periods worked by
6 each Aggrieved Employee during the Settlement Period, and (ii) the total
7 number of pay periods worked by all Aggrieved Employees during the
8 Settlement Period.

9 12(b) To determine each Aggrieved Employee's payment from the PAGA
10 Penalties Fund, Defendant will use the following formula: Settlement
11 Payment = 25% of PAGA Penalties Fund $\times$ [Pay Periods Worked by
12 Individual Aggrieved Employee During the Settlement Period $\div$ Total Pay
13 Periods Worked by All Aggrieved Employees during the Settlement
14 Period].

15 13. Attorneys' Fees and Costs. In full satisfaction of all claims Plaintiff may have for
16 attorneys' fees, and all out-of-pocket costs incurred and to be incurred by Plaintiff's Counsel in the
17 Action, including but not limited to fees and expenses of experts, investigation expenses, postage,
18 telephone, and photocopying charges, costs associated with documenting the Settlement, the Parties
19 agree that Defendant will pay Plaintiff's Counsel out of the Maximum Settlement Amount a payment of
20 a total of Ninety Eight Thousand Three Hundred Thirty Three Dollars (\$98,333) in attorneys' fees and
21 Fifteen Thousand Dollars (\$15,000) in litigation costs and expenses ("Attorneys' Fees and Costs"). Any
22 portion of the Attorneys' Fees and Costs not awarded to Plaintiff's Counsel will be added to the PAGA
23 Penalties Fund.

24 14. Service Award and Release by Plaintiff. For a general release of all claims Plaintiff may
25 have against Defendant arising out of his employment, and for his service on behalf of the LWDA and
26 Aggrieved Employees, Defendant agrees to apportion out of the Maximum Settlement Amount a
27 payment to Plaintiff in the sum of Ten Thousand Dollars (\$10,000) ("Service Award"). Upon receipt of
28 the Service Award, Plaintiff will be deemed to have fully released and discharged Defendant from any

and all claims, demands, obligations, causes of action, rights, or liabilities of any kind which have been or could have been asserted against Defendant arising out of, or relating to, Plaintiff's employment with Defendant or termination thereof, including but not limited to claims for wages, restitution, penalties, retaliation, defamation, discrimination, harassment or wrongful termination of employment. This release specifically includes any and all claims, demands, obligations and/or causes of action for damages, restitution, penalties, interest, and attorneys' fees and costs (except provided by the Settlement) relating to or in any way connected with the matters referred to herein, whether or not known or suspected to exist, and whether or not specifically or particularly described herein. Specifically, Plaintiff will be deemed to have waived all rights and benefits afforded by California Civil Code Section 1542, which provides:

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.

15. Settlement Administration Costs. The Parties will retain CPT Group, Inc. to serve as the third-party settlement administrator ("Settlement Administrator"). The Settlement Administrator will be responsible for establishing a qualified settlement fund ("QSF") and issuing payments and appropriate tax forms to Aggrieved Employees, the LWDA, Plaintiff, and Plaintiff's Counsel. The Settlement Administration Costs will be paid from the Maximum Settlement Amount. Based on the estimate that there are approximately One Hundred and Fifty (150) Aggrieved Employees, Settlement Administration Costs are estimated at Five Thousand Dollars (\$5,000).

16. Court Approval of the Settlement and Distribution of Settlement Payments. The Parties will present this Settlement Agreement to the Court and the LWDA. The Parties will request that the Court issue an order and judgment approving and incorporating by reference the terms and conditions of the Settlement Agreement (the "Order and Judgment").

17. List of Aggrieved Employees. Within seven (7) calendar days after entry of the Order and Judgment, Defendant will provide the Settlement Administrator a complete list of all Aggrieved

Employees (“Aggrieved Employee List”). The Aggrieved Employee List will be formatted in Microsoft Office Excel and will include each Aggrieved Employees full name; most recent mailing address and telephone number; Social Security number; the respective number of pay periods during which each Aggrieved Employee worked during the Settlement Period; and any other relevant information needed to calculate settlement payments. Information from the list of Aggrieved Employees will not be provided to Plaintiff or Plaintiff’s Counsel without prior authorization from Defendant’s counsel.

18. Funding of the Settlement. Within seven (7) calendar days after entry of the Order and Judgment, Defendant will deposit the Maximum Settlement Amount into the QSF to be established by the Settlement Administrator. Within fourteen (14) calendar days of the funding of the Settlement, the Settlement Administrator will issue payments to: (a) Aggrieved Employees; (b) the Labor and Workforce Development Agency; (c) Plaintiff; (d) Plaintiff’s Counsel; and (e) itself. The Settlement Administrator, and not Defendant, will issue the appropriate tax forms for all payments issued under this Settlement.

19. Settlement Payments to Aggrieved Employees. The Settlement Administrator will issue each Aggrieved Employee one check for his or her share of the PAGA Penalties Fund along with an explanatory letter which will be mutually approved by the parties in substantially the form attached as Exhibit A. Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. 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 Aggrieved Employee involved, and will then perform a single re-mailing. Checks will remain negotiable for 180 days. Those funds represented by un-cashed checks which remain outstanding 180 days after the mailing of the Settlement checks by the Settlement Administrator will be tendered to the unclaimed property fund of The State Controller’s Office. All settlement payments to Aggrieved Employees will be treated as miscellaneous income for which a 1099 will be issued. Recipients of settlement payments shall be exclusively and entirely responsible for all tax consequences arising out of such payments.

20. Release of Settled Claims. Upon entry of the Order and Judgment, Plaintiff and all Aggrieved Employees will be forever barred from pursuing against Defendant any and all Settled Claims during the Settlement Period. This release of the Settled Claims shall extend to the limits of the Settlement Period. The *res judicata* effect of the Judgment will be the same as that of the Release. Plaintiff, the Aggrieved Employees and the State of California may hereafter discover facts or legal arguments in addition to, or different from, those they now know or currently believe to be true with respect to the claims, causes of action and legal theories of recovery in this Action. Regardless, the discovery of new facts or legal arguments shall in no way limit the scope or definition of the Settled Claims. Aggrieved Employees, other than Plaintiff, will not be deemed to have released any individual wage and hour claims by virtue of this Settlement.

21. No Right to Exclusion or Objections by Representative Action Members. Because this settlement resolves claims and actions brought pursuant to PAGA by Plaintiff acting as a proxy and as a Private Attorney General of, and for, the State of California and the LWDA, the Parties agree that no Aggrieved Employee has the right to exclude himself or herself from the Settlement. Aggrieved Employees will be bound by the terms of the Settlement Agreement, upon its approval by the Court, regardless of whether he or she cashes any payment received as a result of this Settlement. The Parties also agree that no Aggrieved Employee has the right to object to the terms of the Settlement Agreement.

22. No Credit Toward Benefit Plans. Payments to Aggrieved Employees as referenced herein will not be utilized to calculate any additional benefits under any benefit plans to which any Aggrieved Employee may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Aggrieved Employee may be entitled under any benefit plans.

23. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged.

24. Nullification of Settlement Agreement. In the event that: (i) the Court does not approve

1 the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then
2 this Settlement Agreement, and any documents generated to bring it into effect, will be null and void,
3 and the Parties will be returned to their original respective positions. Notwithstanding the above, even in
4 the event the Court does not approve or reduces Plaintiff's requests for approval of the Service Award or
5 request for Attorneys' Fees and Costs, the Settlement shall remain binding.

6 25. Judgment and Continued Jurisdiction. After entry of the Order and Judgment, the Court
7 will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement
8 of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-Judgment matters
9 as may be appropriate under court rules or as set forth in this Settlement.

10 26. Entire Agreement. This Settlement Agreement constitutes the entirety of the Parties'
11 settlement terms. No other prior or contemporaneous written or oral agreements may be deemed binding
12 on the Parties.

13 27. Amendment or Modification. This Settlement Agreement may be amended or modified
14 only by a written instrument, signed by either the Parties or their successors-in-interest or counsel for all
15 Parties.

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

25 29. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
26 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

27 30. California Law Governs. All terms of this Settlement Agreement will be governed by
28 and interpreted according to the laws of the State of California.

31. 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 signatures (e.g., Docusign), facsimiles, and scanned copies of the signature pages, will be deemed to be one and the same instrument.

32. 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.

33. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however, that Plaintiff may appeal any reduction to the Attorneys' Fees and Costs below the amount they request from the Court, and either party may appeal any court order that materially alters the Settlement's terms. The Parties agree that any such appeal of any reduction of Attorneys' Fees and Costs constitutes a dispute between Plaintiff's Counsel and the Court, and that Defendant and Defendant's Counsel will not be involved and will not be expected to appear, file papers, argue any position, or participate in any manner. In the event of any such appeal, Defendant shall not fund the settlement, and its obligation to fund it will be stayed until such appeal is fully resolved.

34. 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.

35. Captions. The captions and section numbers in this Settlement Agreement are inserted for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the provisions of this Settlement Agreement.

36. 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.

37. Enforcement Action. In the event that one or more of the Parties institutes any legal

1 action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement
2 or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be
3 entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including
4 expert witness fees incurred in connection with any enforcement actions.

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

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

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

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

22 42. Denial of Liability. The Parties expressly recognize that the making of this agreement
23 does not in any way constitute an admission or concession of wrongdoing on the part of Defendant.
24 Nothing in this Settlement, nor any action taken in implementation thereof, nor any statements,
25 discussions or communications, nor any materials prepared, exchanged, issued or used during the
26 pendency of the Action, is intended by the Parties to, nor will any of the foregoing constitute, be
27 introduced, be used or be admissible in any way in any other judicial, arbitral, administrative,
28 investigative or other forum or proceeding, as evidence of any violation of any federal, state, or local law,

1 statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.

2 Notwithstanding the foregoing, this agreement may be used in any proceeding in the Court that has as its
3 purpose the interpretation, implementation, or enforcement of the Settlement or any orders or judgments
4 of the Court entered into in connection therewith.

5 43. Confidentiality. Plaintiff and Plaintiff's Counsel agree not to disclose or publicize the
6 Settlement, including the fact of the Settlement, its terms or contents, and the negotiations underlying the
7 Settlement, in any manner or form, directly or indirectly, to any person or entity, except as may be
8 strictly required to effectuate the terms of the Settlement. For the avoidance of doubt, this section means
9 Plaintiff and Plaintiff's Counsel agree not to issue press releases, communicate with, or respond to any
10 media or publication entities, publish information in manner or form, whether printed or electronic, on
11 any medium or otherwise communicate, whether by print, video, recording or any other medium, with
12 any person or entity concerning the Settlement, including the fact of the Settlement, its terms or contents
13 and the negotiations underlying the Settlement, except as shall be contractually required to effectuate the
14 terms of the Settlement. However, Plaintiff's Counsel may disclose the name of the Parties in this action,
15 the venue/case number, and settlement details available in the public record, for the limited purpose of
16 providing reference in court or in pleadings to similar settlements when seeking approval of an unrelated
17 settlement.

18 44. Notice of Settlement Agreement to LWDA. Plaintiff's Counsel will provide notice of
19 this Settlement Agreement to the Labor and Workforce Development Agency ("LWDA") as required by
20 Labor Code Section 2699(1)(2).

21 *[Signatures follow on next page.]*
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READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: 6/3/2021

DocuSigned by:
Jacob Ortega
5D37F7305BB2490...
Jacob Ortega

DEFENDANT

Dated: 6/14/2021

DocuSigned by:
Anirma Gupta
CB62A8558A88498...
Carbon, Inc., dba Carbon 3D, Inc.
Name of Authorized Signatory

APPROVED AS TO FORM

CAPSTONE LAW APC

Dated: 6/14/2021

Raul Perez
Raul Perez

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

Dated: 6/14/2021

DocuSigned by:
Tom McInerney
6738DF387FEA4E8...
Thomas M. McInerney

47278780.6

Exhibit A

<<DATE>>

<<FIRST_NAME>> <<LAST_NAME>>

<<ADDRESS 1>>

<<ADDRESS 2>>

Re: Payment From *Jacob Ortega v. Carbon, Inc.*, No. 20-CIV-04803 (San Mateo County Superior Court)

Dear <<FIRST_NAME>> <<LAST_NAME>>:

Enclosed you will find a check made payable to you. This is your payment from the settlement of the lawsuit entitled *Jacob Ortega v. Carbon, Inc.*, No. 20-CIV-04803 (San Mateo County Superior Court) (the “Action”).

The Action was filed against Defendant Carbon, Inc., dba Carbon 3D, Inc. (“Defendant”) pursuant to the California Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* (called “PAGA”). The Action was brought by a former employee of Defendant on behalf of the State of California and all allegedly “aggrieved employees” of Defendant. You have been identified as one of the employees on whose behalf the case was brought.

The Plaintiff in the Action claimed that Defendant owed civil penalties under PAGA for alleged violations of the California Labor Code and California Wage Orders. Defendant denies that it violated the Labor Code or California Wage Orders and this settlement is not to be construed as an admission that it is liable in any way for any penalties.

The Court has not ruled on the merits of the Action but it has approved the settlement of PAGA civil penalties, of which 75% will be paid to the California Labor and Workforce Development Agency, and the remaining 25% will be paid to eligible current and former employees of Defendant.

Pursuant to the settlement, the enclosed check is for your share of a portion of the settlement of PAGA civil penalties. You need take no further action. Simply cash or deposit the enclosed check. Any checks not cashed or deposited within 180 calendar days of the date of issuance shall be tendered to the State Controller’s Office.

You are not a party to this lawsuit, but you and the government will be bound by the settlement in this matter as to civil penalties. If you have any questions, you can contact the settlement administrator (whose contact information is at the top of this letter).

Very Truly Yours,

[Administrator]