

PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 ET SEQ.)
SETTLEMENT AGREEMENT

Wayne Osborne v. Fremouw Environmental Services, Inc.

(San Joaquin County Superior Court, Case Number STK-CV-UOE-2021-1780)

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned Parties, subject to the approval of the Court, that 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 this Private Attorneys General Act (Labor Code § 2698 *et seq.*) Settlement Agreement (“Agreement”).

This Agreement is made by and between Defendant Fremouw Environmental Services, Inc. (“Defendant”), Plaintiff Wayne Osborne (“Plaintiff”), for himself and on behalf of the State of California, and the law firms defined below as “Plaintiff’s Counsel” and “Defense Counsel.” (Defendant, Plaintiff and Aggrieved Employees, as defined herein, are sometimes collectively referred to as the “Parties.”) This Agreement shall be effective on the Effective Date, as defined herein.

The Parties agree that the Litigation shall be, and hereby is, ended, settled, resolved, and concluded by agreement of Defendant to pay the total sum of Eighty Thousand U.S. Dollars (\$80,000) (hereinafter referred to as the “Settlement Sum”) for settlement of the Private Attorneys General Act (“PAGA”) penalties, which shall be inclusive of Plaintiff’s Counsel’s attorneys’ fees and costs and the Claims Administrator’s fees and costs.

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 all non-exempt truck drivers employed by Fremouw Environmental Services, Inc. in California between August 12, 2019 and January 20, 2021. Defendant represents and warrants that there are no more than 40 Aggrieved Employees who worked no more than 2,240 pay periods.
- (b) “Claims Administrator” means and refers to Simpluris, Inc. the third-party entity that will administer the Agreement, or any other third-party class action settlement claims administrator agreed to by the Parties. The Parties each represent that they do not have any financial interest in the Claims Administrator or otherwise have a relationship with the Claims Administrator that could create a conflict of interest.

- (c) “Complaint” means the operative Complaint filed by Plaintiff on March 1, 2021 in San Joaquin County Superior Court, Case No. STK-CV-UOE-2021-1780. This action is referred to as the “Litigation.”
- (d) “Court” means the Superior Court for the State of California, County of San Joaquin.
- (e) “Defense Counsel” or “Counsel for Defendant” is:

Jennifer Duggan, Esq.
Christina Bucci Hamilton, Esq.
DUGGAN MCHUGH LAW CORPORATION
641 Fulton Avenue, Suite 100
Sacramento, California 95825
- (f) “Effective Date” means the date the Court enters the order approving the settlement of the PAGA penalties as described in this Agreement.
- (g) “Plaintiff’s Counsel” is:

Alex P. Katofsky, Esq.
Daniel F. Gaines, Esq.
GAINES & GAINES, APLC
27200 Agoura Road, Suite 101
Calabasas, CA 91301
- (h) “Release Period” means the time period August 12, 2019 through January 20, 2021.
- (i) “Released Claims” means any and all claims and/or causes of action under the California Private Attorneys General Act alleged in the Action, or which could have been alleged in the Action based on the facts and claims alleged therein, including but not limited to alleged violations of Labor Code §§ 201-203, 221, 226(a), 226.3, 226.7, 510, 558, 512, 1194 and 2802.
- (j) “Released Parties” means Defendant and its former and present parents, 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 or about August 12, 2020, Wayne Osborne transmitted a letter to the Labor & Workforce Development Agency and Defendant in compliance with the exhaustion requirements of PAGA, articulating claims related to unpaid and unlawful deductions from

wages, uncompensated meal and rest period premium wages, inaccurate wage statements, failure to reimburse expenses, and untimely payment of all wages at separation of employment.

- (b) On March 1, 2021, Wayne Osborne filed a Complaint in the Superior Court of the State of California for the County of San Joaquin, entitled *Wayne Osborne, et al. v. Fremouw Environmental Services, Inc., et al.*, case number STK-CV-UOE-2021-1780. The Litigation was brought by Wayne Osborne, on behalf of the State of California and other aggrieved employees, as a PAGA action based on violations of Labor Code §§ 201-203, 221, 226(a), 226.3, 226.7, 510, 558, 512, 1194 and 2802.
- (c) During a period of time between October, 2020 and January, 2021, during which the statute of limitations was tolled by agreement, the Parties engaged in informal discovery and fully shared the information necessary for all sides to conduct a legitimate investigation into the allegations of the Litigation and potential defenses thereto. The Parties have reached this Settlement only after discovery and investigation was performed.
- (d) This settlement contemplates the (a) entry of an order by the Court approving the payment allocated for settlement of the PAGA penalties; (b) dismissal of the Litigation with prejudice; and (c) all parties bearing their respective fees and costs except as expressly provided in this Agreement.

Article III.

Approval and Implementation of Settlement.

Section 3.01 Cooperation.

The Parties will cooperate in obtaining through an unopposed motion an Order from the Court approving the payment of PAGA penalties as described in this Agreement at the earliest possible date. Plaintiff's Counsel shall request and be paid up to \$32,000.00 for attorneys' fees and up to \$2,000 for reimbursement of litigation costs from the Settlement Sum, and Defendant will not oppose these requests. Plaintiff Osborne shall request and be paid up to \$8,000 as a general release payment from the Settlement Sum, and Defendant will not oppose this request. The Parties agree to use their best efforts to expedite the preparation and submission of the settlement documents. 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 that 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 payment of PAGA penalties as described in this Agreement by way unopposed motion to be filed by Plaintiff's counsel as soon as practicable. Plaintiff's Counsel and Defense Counsel will jointly lodge this Agreement with

the Court for its approval. 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.

Section 3.03 Notice to Aggrieved Employees.

(a) Notice.

Notice shall be provided to the Aggrieved Employees in the following manner:

- (1) No later than fifteen (15) calendar days after the Effective Date, Defendant shall provide the Claims Administrator with a list of all Aggrieved Employees ("Aggrieved Employees List"). The Aggrieved Employees List shall state the first name and last name for each Aggrieved Employee, the last known address for each Aggrieved Employee, each Aggrieved Employee's social security number, and the number of pay periods worked by each Aggrieved Employee during the Release Period.
- (2) No later than thirty (30) calendar days after the Effective Date, the Claims Administrator shall mail the Notice of PAGA Settlement (attached hereto as Exhibit "A") to all Aggrieved Employees, together with their settlement checks by first-class United States mail, postage prepaid, to the last known address of each recipient with directions to the Postmaster to forward the Notice of PAGA Settlement and return all undeliverable Notices to the Claims Administrator. For each Notice of PAGA Settlement that is returned as undeliverable, the Claims Administrator shall promptly attempt to locate the Aggrieved Employee by using an address refresher database. Concurrently, the Claims Administrator shall mail the required payment to the LWDA.
- (3) All costs incurred by the Claims Administrator in connection with the current settlement, including mailing of the Notice of PAGA Settlement described herein, whether foreseen or not, shall be paid out of the Settlement Sum. These costs shall not exceed \$3,000; to the extent they exceed this amount, they shall be paid from the Net Settlement Amount (as defined herein); to the extent they fall below this amount, they shall be added to the amount distributable to the Aggrieved Employees and the LWDA.

Section 3.04 Settlement Payment Procedures.

(a) Deposit of Settlement Sum with Claims Administrator

No later than ten (10) calendar days after the Effective Date, Defendant shall deposit the Settlement Sum with the Claims Administrator.

(b) Payment of PAGA Penalties.

The total sum available for payment of PAGA penalties shall be calculated by deducting Plaintiff's counsel's fees and costs (\$34,000.00), Plaintiff Osborne's general release payment

(\$8,000), and the costs of administration referenced in Section 3.03(a)(3) above (no more than \$3,000) from the \$80,000 Settlement Sum (this will yield the “Net Settlement Amount,” which is estimated to be approximately \$35,000.00).

Seventy-five percent (75%) of the Net Settlement Amount shall be paid to the LWDA; the remaining twenty-five percent (25%) of the Net Settlement Amount (the “Employee Net Settlement Amount”) shall be paid to Aggrieved Employees pro rata based on the number of pay periods worked during the Release Period. **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 their portion of the settlement, if deemed required by the Claims Administrator (in compliance with IRS guidelines).

The settlement checks issued to Aggrieved Employees shall remain valid for one hundred eighty (180) days. Thereafter, all uncashed checks shall be transmitted to the LWDA.

(c) Attorneys’ Fees and Costs and General Release Payment.

Within five (5) calendar days of receipt of the Settlement Sum by the Claims Administrator from Defendant, the Claims Administrator shall pay the \$34,000.00 allocated to attorneys’ fees and costs to Plaintiff’s Counsel and the \$8,000 allocated to Plaintiff Osborne’s general release payment to Plaintiff Osborne.

(d) Claims Administrator Expenses.

Within five (5) calendar days following the conclusion of the notice period, the Claims Administrator shall pay itself up to the \$3,000 allocated to it for administration fees.

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 Defendant of any liability whatsoever, or as admission by Defendant of any violations of Plaintiff’s or the Aggrieved Employees’ rights, violation of any order, law, statute, duty or contract whatsoever. Defendant specifically disclaims any liability to Plaintiff, the Aggrieved Employees, 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, 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 by Aggrieved Employees.

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 deemed to have fully, finally, and forever released, relinquished, and discharged each and all of the Released Parties from the Released Claims that arose during the Release Period.

Section 5.02 Release by Wayne Osborne.

Upon the Effective Date and subject to Defendant's full payment of all sums required by this Settlement, Plaintiff Wayne Osborne shall be deemed to have fully, finally, and forever released the Released Parties from any and all claims, obligations, demands, actions, rights, causes of action, and liabilities against the Released Parties, of whatever kind and nature, character, and description, whether in law or equity, whether sounding in tort, contract, federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, whether known or unknown, and whether anticipated or unanticipated, including unknown claims covered by Civil Code Section 1542, arising through the Effective Date, for any type of relief, including, without limitation, claims for wages, damages, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief. These claims include, but are not limited to, the Released Claims, as well as any other claims under any provision of the California Labor Code or any applicable California Industrial Welfare Commission Wage Orders, and claims under local, state, or federal discrimination statutes, including, without limitation, the California Fair Employment and Housing Act, California Government Code §§ 12940 *et seq.*; the Unruh Civil Rights Act, California Civil Code §§ 51 *et seq.*; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000 *et seq.*; the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*; the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 *et seq.*; and all of their implementing regulations and interpretive guidelines. With respect to these released claims as described in this Section, Plaintiff Osborne shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law,

the provisions, rights, and benefits she may otherwise have had pursuant to Section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor or released party.

Plaintiff understands and acknowledges that the significance and consequence of this waiver of California Civil Code Section 1542 is that even if he should eventually suffer injury arising out of or pertaining to the employment relationship or, where applicable, its termination through the Effective Date, he will be unable to make any claim for those injuries. Furthermore, Plaintiff acknowledges that he consciously intends these consequences even as to claims for injuries that may exist as of the Effective Date but which he does not know exist and which, if known, would materially affect his decision to execute this Agreement, regardless of whether their lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

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, Defendant 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 that he has 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.

Except as expressly provided herein, Defendant and Plaintiff shall each bear their own 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 this case pursuant to the terms of this Agreement, this Agreement shall be enforceable by the Court pursuant to Code of Civil Procedure Section 664.6 and the Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties and Aggrieved Employees to interpret and enforce the terms, conditions and obligation of the Agreement.

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

APPROVED AND ACCEPTED.

Dated: _____, 2021

FREMOUW ENVIRONMENTAL SERVICES,
INC.

By_____

Dated: _____, 2021

By_____

Wayne Osborne

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

Dated: _____, 2021

GAINES & GAINES, ALPC

By _____
Alex P. Katofsky, Esq.
Daniel F. Gaines, Esq.
Attorneys for Plaintiff

Dated: _____, 2021

DUGGAN MCHUGH LAW CORPORATION

By _____
Jennifer Duggan, Esq.
Christina Bucci Hamilton, Esq.
Attorneys for Defendant

EXHIBIT A

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN**

WAYNE OSBORNE, on behalf of himself
and all “aggrieved employees” pursuant to
Labor Code § 2698, et seq.,

Plaintiff,

v.

FREMOUW ENVIRONMENTAL
SERVICES, INC., a California
corporation, and DOES 1 through 10,
inclusive,

Defendants.

Case No. STK-CV-UOE-2021-1780

**NOTICE OF SETTLEMENT OF PRIVATE
ATTORNEYS GENERAL ACT CLAIM
(CAL. LABOR CODE § 2698 *ET SEQ.*)**

You have been identified as a non-exempt truck driver employed by Fremouw Environmental Services, Inc. (“Defendant”) in California between August 12, 2019 and January 20, 2021 (“Aggrieved Employee”).

On March 1, 2021, Wayne Osborne (the “Plaintiff”) commenced a lawsuit in San Joaquin County Superior Court, Case No. STK-CV-UOE-2021-1780 (the “Lawsuit”) to recover civil penalties. In the Lawsuit, Mr. Osborne alleges that Defendant failed to provide proper meal and rest breaks or compensation in lieu thereof, failed to issue accurate wage statements, made unlawful deductions from wages, failed to reimburse business expenses, and failed to timely pay wages at the separation of employment. For these alleged violations, Plaintiff seeks penalties pursuant to the California Labor Code’s Private Attorneys General Act of 2004, codified at Labor Code § 2698 *et seq.* (“PAGA”).

Defendant denied Plaintiff’s allegations and disputed all of Plaintiff’s claims. The Parties engaged in informal discovery and fully shared the information necessary for all sides to conduct a legitimate investigation into the allegations of the Lawsuit and potential defenses thereto. The Parties reached a settlement which takes into account the uncertainties and risks of proceeding with litigation.

The Court approved the settlement on _____ and has determined that the settlement is fair and reasonable. The payment which accompanies this notice is made to you pursuant to the terms of the Settlement. Your portion of the Settlement was calculated as a pro

rata share based upon the number of pay periods you worked for Defendant between August 12, 2019 and January 20, 2021.

The Court-approved settlement contains the following release of claims, to which you are bound:

Plaintiff, all Aggrieved Employees, and the State of California shall be deemed to have fully, finally, and forever released, relinquished, and discharged each and all of the Released Parties (defined as Defendant Fremouw Environmental Services, Inc. and its former and present parents, subsidiaries and affiliated corporations and their officers, directors, employees, managers, partners, shareholders, agents, insurers, and any other successors, assigns, or legal representatives) from the Released Claims (defined as any and all claims and/or causes of action under the California Private Attorneys General Act alleged in the Action, or which could have been alleged in the Action based on the facts and claims alleged therein, including but not limited to alleged violations of Labor Code §§ 201-203, 221, 226(a), 226.3, 226.7, 510, 558, 512, 1194 and 2802) that arose during the Release Period (August 12, 2019 through January 20, 2021).

If you have any questions, you may contact counsel for Plaintiff or Defendant as follows:

Counsel for Plaintiff

Daniel Gaines
Evan Gaines
Gaines & Gaines, APLC
(866) 550-0855

Counsel for Defendant

Christina Bucci Hamilton
Duggan McHugh Law Corporation
(916) 550-5397