

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

Lester Bair v. Voigt, Inc. and Greg Voigt
Santa Barbara Superior Court Case No. 20CV03837

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 with respect to all claims brought in a representative capacity pursuant to the Labor Code Private Attorneys General Act ("PAGA") (Labor Code §§ 2698, *et seq.*) 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 PAGA Settlement Agreement (the "Agreement").

This Agreement is made by and among Defendants Greg Voigt and Voigt, Inc. ("Defendant") and Plaintiff Lester Bair ("Plaintiff"), for himself and for the Aggrieved Employees (as defined herein), and on behalf of the State of California (each of Plaintiff and Defendant are occasionally hereinafter referred to as a "Party," and collectively as "Parties").

Plaintiff has exhausted PAGA with the LWDA and has filed a PAGA representative action in Santa Barbara County Superior Court ("the "Litigation" or the "Action"). The Parties agree that certain PAGA representative claims, as specifically set forth in Section 5.01 below, including all claims asserted by Plaintiff in the Litigation, shall be, and hereby are, ended, settled, resolved, and concluded by agreement of Defendant to pay the sum of fifty thousand dollars (\$50,000.00) (hereinafter referred to as the "PAGA Settlement Sum"), which amount shall be inclusive of administration costs, Plaintiffs attorneys' fees and costs, and a service payment to Plaintiff.

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 hourly employees who worked for Voigt, Inc. during the Release Period (defined below). Defendant represents that, based on a reasonable investigation of its records, the total number of Aggrieved Employees, including Plaintiff, is no more than 55 current and former employees.
- (b) "Complaint" means the First Amended Complaint filed by Plaintiff in Santa Barbara County Superior Court.
- (c) "Court" means the Superior Court for the State of California, County of Santa Barbara.
- (d) "Defense Counsel" is:

Robert B. Forouzandeh, Esq.
Reicker Pfau
1421 State Street, Suite B
Santa Barbara, California 93101

- (e) "Effective Date" means the date the Court approves the settlement of the PAGA claims as described in this Agreement. Plaintiff will file a Notice of Conditional Settlement after the Court approves the settlement. The Action will be dismissed with prejudice and judgment entered Defendant makes the final settlement payment as described below.

- (f) "Plaintiffs Counsel" is:

David J. Palay, Esq.
Brian Hefelfinger, Esq.
Palay Hefelfinger, APC
1746 S. Victoria Ave., Suite 230
Ventura, CA 93003

- (g) "Release Period" means the time period from November 19, 2019 through July 1, 2021, inclusive.

Article II.

Background.

Section 2.01 Background.

- (a) Plaintiff submitted a PAGA exhaustion letter to the State of California Labor & Workforce Development Agency ("LWDA") on October 22, 2020. The Litigation was brought by Plaintiff on behalf of the State of California and other "aggrieved employees" as a PAGA representative action based on alleged violations of California Labor Code §§ 201-203, 204, 226.3, 226.7, 404(b), 510, 512, 1194, 1197, 1197.1, 1198, 1199, and 2802.
- (b) The Parties have engaged in certain informal discovery and have reached this PAGA settlement only after such informal discovery and investigation was performed and following a mediation with Henry Bongiovi, Esq. on July 1, 2021.
- (c) This Agreement contemplates the entry of an order and judgment by the Court approving the PAGA Settlement Sum allocated for settlement of the Released Claims (as defined in Section 5.01 below) released by this Agreement and dismissing the Action with prejudice after Defendant makes the final settlement payment contemplated by this Agreement.

- (d) Without any admission of liability, the Parties are entering into this Agreement solely to avoid the uncertainties, inconveniences, and expense of future litigation and to compromise, resolve, and settle the PAGA Action.

Article III.

Approval and Implementation of Settlement.

Section 3.01 Cooperation.

The Parties will cooperate in obtaining, through an unopposed motion or application, filed by Plaintiff, an order from the Court approving this Agreement and the payment of the PAGA Settlement Sum as described in this Agreement at the earliest possible date. Concurrently with the submission of this Agreement to the Court, Plaintiff shall submit it to the LWDA as required by PAGA. The Parties agree to use their best efforts to expedite the preparation and submission of the settlement documents. The Parties further agree to cooperate fully in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, and 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 the PAGA Settlement Sum as described in this Agreement.

The Court's approval of the payment of the PAGA Settlement Sum as described in this Agreement shall be embodied in a written order, which shall be transmitted to the LWDA promptly upon entry, as required by PAGA. Should the Court not grant approval of the payment of the PAGA Settlement Sum as described in this Agreement, this Agreement shall be null and void and have no further effect and the Litigation will continue.

Section 3.02 Settlement Payment Procedures.

(a) Payment of PAGA Settlement Sum and Notice to the Aggrieved Employees.

- (1) Defendant agrees to pay a total amount of fifty thousand dollars (\$50,000), *i.e.*, the PAGA Settlement Sum. This amount shall cover, resolve, and fully satisfy the costs of administration and any and all amounts owed to Plaintiff, the Aggrieved Employees, the LWDA, and Plaintiff's Counsel, including all amounts allocated to attorneys' fees and costs, in settlement of the Released Claims (as defined in Section 5.01 below). The Parties agree that there are no circumstances that would require Defendant to pay any amount greater than the PAGA Settlement Sum in connection with this Agreement or to resolve the Released Claims. In the event that this Agreement is not approved by the Court, Defendant shall have no obligation to pay any of the PAGA Settlement Sum.
- (2) The "Net Settlement Fund" shall be calculated by deducting from the PAGA Settlement Sum (i) seventeen thousand five hundred (\$17,500) for the payment of Plaintiff's Counsel's attorneys' fees and two thousand dollars (\$2,000) in costs; (ii) two thousand dollars (\$2,000) for the payment to Plaintiff of a service payment; and (iii) an estimated two thousand dollars (\$2,000.00) for the payment of administration costs to CPT, Inc., the Parties' chosen Settlement Administrator. After subtracting these amounts, the Net Settlement

Fund will be comprised of twenty six thousand five hundred dollars (\$26,500). Based on the statutory requirement that seventy-five percent (75%) of PAGA civil penalties be paid to the LWDA and twenty-five percent (25%) of PAGA civil penalties be distributed to the Aggrieved Employees, nineteen thousand eighty hundred and seventy five dollars (\$19,875) shall be distributed to the LWDA and the remaining six thousand six hundred and twenty five dollars (\$6,625) shall be distributed directly to the Aggrieved Employees by the Settlement Administrator on a pro rata basis

- (3) The Parties have selected CPT, Inc. to serve as Settlement Administrator. CPT, Inc. has agreed to provide all administrative functions necessary for the administration of this settlement for an amount not to exceed two thousand dollars (\$2,000.00). No later than thirty (30) calendar days after the Effective Date, Defendant shall transmit to the Settlement Administrator the total sum of ten thousand six hundred and twenty five dollars (\$10,625) plus the all of the following information about each Aggrieved Employee in a format requested by the Settlement Administrator: (i) name; (ii) last known mailing address; (iii) and social security number. Starting the next calendar month, Defendant shall thereafter make twenty four (24) payments of one thousand eight hundred dollars (\$1,640.63) to the Settlement Administrator by the 10th of each calendar month.
- (4) No later than twenty (20) days after receipt of Defendant's initial payment, the Settlement Administrator shall collect two thousand dollars (\$2,000) for its own fee and two thousand dollars (\$2,000) to be paid to Plaintiff's Counsel for costs incurred in the Action.
- (5) The Aggrieved Employees do not need to submit a claim to get a settlement check. No later than thirty (30) calendar days after the Effective Date, the Settlement Administrator shall mail, by first-class United States mail, postage prepaid, to the last known address of each Aggrieved Employee, the Notice of PAGA Settlement (attached hereto as Exhibit "A"), together with the settlement check containing each Aggrieved Employee's individual settlement amount, as calculated according to the pro rata distribution formula described above.
- (6) The Settlement Administrator will perform address updates and verifications as necessary prior to each mailing. For each settlement check and Notice of PAGA Settlement that is returned as undeliverable, the Settlement Administrator shall promptly attempt to locate the Aggrieved Employee by using an address refresher database. The value of checks uncashed more than seventy five (75) days after issuance shall be sent by the Settlement Administrator to the State of California unclaimed property fund.
- (7) No later than twenty days (20) calendar days after the after the final monthly payment has been made and the entire fifty thousand (\$50,000) PAGA Settlement Sum has been paid by Defendant, the Settlement Administrator shall transmit to:
 - (i) the LWDA its portion of the PAGA Settlement Sum;
 - (ii) Plaintiff's Counsel a total of seventeen thousand five hundred dollars (\$17,500.00) for fees;
 - (iii) Plaintiff two thousand dollars (\$2,000 for his service award;
- (8) Should Defendant miss any payment required herein, it shall have a 10 day cure period. If the missed payment is not cured within 10 days, Plaintiff shall be entitled to move ex parte for an immediate judgment as to the total unpaid balance of the PAGA Settlement Sum plus fees and costs to obtain and execute on the judgment.

- (9) The six thousand six hundred and twenty five dollars (\$6,625) Net Settlement Fund allocation to cover all Released Claims shall not be considered "wages" for income tax purposes and shall not be subject to regular payroll withholdings.

Article IV.

Limitations On Use Of This Settlement.

Section 4.01 No Admission of Liability.

This Agreement, and compliance with this Agreement, shall not be construed as an admission by Defendant of any liability whatsoever, or as an admission by Defendant of any violation of Plaintiff's or the Aggrieved Employees' rights, or of any order, law, statute, duty or contract whatsoever. Defendant specifically disclaims any liability to Plaintiff, the State of California, the Aggrieved Employees, 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. Defendant further denies that, for any purpose other than settling the Released Claims described herein, that this Action is appropriate for representative, collective, or class treatment.

Section 4.02 Non-Evidentiary Use.

Except as specifically described in Section 4.03 below, neither this Agreement, nor any of its terms, nor any of the negotiations, proceedings, or payouts connected to it, nor anything else associated with it, 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, including to establish any liability or admission on the part of Defendant or any Released Parties (as defined in Section 5.01 below) or to establish the existence of any condition constituting a violation of, or noncompliance with, federal, state, local or other applicable law; provided, however, this Section 4.02 shall not prevent this Agreement from being used, offered, or received in evidence in any proceeding to enforce,

interpret, construe, or finalize this Agreement. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it or proceedings relating to this Agreement, payouts or other events associated with it, shall be construed as an admission or concession by Defendant or any Released Parties or establishment of any such violation(s) or failure(s) to comply with any applicable law. Defendant specifically retains the right to defend, on the merits, against any non-settled claims brought by any Aggrieved Employee.

Section 4.03 Permitted Evidentiary Use.

The express purpose of this Agreement and the judgment to be entered by the Court following approval of this settlement is to forever bar Plaintiff, the LWDA, and any Aggrieved Employee from asserting any of the Released Claims in any future litigation. It is the intent of the Parties that, to the greatest extent provided by law, including under the holding of *Arias v. Superior Court* (2009) 46 Cal.4th 969, 986, the ability of Plaintiff, the State of California or any Aggrieved Employee to bring a PAGA claim on behalf of the LWDA relating to the alleged violations that are the subject to this Agreement is completely and forever foreclosed. Any Party to this Agreement may use the Agreement to assert that this settlement and the judgment to be entered by the Court following approval of this settlement bars any later-filed action asserting any of the Released Claims against any of the Released Parties.

Section 4.04 Nullification.

Invalidation of any material provision of this Agreement, including, but not limited to, Section 5.01 herein, shall invalidate this Agreement in its entirety unless the Parties 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 Plaintiff on behalf of the LWDA, a State of California Executive Branch Agency.

Upon approval by the Court, Plaintiff, individually and as the representative acting as a proxy or agent of the LWDA, a State of California Executive Branch Agency, in this Action, , agrees to release Defendant, its managing agents, affiliates, subsidiaries, owners, members, partners, officers, directors, predecessors, successors, assigns, agents, shareholders, investors, insurers and legal representatives (collectively, the "Released Parties"), of and from any and all claims under the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code §§ 2698, *et seq.*, based on or arising out of alleged violations of Labor Code sections relating to minimum wages and overtime wages, meal periods, rest periods, wage statements, waiting time penalties, days of rest, out-of-pocket expenses, interest on uniform deposits, and the payment of final wages (including, but not limited to, California Labor Code sections §§ 201-203, 204, 226, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198 1199, and 2802 during the time period from November 19, 2019 through the Effective Date, inclusive, that have been or could have been asserted against the Released Parties in the Action (the "Released Claims"). The Parties further agree to release any and all claims for costs, fees, and interest related to the Released Claims.

The Parties agree that the Agreement and judgment to be entered by the Court following approval of this settlement forever bars Plaintiff and the LWDA, directly or through any other proxy or agent, from any future prosecution of any of the Released Claims against any of the Released Parties.

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 (i) signed by the Plaintiff, Plaintiff's Counsel, Defendant and Defense Counsel who executed this Agreement; and (ii) 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 set forth in 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 or entity. Plaintiff expressly warrants that she 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 agreement between the Parties with respect to the settlement of representative claims under PAGA. This Agreement supersedes all prior agreements, representations, warranties, statements or understandings between 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 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 obligation, 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. A photocopy or PDF copy of this Agreement or counterpart thereof shall be deemed an original for all purposes.

Section 6.08 Attorneys' Fees and Costs.

With respect to this Agreement, neither Plaintiff's Counsel nor any other attorneys acting for, or purporting to act for the Aggrieved Employees, nor Plaintiff may recover or seek to recover any amounts for fees, costs, or disbursements from the Released Parties or the PAGA Settlement Sum except as expressly provided herein. Other than as set forth herein, Defendant shall bear its own attorneys' fees and costs in connection with the Litigation, including in the preparation, negotiation and drafting of this Agreement, and neither Plaintiff's Counsel, the Aggrieved Employees nor the Plaintiff shall be responsible for Defendant's attorney's fees and costs. However, if any Party moves the Court to enforce this Agreement, the prevailing Party shall be entitled to recover from the other Party all reasonable attorneys' fees and costs incurred to enforce this Agreement.

Section 6.09 Dispute(s).

Should any dispute(s) arise between the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, the Parties agree to submit any such dispute(s) first to mediation and/or continued negotiations before mediator Henry Bongioivi, Esq. (the "Mediator") and then, if unsuccessful, to the Court. Any fees or costs due to the Mediator shall be paid evenly by the Parties. 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 all reasonable attorneys' fees and costs.

Section 6.10 Binding Effect.

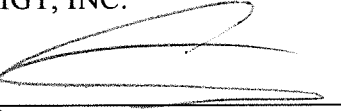
This Agreement shall bind and inure to the benefit of the Parties hereto and to their respective affiliates, legatees, heirs, executors, administrators, representatives, successors and assigns, including any successor by virtue of merger, consolidation or sale of substantially all of the assets of a Party.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

APPROVED AND ACCEPTED.

Dated: July 1, 2021

VOIGT, INC.

By: 

Greg Voigt, Inc., its President

Dated: July 1, 2021


Greg Voigt

Dated: July 1, 2021

Lester Bair

**APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONSONLY**

Dated: July 1, 2021

Palay Hefelfinger, APC

By: _____

Daniel J. Palay, Esq.
Attorneys for Plaintiff

Dated: July 1, 2021

REICKER PFAU

By: 

Robert B. Forouzandeh, Esq.
Attorneys for Defendant

EXHIBIT A

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA**

LESTER BAIR, as an
"aggrieved employee" and on behalf of
"aggrieved employees" under the
California Labor Code Private Attorneys
General Act,

Plaintiff,

v.

VOIGT, INC., GREG VOIGT; and
DOES 1 through 100, inclusive,

Defendants.

Case No. 20CV03837

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

Complaint Filed: November 19, 2020

You have been identified as a current or former driver who worked for Voigt Inc. d/b/a Smitty's Towing during the period November 19, 2019 through July 1, 2021, inclusive ("Covered Employee").

On November 19, 2020, Lester Bair ("Plaintiff") filed an action in Santa Barbara County Superior Court (the "Court") which, through various amended pleadings, sought to recover civil penalties pursuant to the California Labor Code Private Attorneys General Act of 2004, codified at Labor Code §§ 2698, *et seq.* ("PAGA"). The lawsuit alleged that Covered Employees were not paid all wages, provided proper meal and rest periods, timely paid all wages, paid all wages due and owing at termination, and issued accurate and complete wage statements.

Defendants Voigt, Inc. and Greg Voigt deny all of Plaintiff's allegations and dispute all of Plaintiff's claims.

Plaintiff and Defendants reached a settlement of the claims for PAGA civil penalties alleged in the lawsuit. The Court approved the PAGA settlement agreement on _____, 2021. The PAGA settlement is for \$50,000. However, by law, \$19,875 has been paid to the State of California's Labor and Workforce Development Agency ("LWDA") for the enforcement of the state's labor laws. An additional \$17,500 has been paid to Plaintiff's Counsel's for its attorneys' fees and costs, \$2,000 has been paid to Lester Bair as a service payment, and \$2,000 has been paid to the Settlement Administrator. Of the remaining settlement funds, the Court approved the distribution, on a pro rata basis, of \$6,625 to the no more than 53 current and former drivers employed by Voigt Inc. between November 19, 2019 and July 1, 2021, inclusive.

Defendant is funding the settlement with one initial payment of \$10,625 and 24 monthly payment of \$1,640.63.

The Court-approved settlement contains the following release of claims, which is meant to bar any future litigation by Plaintiff of the California Labor & Workforce Development Agency ("LWDA"), either directly or through any other proxy or agent:

Upon approval by the Court, Plaintiff, individually and as the representative acting as a proxy or agent of the LWDA, a State of California Executive Branch Agency, in this Action, , agrees to release Defendant, its managing agents, affiliates, subsidiaries, owners, members, partners, officers, directors, predecessors, successors, assigns, agents, shareholders, investors, insurers and legal representatives (collectively, the "Released Parties"), of and from any and all claims under the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code §§ 2698, *et seq.*, based on or arising out of alleged violations of Labor Code sections relating to minimum wages and overtime wages, meal periods, rest periods, wage statements, waiting time penalties, days of rest, out-of-pocket expenses, and the payment of final wages (including, but not limited to, California Labor Code sections §§ 201-203, 204, 226, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198 1199, and 2802 during the time period from April 3, 2018 through April 30, 2019, inclusive, that have been or could have been asserted against the Released Parties in the Action (the "Released Claims"). The Parties further agree to release any and all claims for costs, fees, and interest related to the Released Claims.

This release of claims does not cover any other claims you may have against Defendant.

If you have any questions or would like a copy of the settlement agreement approved by the Court, please contact the Settlement Administrator at _____