

SETTLEMENT AGREEMENT

This Settlement Agreement (this "Settlement") is made and entered into between Plaintiff Michel Uribe-Elecciri (acting in a private attorney general capacity) and Defendant Assured Audit Pest Prevention.

I. DEFINITIONS

The following terms, when used in this Settlement, shall have the following meanings:

1. "Action" means the matter entitled *Michael Uribe-Elecciri v. Assured Audit Pest Prevention*, Merced County Superior Court, Case No. 20CV-03783, and as set forth in Plaintiff's correspondence to the California Labor and Workforce Development Agency ("LWDA Letter") dated October 8, 2020.

2. "Aggrieved Employees" consist of all current and former non-exempt pest control technician employees of Defendant who have worked for Defendant in California from October 19, 2019, to the date the Court approves the settlement.

3. "Defendant" means Assured Audit Pest Prevention.

4. "Complaint" means the Representative Action Complaint entitled *Michael Uribe-Elecciri v. Assured Audit Pest Prevention*, Merced County Superior Court, Case No. 20CV-03783, filed on December 23, 2020.

5. "Court" means the Superior Court of California for the County of Merced.

6. "Effective Date" means the date upon which the Court enters an Order approving the Settlement Agreement.

7. "Individual Settlement Payment" means the amount to be paid to each Aggrieved Employee based on the formula described herein.

8. "LWDA" means the California Labor and Workforce Development Agency.

9. "Maximum Settlement Amount" is the non-reversionary sum of fifteen thousand dollars and zero cents (\$15,000.00), which represents the total amount payable under this Settlement by Defendant, including, without limitation, payments to all Aggrieved Employees, payment to the LWDA; payment of Plaintiff's Attorneys' fees and costs, payment of Plaintiff's enhancement award, and payment to the Settlement Administrator for administration costs.

10. "Net Settlement Amount" is the amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts (subject to Court approval) are subtracted from the Maximum Settlement Amount: (a) Plaintiff's attorneys' fees up to one-third of the Maximum Settlement Amount, or five thousand dollars (\$5,000.00); (b) Plaintiff's verified litigation costs and expenses of up to one thousand seven hundred fifty-seven dollars (\$1,757.00); (c) Plaintiff's enhancement award of one thousand five hundred dollars (\$1,500.00); and (d) administration costs up to two thousand five-hundred dollars (\$2,500.00).

11. “PAGA” means the California Labor Code Private Attorneys General Act, California Labor Code § 2698, et seq.

12. “PAGA Period” means the time period from October 19, 2019, to the date the Court approves the PAGA settlement.

13. “PAGA Released Claims” means any and all claims based on the facts as alleged in the operative complaint or LWDA Letter submitted on October 8, 2020, or which could have been pursued in the Action under the PAGA based on the factual allegations in the Action and the LWDA Letter, or which could have been pleaded under the PAGA based on the factual allegations in the Action or the LWDA Letter, that arose during the PAGA Period.

14. “Parties” means Plaintiff and Defendant.

15. “Plaintiff” means Michael Uribe-Elecciri.

16. “Plaintiff’s Counsel” means Kevin Mahoney and George Singer of the Mahoney Law Group, APC.

17. “Settlement Administrator” means Phoenix Settlement Administrators.

II. RECITALS

1. In his LWDA Letter, Plaintiff alleges that he and Aggrieved Employees were regularly not compensated for all minimum wages as well as overtime for all hours worked; that he and Aggrieved Employees are owed waiting time penalties; that Defendant failed to provide proper and accurate wage statements; that Defendant failed to provide lawful meal and rest periods and/or premium payments in lieu of such; that Defendant failed to compensate Plaintiff and Aggrieved Employees for rest and recovery periods and other nonproductive time; and that Plaintiff and Aggrieved Employees did not receive reimbursement for necessary business expenses. Based on the above, Plaintiff alleges that Defendant is therefore liable for civil penalties under PAGA.

2. On October 8, 2020, Plaintiff provided written notice to the LWDA and Defendant asserting claims for civil penalties pursuant to PAGA, stemming from the alleged violations of the California Labor Code described above.

3. On December 23, 2020, Plaintiff filed the Complaint, which asserted claims for civil penalties under PAGA.

4. In response to Plaintiff’s Counsel’s informal discovery requests, Defendant provided Plaintiff’s Counsel with information and documents pertaining to Plaintiff and other Aggrieved Employees which Plaintiff’s counsel used to investigate Plaintiff’s allegations and value the PAGA claim.

5. After formal discovery, over the time period of approximately September 28, 2023, to October 6, 2023, the Parties engaged in back-and-forth arms’ length negotiations. As a result of these negotiations, the Parties agreed to fully and finally resolve the PAGA Released Claims as to Plaintiff and Aggrieved Employees.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. **Non-Admission.** Nothing in this Settlement shall be construed to be an admission by Plaintiff that his claims do not have merit or by Defendant of any liability or wrongdoing as to Plaintiff; Aggrieved Employees or any other person, and Defendant specifically disclaims any such liability or wrongdoing. The Parties have entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses and risks. This Settlement and any related court documents or orders are not and may not be cited or admitted as evidence of liability,

2. **Maximum Settlement Amount.** Defendant shall pay fifteen thousand dollars and zero cents (\$15,000.00) as the non- reversionary Maximum Settlement Amount. Defendant will not pay more than the Maximum Settlement Amount. Defendant shall deposit the Maximum Settlement Amount with the Settlement Administrator within thirty (30) calendar days after the Effective Date. This is an "all in" settlement amount, meaning that all sums to be paid as a result of this Settlement shall be taken solely and exclusively from the Maximum Settlement Amount, including but not limited to amounts paid to Plaintiff, Plaintiff's Counsel, the Settlement Administrator, and the Aggrieved Employees. Moreover, the Settlement Administrator will be solely and exclusively responsible for preparing, filing and delivering all tax related documents.

3. **Net Settlement Amount.** The Parties agree that the following amounts should be Subtracted from the Maximum Settlement Amount, if approved by the Court, resulting in a Net Settlement Amount to distribute to the LWDA and Aggrieved Employees:

a. **Plaintiff's Attorneys' Fees and Costs.** Defendant will not oppose Plaintiff's request for attorneys' fees in the amount up to five thousand dollars and zero cents (\$5,000.00), or one-third of the Maximum Settlement Amount and actual costs incurred in prosecuting this Action, up to one thousand seven hundred fifty-seven dollars (\$1,757.00.) In the event the Court approves a payment of less than these amounts, the difference will be added to the Net Settlement Amount (although Plaintiff may appeal an order granting less than the full amount sought for attorneys' fees and costs). The Settlement Administrator will report these payments on IRS Form 1099 issued to Plaintiff's Counsel

b. **Plaintiffs Enhancement Award.** Defendant will not oppose Plaintiff's request for an enhancement award in the amount of one thousand five hundred dollars (\$1,500.00) for his service to the LWDA and the Aggrieved Employees, the risk he undertook by attaching his name to this Action and his general release of claims. In the event the Court approves a payment of less than the requested amount, the difference will be added to the Net Settlement Amount (although Plaintiff may appeal an order granting less than the full amount sought for Plaintiff's enhancement award). The Settlement Administrator will report this payment on IRS Form 1099 issued to Plaintiff.

c. **Administration Costs.** Defendant will not oppose the Settlement Administrator's costs in the amount up to two thousand five hundred dollars (\$2,500.00) for administering the Settlement. In the event the Court approves a payment of less than this amount,

the difference will be added to the Net Settlement Amount. The Settlement Administrator will report this payment on IRS Form 1099 issued to the Settlement Administrator.

4. **Allocation of Net Settlement Amount.** The Net Settlement Amount shall be distributed as follows:

a. The Net Settlement Amount shall be designated as the "Section 2699 Fund., and shall be distributed 75% to the LWDA and 25% to Aggrieved Employees, pursuant to Labor Code § 2699(i). The 25% portion to be paid to Aggrieved Employees shall be paid to all Aggrieved Employees based on the proportionate number of pay periods worked by each Aggrieved Employee during the PAGA Period.

The Parties agree that should the Court deny approval of the Settlement based on the allocation of the Maximum Settlement Amount or the Net Settlement Amount, the Parties agree to re-negotiate the allocation of funds in good faith in an effort to obtain approval of the Settlement.

5. **PAGA Release.** In his capacity as a private attorney general and alleged "aggrieved employee" acting on behalf of himself, the State of California, and Aggrieved Employees, and in consideration of the enhancement payment awarded to him, Plaintiff hereby releases Defendant and Defendant's former, present and future owners, parents, and subsidiaries, and all of their respective current, former, and future officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, agents, successors, assigns, accountants, insurers, and legal representatives (collectively, the "Released Parties") from any and all of the PAGA Released Claims.

In addition to the PAGA Released Claims, Plaintiff in his individual capacity as an individual, agrees to release all claims, whether known or unknown, under federal law or state law (including without limitation, his individual wage and hour claims) against the Released Parties. The Parties understand and agree that Plaintiff is not, by way of this release, releasing any workers' compensation claims nor any other claims which cannot be released as a matter of law. Notwithstanding the foregoing, Plaintiff understands that this release goes beyond a general release to include unknown claims and that he is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, 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."

6. **PAGA Released Claims.** Plaintiff agrees that upon entry of an Order approving the Settlement, all Aggrieved Employees will release any and all PAGA Released Claims against the Released Parties. Upon entry of the Order approving the Settlement and judgment entered thereon, Plaintiff and all Aggrieved Employees will be forever barred from pursuing any and all of the PAGA Released Claims against the Released Parties.

7. **Covenants and Representations by Plaintiff.**

a. Plaintiff represents and warrants that he has not assigned or transferred or purported to assign or transfer to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Settlement.

b. Plaintiff acknowledges that he has read this Settlement, that he fully understands his rights, privileges and duties under the Settlement, and enters into this Settlement freely and voluntarily. Plaintiff further acknowledges that he had the opportunity to consult with his attorneys to explain the terms of this Settlement and the consequences of signing this Settlement.

8. **Confidentiality.** Except as provided below, to the extent necessary to effectuate the Settlement or as required by court or legal process, Plaintiff will keep the terms of this Settlement, including the settlement amounts, confidential. Plaintiff will instruct his counsel that he and his counsel shall not issue a press release, hold a press conference, publish information about the Settlement on any website or through any social media or otherwise publicize the Settlement or communicate its terms or amounts in public or in private, unless ordered by the Court. However, for the limited purpose of establishing adequacy of counsel in future actions, Plaintiff's Counsel may reference the Action by name and case number in a declaration establishing adequacy as class or representative counsel. In addition, Defendant may disclose this Agreement (and/or any motion filed to obtain approval of this Agreement and/or any order issued on such a motion) to the fullest extent it deems necessary (in its sole and subjective discretion) to defend against claims that, in whole or in part, encompass the claims raised in the Complaint; the LWDA Letter, and/or this Agreement.

To permit judicial review and approval of the payments referenced herein, as required by Labor Code Section 2698, et seq. Plaintiff's Counsel will file the Settlement with the Court and submit the Settlement to the LWDA as part of the Parties' seeking Court approval of the Settlement, per Labor Code § 2699(1)(2).

9. **Judgment.** As part of the Motion to approve the Settlement, Plaintiff shall submit a proposed order and judgment which enters judgment in the Action in accordance with the terms of the Settlement and retains jurisdiction over the Action for the purpose of enforcing the terms of the Settlement following approval of the Settlement. This Settlement is expressly conditioned upon the Court entering judgment as set forth herein. The judgment will not release or bar any claims other than the PAGA Released Claims as to the Aggrieved Employees. If the Motion referenced in this paragraph is denied, this Agreement shall be rendered null and void.

IV. **ADMINISTRATION OF SETTLEMENT**

1. **Settlement Administrator.** The Parties agree to use Phoenix Settlement Administrators to handle the administration of this Settlement.

2. **Provision of Information for Aggrieved Employees.** Within ten (10) business days after the Effective Date, Defendant shall provide the Settlement Administrator with

information for Aggrieved Employees. Defendant will, in good faith, compile from its records a list of Aggrieved Employees that will be in a computer readable format, such as a Microsoft Excel spreadsheet, and shall include each Aggrieved Employee's full name, last known mailing address, last known telephone number, start date(s) of employment, end date(s) of employment, total pay periods worked during the PAGA Period, and Social Security numbers. The list shall also include the sum total of all pay periods worked by all Aggrieved Employees during the PAGA Period. Because Social Security numbers are included in the list, the Settlement Administrator will maintain the list in confidence, and access shall be limited to those with a need to use the list as part of the administration of the Settlement.

Within ten (10) business days of receiving the Aggrieved Employees' information from Defendant, the Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the Individual Settlement Payments to each Aggrieved Employee and the data used to calculate said payments. The Settlement Administrator shall also determine whether Plaintiff's Right to Rescind, as detailed in Section III.3, has been triggered. The Settlement Administrator shall obtain approval from all counsel of the calculations before mailing Individual Settlement Payments.

3. **Explanatory Letter and Individual Settlement Payments.** Upon receipt of the information for Aggrieved Employees, the Settlement Administrator will perform a search on the National Change of Address database to update the Aggrieved Employee's addresses.

Within two (2) business days of receiving approval from counsel of the payment calculations as provided above, the Settlement Administrator shall mail copies of the explanatory letter, which has been mutually approved by the Parties and is attached hereto as Exhibit A, in English and Spanish, along with Individual Settlement Payments to all Aggrieved Employees via First-Class U.S. Mail.

Each Individual Settlement Payment shall be deemed penalties and reported using IRS Form 1099. Checks will remain negotiable for one hundred eighty (180) days from the date they are mailed by the Settlement Administrator. Any check that is not negotiated within one hundred eighty (180) days of mailing to an Aggrieved Employee shall be transferred to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code, § 1500, *et seq*, in the name of the Aggrieved Employee to whom the check was issued.

4. **Undeliverable Notices.** The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Aggrieved Employee. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Aggrieved Employee.

Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via 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 perform a single re-mailing.

Defendant fully discharges its obligations to those Aggrieved Employees to whom it will pay an Individual Settlement Payment through the Settlement Administrator's initial mailing of a check, regardless of whether such checks are actually received and/or negotiated by Aggrieved Employees.

5. **Payment of Remainder.** Within two (2) business days of receiving approval :from counsel of the payment calculations, the Settlement Administrator will distribute the following additional payments: (1) the 75% share of the Section 2699 Fund to the LWDA; (2) Court-approved attorneys' fees and costs to Plaintiff's Counsel; (3) Court-approved enhancement award to Plaintiff; and (4) Court-approved administration costs to the Settlement Administrator.

6. **Accounting.** Within fifteen (15) business days of receiving approval from counsel of the payment calculations, the Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid from the Settlement.

7. **Tax Consequences.** Individual Settlement Payments made under this Settlement will be attributed 100% as penalties and interest and paid via IRS Form 1099 issued to each Aggrieved Employee. Neither Plaintiff nor Defendant, nor counsel for either of the Parties, makes any representations or warranties with respect to tax consequences of any payment under this Settlement.

V. **MISCELLANEOUS PROVISIONS**

1. **Drafting.** The Parties agree that the terms and conditions of this Settlement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that neither Plaintiff nor Defendant shall be considered the "drafter" of this Settlement for purposes of having terms construed against that Party.

2. **Successors.** This Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators and successors.

3. **Costs and Fees.** The Parties shall each bear their own costs, attorneys' fees, mediator fees and other fees incurred :in connection with this Settlement, the Action and Plaintiff's claims, except as otherwise set forth specifically herein.

4. **Governing Law.** This Settlement shall be construed under and governed by the laws of the State of California. This Settlement shall be deemed to have been entered into in Merced County, California, and all questions of validity, interpretation or performance of any of its terms or of any rights or obligations of the Parties to this Settlement shall be governed by California law. If any legal or equitable action is necessary to enforce the terms of this Settlement, it shall be brought in the State of California, County of Merced.

5. **Complete Agreement.** The Parties each acknowledge and represent that no promise or representation not contained in this Settlement has been made to them and acknowledge and represent that this Settlement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the claims in the Action. This Settlement cannot be amended or modified except by a writing signed by the Parties hereto.

6. **Nullification of Settlement.** In the event that: (i) the Court does not approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then this Settlement and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions.

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

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

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

10. **Execution and Counterparts.** This Settlement is subject only to the execution of all Parties. However, the Settlement may be executed in one or more counterparts. All executed counterparts, and each of them, including facsimile, electronic and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

11. **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties believe this Settlement 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.

12. **Invalidity of Any Provisions.** Before declaring any provision of this Settlement 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 valid and enforceable.

13. **Severability.** If any term or provision of this Settlement is held to be invalid or unenforceable, the remaining portions of this Settlement will continue to be valid and will be performed, construed and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Agreement to the extent necessary to permit the maximum enforceability or validation of the term or provision.

14. **Waiver.** No waiver of any condition or covenant contained in this Settlement 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.

15. **Enforcement Action.** In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys fees and costs, including reasonable expert witness fees incurred in connection with any enforcement actions.

16. **Mutual Preparation.** The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement. Accordingly, this Settlement will not be construed more strictly against one Party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arms' length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement.

17. **Representation by Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement, and this Settlement has been executed with the consent and advice of counsel and reviewed in full.

18. **Cooperation and Execution of Necessary Documents.** All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement.

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

20. **Denial of Liability.** The Parties expressly recognize that the making of this Settlement does not in any way constitute an admission or concession of wrongdoing on the part of Defendant. Nothing in this Settlement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of this Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative, or other forum or proceeding, as evidence of violation of any federal, state or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Settlement may be used in any Court proceeding that has as its purpose the interpretation, implementation or enforcement of the Settlement or any orders or judgments of the Court entered into in connection therewith.

IN WITNESS THEREOF, the Parties each acknowledge that they have read the foregoing Settlement, accept and agree to the provisions contained in this Settlement and hereby execute it voluntarily and with full understanding of its consequences.

MICHAEL URIBE-ELECCIRI

Dated: 06 / 03 / 2024



Michael Uribe-Elecciri, Plaintiff

ASSURED AUDIT PEST PREVENTION

Dated: 3/31/2024

DocuSigned by:


By: JOSEPH HENRY
Its: CEO

APPROVED AS TO FORM:

Dated: June 3, 2024

MAHONEY LAW GROUP, APC

By: 

Kevin Mahoney
George B. Singer
Attorneys for Plaintiff
MICHAEL URIBE-ELECCIRI

Dated: 3/28/2024

YOUNGER & ASSOCIATES

DocuSigned by:


By: TIMOTHY M. YOUNGER
Timothy M. Younger, Esq.
Attorney for Defendant
ASSURED AUDIT PEST PREVENTION