

PAGA SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement ("Settlement" or "Agreement") is made and entered into between Plaintiff Estuardo Mayorga ("Plaintiff"), acting in a Private Attorney General capacity, and Defendant Professional Aviation Marketing, Inc. ("Defendant").

I. DEFINITIONS

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

1. "Action" means Plaintiff's Lawsuit, brought under the Private Attorneys' General Act of 2004 ("PAGA") pursuant to California Labor Code section 2698, *et seq.* alleged in the case entitled, *Estuardo Mayorga, on behalf of all aggrieved employees v. Professional Aviation Marketing, Inc., et al.*, Superior Court for the County of Los Angeles, Case No.: 21STCV04211.
2. "Aggrieved Employees" means all current or former employees of Defendant in the State of California who were issued a wage statement by Defendant at any time between November 19, 2019 through November 20, 2020 and who did not opt out of receiving healthcare benefits and received payment of the hourly health insurance differential.
3. "Defendant" means Professional Aviation Marketing, Inc.
4. "Complaint" means the Representative Action Complaint entitled *Estuardo Mayorga, on behalf of all aggrieved employees v. Professional Aviation Marketing, Inc., et al.*, Superior Court for the County of Los Angeles, Case No.: 21STCV04211, filed on February 2, 2021.
5. "Court" means the Superior Court of California for the County of Los Angeles.
6. "Effective Date" means the date upon entry of an Order by the Court approving this Agreement following Plaintiff's execution of the Agreement and Defendant's Counsel's receipt of the executed Form W9 from Plaintiff and an executed Form W9 from Plaintiff's Counsel with respect to Plaintiff's payment under the Individual Settlement.
7. "Individual PAGA 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. "Gross Settlement Amount" is the non-reversionary sum of Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00), which represents the total amount payable under this Settlement by Defendant, including, without limitation, payments to all Aggrieved Employees, payment to the LWDA, payment to the Settlement Administrator for administration costs, and inclusive of payment of Plaintiff's Counsel's fees and costs.
10. "Net Settlement Amount" is the amount remaining to distribute to the LWDA and Aggrieved Employees after administrative costs in an amount not to exceed \$3,000.00 (if approved by the Court) and of Plaintiff's Counsel's fees and costs are subtracted from the Gross Settlement Amount.

11. "Individual Settlement" is the settlement amount to be paid to Plaintiff for his individual claims against Defendant which will be paid to Plaintiff's Counsel's attorney/client trust account.

12. "PAGA" means the California Labor Code Private Attorneys General Act, California Labor Code § 2698, *et seq.*

13. "PAGA Period" means the time period from November 19, 2019 through November 20, 2020.

14. "Released Parties" means Defendant and its predecessors, franchisees, successors and assigns, parent corporations, subsidiary corporations, affiliates, insurers, reinsurers and the officers, directors, shareholders, partners, employees, independent contractors, attorneys and agents, past or present, of each of the aforesaid entities/individuals, heirs, executors, administrators, assigns, attorneys and agents, and all persons acting under, by, through, or in concert with any of them.

15. "PAGA Released Claims" means any and all claims, rights, demands, liabilities and causes of action for: civil penalties under Plaintiff's Cause of Action for violations of the Labor Code Private Attorneys General Act ("PAGA"), Labor Code § 2698 *et seq.* pled in the Complaint in the Action; or civil penalties under Plaintiff's Cause of Action for violations of the PAGA that could be brought based on the factual allegations in the Complaint in the Action, that arose during the PAGA Period, including any related claims for attorneys' fees, costs, or interest resulting therefrom ("Released Claims"). As this Agreement involves a settlement for civil penalties only and recoverable under the PAGA, the Released Claims herein does not release the Released Parties from any individual wage and hour liability belonging exclusively to the Aggrieved Employees.

16. "Parties" mean Plaintiff and Defendant, collectively.

17. "Plaintiff" means Estuardo Mayorga

18. "Plaintiff's Counsel" means Gregory P. Wong and John F. Litwin of Barkhordarian Law Firm, PLC, 6047 Birstol Parkway, Second Floor, Culver City, CA 90230.

19. "Settlement Administrator" means Simpluris, Inc.

II. RECITALS

1. Plaintiff's single cause of action for civil penalties under the PAGA alleged on behalf of the Aggrieved Employees is based on Defendant's alleged 1) failure to pay wages due upon discharge and penalties for failure to pay wages to discharged employee (in violation of Labor Code §§ 201 through 203), 2) failure to pay wages timely (in violation of Labor Code §§ 201.3 and 204), 3) failure to provide accurate itemized wage statements (in violation of Labor Code § 226), 4) failure to pay overtime (in violation of Labor Code § 510), and 5) failure to pay regular and overtime wages pursuant to (in violation of Labor Code §§ 1197 and 1198).

2. On November 20, 2020, Plaintiff provided written notice to the LWDA asserting claims for civil penalties pursuant to the PAGA stemming from the alleged violations of the California Labor Code described in Paragraph 1 above.

3. On February 2, 2021, after exhausting his administrative remedies, Plaintiff filed in the Action a representative action complaint against Defendant on behalf of himself and all aggrieved employees alleging a single cause of action for civil penalties under the PAGA.

4. On March 14, 2022, the Parties participated in mediation before mediator Henry Bongiovi, Esq. With the assistance of Mr. Bongiovi, the Parties agreed to fully and finally resolve the PAGA Released Claims as to Plaintiff and Aggrieved Employees.

5. On March 14, 2022, the Parties entered into a settlement agreement and mutual release wherein the Parties agreed that the Parties would execute a long form settlement agreement containing additional terms and conditions. The settlement agreement and mutual release entered into by the parties is attached hereto as **Exhibit A**.

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. **Gross Settlement Amount**. Defendant shall pay Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00) as the **non-reversionary** Gross Settlement Amount. Defendant shall deposit the Gross Settlement Amount with the Settlement Administrator by no later than thirty (30) calendar days after the Effective Date of the Settlement. The Settlement Administrator shall hold all portions of the Gross Settlement Amount in a non-interest-bearing account for the benefit of the Aggrieved Employees until the time for disbursement. The releases identified herein shall be null and void if Defendant fails to fully fund the Gross Settlement Amount. The Gross Settlement Amount is inclusive of attorneys' fees and costs. Plaintiff's Counsel shall request, upon separate application to the Court and through regular noticed motion, Plaintiff's Counsel's Fees and Plaintiff's Counsel's Costs arising from this Action. Defendant will not oppose a request for attorneys' fees up to 45% (conditioned upon Court approval) and otherwise Defendant reserves its right to dispute or oppose a request for attorneys' fees.

3. **Net Settlement Amount**. The Parties agree that the following amounts should be subtracted from the Gross Settlement Amount, subject to Court approval, resulting in a Net Settlement Amount to distribute to the LWDA and Aggrieved Employees:

a. **Administration Costs**. The Parties agree that the Administration Costs shall be paid from the Gross Settlement Amount, currently estimated to be \$3,000.00, for administering the Settlement. 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 pursuant to Labor Code § 2699(i) as follows:

- a. 75% of the Net Settlement Amount shall be distributed to the LWDA;
- b. 25% of the Net Settlement Amount shall be paid to Aggrieved Employees. This portion of the Net Settlement Amount shall be paid to all Aggrieved Employees pro rata based on the proportional number of wage statements received by each Aggrieved Employee during the PAGA Period.

This paragraph regarding allocation is based on the Parties' collective understanding that all payments under this Settlement will be considered "penalties" and classified as 1099 income, and that there will be no employer-side tax consequence to Defendant as a result. If the Parties later determine otherwise, they will meet and confer regarding changes to this allocation provision. The Parties agree that should the Court deny approval of the Settlement based on the allocation of the Net Settlement Amount, the Parties agree to re-negotiate in good faith in an effort to obtain approval of the Settlement.

5. **Representative PAGA Release.** In his capacity as a Private Attorney General or "aggrieved employee" acting on behalf of himself, the State of California and Aggrieved Employees, Plaintiff hereby releases Defendant and Released Parties, from any and all of the PAGA Released Claims that arose during the PAGA Period.

6. **No Right to Opt-Out.** The Parties agree that there is no statutory right for any Aggrieved Employee to opt-out or otherwise exclude himself or herself from the Settlement.

7. **Covenants and Representations by Plaintiff and Plaintiff's Counsel.**

- 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, and without duress. 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. **Court Approval of PAGA Settlement.** To permit judicial review and approval of the Settlement, as required by Labor Code Section 2698, *et seq.*, Plaintiff's Counsel will file the Agreement with the Court and submit the Agreement to the LWDA as part of Plaintiff's motion seeking Court approval of the Settlement, per Lab. Code § 2699(l)(2).

9. **Termination of Settlement.** If the Court does not approve the Settlement, if the Court does not enter judgment, as provided for in this Settlement, or if appellate review is sought and, on such review, the Court's decision is materially modified or reversed, or, except as otherwise set forth herein, if one or more of the terms of the Settlement is not approved or is materially modified or reversed or found to be invalid, then either of the Parties shall have the right within ten (10) days of written notice thereof to elect to terminate the Settlement, in which case

the Settlement shall have no force or effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of the Settlement.

10. **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 Plaintiff and Aggrieved Employees. Plaintiff's Counsel will further submit any judgment rendered in the Action and approving the PAGA Settlement to the California Labor Workforce & Development Agency, per Lab. Code § 2699(1)(3).

IV. ADMINISTRATION OF SETTLEMENT

1. **Settlement Administrator.** The Parties agree to use Simpluris Inc. 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, pursuant to and subject to a protective order to be entered by the Parties and the Court in this Action, 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, total number of wage statements issued during the PAGA Period, and Social Security number. The list shall also include the sum total of all pay periods worked by Aggrieved Employees during the PAGA Period. Because Social Security numbers are included in the list, the Settlement Administrator will maintain the list in the highest of confidence, and access shall be limited to those with a need to use the list as part of the administration of the Settlement and subject to the protective order governing this Action, and none of the information contained in the list shall be disclosed to third Parties or to Plaintiff's Counsel without the express written consent of counsel for Defendant.

Within seven (7) 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 estimated individual settlement payments to each Aggrieved Employee ("Individual Settlement Payment(s)") and the data used to calculate said payments. The Settlement Administrator shall obtain approval from all counsel of the calculations before mailing Individual PAGA Payments.

3. **Explanatory Letter and Individual PAGA 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 Employees' 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 B**, in English, along with Individual PAGA Payments to all Aggrieved Employees via regular First-Class U.S. Mail.

The Settlement Administrator will calculate the amount to be received by each Aggrieved Employee, which will be based on the formula set forth in Section III.4., *supra*. The Settlement Administrator will send each Aggrieved Employee a check for his or her Individual PAGA Payment along with the explanatory letter. Checks will remain negotiable for 180 days. Each Individual PAGA Payment shall be deemed penalties/interest and reported using IRS Form 1099.

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 re-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 perform a single re-mailing after which any returned checks will be deemed undeliverable.

The Settlement Administrator shall maintain a list of the postmark date for the original mailing of the Individual Settlement Payment(s) to the Aggrieved Employees, the postmark date of any subsequent mailing to any the Aggrieved Employees, and a list of Aggrieved Employees who did not receive the Individual Settlement Payment due to the inability to locate a valid address using the procedures described herein or who otherwise could not be located within two attempts at mailing.

Defendant fully discharges its obligations to those Aggrieved Employees to whom they will pay an Individual PAGA Payment through the mailing of a check, regardless of whether such checks are actually received and/or negotiated by Aggrieved Employees. Funds represented by checks returned as undeliverable after a re-mailing, and funds represented by checks remaining un-cashed for more than 180 days after issuance, will be tendered to the State Controller's Office pursuant to the Unclaimed Property Law, California Civil Code § 1500, *et. seq.* for the benefit of and in the name(s) of the Aggrieved Employees to whom the checks were issued but whom did not cash the checks. The unclaimed checks shall remain in the unclaimed property fund in the name of the Aggrieved Employee until such time that they claim their property (the Individual Settlement Payment), or the property is otherwise disposed of pursuant the Unclaimed Property Laws.

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 Net Settlement Amount to the LWDA; (2) Court-approved attorneys' fees and costs to Plaintiff's Counsel; and (3) 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. The Settlement Administrator shall provide a further such accounting under oath, upon request, after the conclusion of the 180-day check cashing period.

7. **Tax Consequences.** Individual PAGA Payments made under this Settlement will be attributed 100% as penalties and paid via IRS Form 1099 issued to each Aggrieved Employee. No later than January 31 of the year following payment of their individual portion of the PAGA Payment, the Settlement Administrator will prepare and issue IRS Form 1099s to Aggrieved Employees who received a payment. 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. **Mutual Preparation and Drafting.** The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement. 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. 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 arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement.

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

3. **Costs and Fees.** The Parties shall each bear their own costs, attorneys' fees, expert 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 the County of Los Angeles, 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 Los Angeles.

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 PAGA Released 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) after good faith efforts to amend or modify the Agreement for Court approval 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 unless otherwise required under this Agreement.

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.

Plaintiff will submit a proposed judgment in conformity with this Agreement to be entered by the Court, which shall constitute a final and binding resolution of the claims in the Action.

8. **Authorization to Enter into Settlement.** The signatories hereto represent that they are fully authorized to enter into 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.

9. **Amendment or Modification.** This PAGA 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.

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 signatures, 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 a fully executed Agreement. The Parties also agree that a facsimile, electronic, or scanned copy of the fully executed Agreement shall have the same force and effect as an original signed Agreement.

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 and with the assistance of an experienced mediator. 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 Provision.** 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. **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.

16. **Enforcement Action.** The Parties hereby agree this Agreement is enforceable under Code of Civil Procedure section 664.6, so as to allow the Parties to enforce the terms of their settlement until performance has been made in full. To that effect, the Parties shall agree to enter into a stipulation in Court and with the Court's approval permitting the Court to retain jurisdiction in order to enforce the terms of the settlement. In the event that one more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this Settlement Agreement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

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.

APPROVED AS TO FORM AND CONTENT:

Date: Mar 28, 2022


Estuardo Mayorga (Mar 28, 2022 12:36 PDT)

Estuardo Mayorga
Personally and acting in a Private Attorney General
capacity

Date: 3/29/2022


Professional Aviation Marketing Inc.

APPROVED AS TO FORM AND CONTENT

Dated: _____, 2022
Mar 28, 2022

BARKHORDARIAN LAW FIRM, PLC

By: 
John F. Litwin
Gregory P. Wong
Attorneys for PLAINTIFF
Estuardo Mayorga

Dated: _____, 2022

FORD & HARRISON, LLP

By: _____
Hilda Aguilar, Esq.
Attorneys for DEFENDANT
Professional Aviation Marketing, Inc.

PAM - Mayorga - Long Form PAGA Settlement Agreement (03-28-2022)

Final Audit Report

2022-03-28

Created:	2022-03-28
By:	Laura Alcazar (Laura@barklawfirm.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAakmCa-TcM6CKo-QCpTf1WDPI7rqyFgDa

"PAM - Mayorga - Long Form PAGA Settlement Agreement (03-28-2022)" History

-  Document created by Laura Alcazar (Laura@barklawfirm.com)
2022-03-28 - 7:09:35 PM GMT
-  Document emailed to Estuardo Mayorga (mayorgaes@yahoo.com) for signature
2022-03-28 - 7:11:35 PM GMT
-  Email viewed by Estuardo Mayorga (mayorgaes@yahoo.com)
2022-03-28 - 7:35:07 PM GMT
-  Document e-signed by Estuardo Mayorga (mayorgaes@yahoo.com)
Signature Date: 2022-03-28 - 7:36:06 PM GMT - Time Source: server
-  Document emailed to John Litwin (john@barklawfirm.com) for signature
2022-03-28 - 7:36:08 PM GMT
-  Email viewed by John Litwin (john@barklawfirm.com)
2022-03-28 - 7:36:55 PM GMT
-  Document e-signed by John Litwin (john@barklawfirm.com)
Signature Date: 2022-03-28 - 7:37:04 PM GMT - Time Source: server
-  Agreement completed.
2022-03-28 - 7:37:04 PM GMT