

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

Santiago Nunez v. Canoga Topanga DH, LP
Los Angeles County Superior Court
Case Number 21VECV00160

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 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 ("Agreement").

This Agreement is made by and between Defendant Canoga Topanga DH, LP ("Defendant"), Plaintiff Santiago Nunez ("Plaintiff"), for himself, Aggrieved Employees (defined below), 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 upon the last date upon which it is signed by the Parties.

The Parties agree that all representative claims brought pursuant to PAGA in Los Angeles County Superior Court case number 21VECV00160 (the "Litigation" or "Action") shall be, and hereby are, ended, settled, resolved, and concluded by agreement of Defendant to pay the sum of Ninety Thousand Dollars (\$90,000.00) (hereinafter referred to as the "PAGA Settlement Sum") for settlement of the PAGA claims and penalties sought in the Litigation, which shall be inclusive of Plaintiff's Counsel attorneys' fees and costs in connection with this Agreement and an enhancement payment to Plaintiff Nunez. The Parties further agree that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission of liability.

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 individuals who worked for Defendant Canoga Topanga DH, LP in California, as hourly and/or non-exempt employees at any time between November 10, 2019 and December 31, 2021. Defendant represents that the total number of Aggrieved Employees is approximately 110 individuals.

- (b) "Complaint" means the operative Complaint filed by Plaintiff on or about February 9, 2021 which asserts claims under PAGA predicated on underlying violations of Labor Code §§ 201, 202, 226(a), 226.3, 226.7, 510, 512, 558, 1194, and 1194.2.
- (c) "Court" means the Superior Court for the State of California, County of Los Angeles.
- (d) "Defense Counsel" or "Counsel for Defendant" is:

Jesse M. Caryl, Esq.
BENT CARYL & KROLL, LLP
6300 Wilshire Boulevard, Suite 1415
Los Angeles, California 90048

- (e) "Effective Date" means the date the Court approves the settlement of the PAGA penalties as described in this Agreement and dismisses the Action with prejudice.
- (f) "Plaintiff's Counsel" is:

Alex P. Katofsky, Esq.
Daniel F. Gaines, Esq.
GAINES & GAINES, APLC
27200 Agoura Road, Suite 101
Calabasas, California 91301

- (g) "Release Period" means the time period November 10, 2019 through December 31, 2021.

Article II.

Background.

Section 2.01 Background.

- (a) On February 9, 2021, Plaintiff Nunez filed a complaint in the Superior Court of the State of California for the County of Los Angeles, entitled *Santiago Nunez v. Canoga Topanga DH, LP*, Case No. 21VECV00160. The Litigation is brought by Santiago Nunez, on behalf of himself, the State of California and other aggrieved employees, as a single representative cause of action pursuant to the Private Attorneys General Act of 2004 (Cal. Labor Code § 2698 *et seq.*) based on alleged violations of Labor Code §§ 201, 202, 226(a), 226.3, 226.7, 510, 512, 558, 1194, and 1194.2 premised on Defendant's alleged failure to provide all meal and rest periods, or premium compensation in lieu thereof, pay all wages due, timely pay wages due at separation of employment, and issue complete and accurate wage statements.
- (b) Through this litigation, the Parties have engaged in informal discovery, including a review of aggrieved employees' timekeeping and payroll records and the pertinent policies and procedures. The Parties reached this PAGA Settlement only after such discovery and

investigation was performed, following a mediation with Steve Pearl, Esq. on November 30, 2021.

- (c) This PAGA Settlement contemplates the entry of an order by the Court approving the payment allocated for settlement of the PAGA claims and dismissing the Action with prejudice.

Article III.

Approval and Implementation of Settlement.

Section 3.01 Cooperation.

The Parties will cooperate in obtaining, through a stipulation and order, or an unopposed motion, if required, an Order from the Court approving 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 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 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 or decline to dismiss the Action, this Agreement shall be null and void and have no further effect, and all sums paid by Defendant, if any, shall be promptly returned to it.

Section 3.02 Settlement Payment Procedures.

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

- (1) Defendant agrees to pay a total amount of Ninety Thousand Dollars (\$90,000.00) to settle this matter. This amount, *i.e.*, the PAGA Settlement Sum, shall cover, resolve, and fully satisfy any and all amounts owed to Plaintiff, the Aggrieved Employees, the State of California, and Plaintiff's Counsel, including all amounts allocated to attorneys' fees and costs, in settlement of all claims asserted in the Complaint, or that could have been asserted in the Complaint, by Plaintiff, on behalf of himself and the Aggrieved Employees. 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 unless the escalator clause in paragraph 6.13 herein is invoked. In the event that this Agreement is canceled, rescinded, terminated, voided or nullified, however that may occur as permitted herein, or the settlement is barred by operation of law, invalidated, or ordered not to be carried out by a court of competent jurisdiction, Defendant shall have no obligation to pay any of the PAGA Settlement Sum and the

Parties' respective positions shall be restored to positions prior to mediation. Further, in that event, nothing in this Agreement, the negotiations leading to this settlement, nor any papers prepared in connection with this Agreement shall be admissible in any proceeding for any purpose whatsoever.

- (2) The "Net Settlement Fund" shall be calculated by deducting from the PAGA Settlement Sum up to \$36,000 for the payment of Plaintiff's Counsel's fees, up to \$10,000 for the payment of Plaintiff's Counsel's costs, up to \$5,000 to Plaintiff for an enhancement payment, and up to \$5,000 to compensate the parties' chosen Settlement Administrator. The Net Settlement Fund will be comprised of approximately \$34,000. Seventy-five percent (75%) of the Net Settlement Fund, or approximately \$25,500, shall be distributed to the State of California Labor and Workforce Development Agency ("LWDA"), and the remaining twenty-five percent (25%) of the Net Settlement Fund, or approximately \$8,500, shall be distributed to the Aggrieved Employees.
- (3) The twenty-five percent (25%) of the Net Settlement Fund to be distributed to the Aggrieved Employees will be divided by the total number of pay periods worked by all of them in California during the Release Period to yield the Pay Period Value. Each Aggrieved Employee will be paid an amount equal to their individual number of pay periods worked in California during the Release Period multiplied by the Pay Period Value.
- (4) Defendant shall pay the PAGA Settlement Sum on an installment basis comprised of twelve (12) equal payments of \$7,500. Payment shall be made via wire, bank transfer or certified funds to the Settlement Administrator on or before the scheduled due date. The first payment of \$7,500 shall be delivered to the Settlement Administrator no later than January 15, 2022. The remaining payments shall each be delivered to the Settlement Administrator no more than thirty (30) calendar days after the due date of the prior installment payment (i.e., every month for a total of 12 months) until the PAGA Settlement Sum is paid in full.
- (5) No disbursements from the PAGA Settlement Sum may be made by the Settlement Administrator unless and until the Effective Date first occurs. Following the Settlement Administrator's receipt of the first two installment payments (totaling \$15,000), and subject to the prior occurrence of the Effective Date, it shall promptly disburse the PAGA Settlement Sum as follows: payment in full to the Aggrieved Employees (i.e. approximately \$8,500), payment in full to Plaintiff (\$5,000), and the balance (i.e. approximately \$1,500) paid to Plaintiff's Counsel for its attorneys' fees and costs. Each successive installment payment (or portion thereof) shall be paid to Plaintiff's Counsel for its attorneys' fees and costs until such fees and costs are paid in full. Thereafter, no later than thirty (30) calendar days after the entire PAGA Settlement Sum has been paid, the Settlement Administrator shall transmit to the LWDA its share of PAGA penalties and to itself all settlement administration fees incurred.
- (6) No later than fifteen (15) calendar days after the second installment of the PAGA Settlement Sum has been paid, the Settlement Administrator shall transmit the Notice of PAGA Settlement (attached hereto as Exhibit "A"), together with settlement checks

containing their individual settlement amounts, with no claims process required, to all Aggrieved Employees 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.

- (7) 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 180 days after issuance will be paid to the California State Controller's Office – Unclaimed Property Fund, to be held in the name of the Settlement Aggrieved Employee.
- (8) 100% of the PAGA Settlement Sum is considered penalties and will not be subject to local, state or federal tax withholdings. All recipients of payments under this PAGA Settlement shall have their payments reported on an IRS Form 1099. The Settlement Administrator shall issue IRS Form 1099s (if required) to the Aggrieved Employees.

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 an admission by Defendant of any violations of Plaintiff's or Aggrieved Employees' rights, violation of any order, law, statute, duty or contract whatsoever. Defendant specifically disclaims any liability to Plaintiff 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. Defendant further denies that, for any purpose other than settling these matters, that this action is appropriate for representative treatment.

Section 4.02 Non-Evidentiary Use.

Neither this Agreement, nor any of its terms, nor any of the negotiations connected with it or proceedings relating to this Agreement, payouts or 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 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 shall not prevent this Agreement from being used, offered, or received in evidence in any proceeding to enforce, 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 Employees.

Section 4.03 Nullification.

Invalidation of any material provision 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 Limited Release By Plaintiff Nunez and Aggrieved Employees.**

Upon the Effective Date and subject to Defendant's full payment of all sums required by this Settlement, Plaintiff, on behalf of himself, his heirs, executors, and assigns, the Aggrieved Employees, and the State of California, fully releases and discharges Defendant, and each of its present and former affiliates, parent companies, subsidiaries, divisions, successors, predecessors, and assigns, and each of its respective past and present shareholders, officers, partners, directors, current and former employees, agents, attorneys, insurers, successors, assigns, representatives, accountants, and all persons acting under, by, through, or in concert with any of them (collectively, "Released Parties") from any and all claims, rights, demands, liabilities, and causes of action of every nature and description, under PAGA, which were alleged or which could have been alleged based on the facts asserted in the operative complaint in the Action and/or the operative administrative exhaustion letter filed with the Labor Workforce Development Agency ("Released Claims") that accrued during the Release Period.

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.

With respect to this Agreement, neither Plaintiff's Counsel nor any other attorneys acting for, or purporting to act for the Aggrieved Employees, or 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. Defendant shall bear its own attorney's fees and costs, and neither Plaintiff's Counsel, Aggrieved Employees or the Plaintiff shall be responsible for Defendant's attorney's fees and costs. If any party moves the Court to enforce this Agreement, the prevailing party shall be entitled to recover from the other party all attorneys' fees and costs incurred to enforce this Agreement.

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, but excluding any dispute related to non-payment or late payment of any installment of the PAGA Settlement Sum (which is addressed in Section 6.12 herein), the Parties agree to submit any such dispute(s) first to mediation and/or continued negotiations before mediator Steven Pearl, and then, if unsuccessful, 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 his/her/its/their 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 Court's Retention of Jurisdiction.

The Court shall retain jurisdiction, pursuant to Code of Civil Procedure section 664.6 and otherwise as permitted by law, to enforce this Settlement.

Section 6.12 Default; Notice; Cure; Acceleration; Time is of the Essence.

If any required installment payment is not received on the date due, Defendant shall be in default of its obligations under this Settlement. Plaintiff shall e-mail notice of the default to Defendant at jcaryl@bcklegal.com. Defendant will then have seven (7) calendar days from the date notice is e-mailed to cure the default. If the default remains uncured for seven (7) calendar days, then all sums remaining unpaid under this Settlement shall be accelerated and become all due and payable and begin to accrue interest at the legal rate. Plaintiff may thereafter move the Court, pursuant to Code of Civil Procedure 664.6, for entry of a judgment against Defendant to reflect this acceleration, the accrual of interest, plus actual attorneys' fees and costs incurred to enforce the judgment and this Settlement. Time is of the essence with respect to all provisions of this Agreement.

Section 6.13 Escalator Provision.

This settlement is based on Defendant's representation that there are approximately 1,485 pay periods at issue worked by approximately 110 individuals through November 29, 2021. If the number of pay periods or employees exceeds these amounts by 5% or more, Defendant shall pay an increased PAGA Settlement Sum proportionate to the increase over the 5% threshold, with the larger increase controlling. For example, if the final number of pay periods is 6% greater than 1,485, the PAGA Settlement Sum will increase by 1%.

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

APPROVED AND ACCEPTED.

[SIGNATURES ON FOLLOWING PAGE]

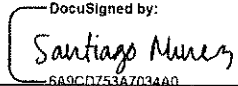
Dated: December __, 2021

CANOCA TOPANGA DH, LP

By _____
Its _____

December 20, 2021

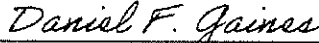
Dated: December __, 2021

By  _____
SANTIAGO NUNEZ

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

Dated: December __20__, 2021

GAINES & GAINES, ALPC

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

Dated: December __, 2021

BENT CARYL & KROLL LLP

By _____
Jesse M. Caryl, Esq.
Attorneys for Defendant

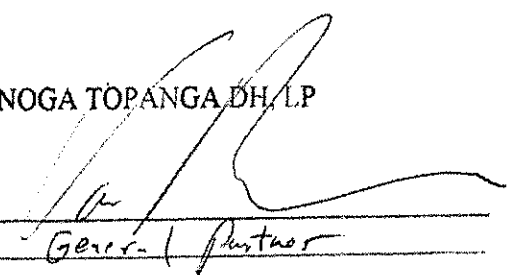
[SIGNATURES ON FOLLOWING PAGE]

Dated: December __, 2021

CANOGA TOPANGA DH, LP

By

Its


Gerardo Pastor

December 20, 2021

Dated: December __, 2021

By

DocuSigned by:

SANTIAGO NUNEZ

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

Dated: December _20_, 2021

GAINES & GAINES, ALPC

By Daniel F. Gaines

Daniel F. Gaines, Esq.

Alex P. Katofsky, Esq.

Attorneys for Plaintiff

Dated: December 20, 2021

BENT CARYL & KROLL LLP

By

Jesse M. Caryl, Esq.

Attorneys for Defendant

EXHIBIT A

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

SANTIAGO NUNEZ, on behalf of himself
and all "aggrieved employees" pursuant to
Labor Code § 2698 *et seq.*,

Plaintiff,

v.

CANOGA TOPANGA DH, LP, a
California limited partnership, and DOES 1
through 10, inclusive,

Defendants.

Case No. 21VECV00160

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

You have been identified as an individual who worked for Defendant Canoga Topanga DH, LP ("Defendant") in California, as an hourly and/or non-exempt employee at any time between November 10, 2019 and December 31, 2021. ("Aggrieved Employee").

On February 9, 2021, Plaintiff Santiago Nunez (the "Plaintiff") commenced a lawsuit in Los Angeles Superior Court, case number 21VECV00160 (the "Lawsuit") to recover civil penalties. Plaintiff alleges in the lawsuit that Defendant failed to provide all meal and rest periods, or premium compensation in lieu thereof, pay all wages due, timely pay wages due at separation of employment, and issue complete and accurate wage statements. 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 denies Plaintiff's allegations and disputes all of Plaintiff's claims. The Lawsuit was litigated and following an investigation and a mediation before a third-party mediator, 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.

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

Upon the Effective Date and subject to Defendant's full payment of all sums required by this Settlement, Plaintiff, on behalf of himself, his heirs, executors, and assigns, the Aggrieved Employees, and the State of California, fully releases and discharges Defendant, and each of its present and former affiliates, parent companies, subsidiaries, divisions, successors, predecessors, and assigns, and each of its respective past and present shareholders, officers, partners, directors, current and former employees, agents, attorneys, insurers, successors, assigns, representatives, accountants, and all persons acting under, by, through, or in concert with any of them (collectively, "Released Parties") from any and all claims, rights, demands, liabilities, and causes of action of every nature and description, under PAGA, which were alleged or which could have been alleged based on the facts asserted in the operative complaint in the Action and/or the operative administrative exhaustion letter filed with the Labor Workforce Development Agency ("Released Claims") that accrued during the Release Period (from November 10, 2019 through December 31, 2021).

If you have any questions, please contact Gaines & Gaines, APLC, counsel for Plaintiff, at (866) 550-0855.