

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This Settlement Agreement and Release of All Claims (the “Agreement”) is made and entered into between Jeremiah Duncan, (“Plaintiff”), on the one hand, and Shottenkirk-California, LLC dba Shottenkirk Desert Lexus and its parent companies, predecessors, successors, subsidiaries, investors, members, related entities and their current and former officers, directors, shareholders, employees, agents, attorneys, servants, members, representatives and insurers (collectively “Defendant”), on the other hand. Plaintiff and Defendant are referred to collectively as the “Parties” and individually as a “Party”.

RECITALS

WHEREAS, a dispute arose between Plaintiff and Defendant arising out of Plaintiff’s employment with Defendant, payment of wages during employment and the termination of that employment.

WHEREAS, on June 9, 2021, Plaintiff filed a civil lawsuit against Defendant in Riverside County Superior Court, Case No. CVR12102881 asserting causes of action for: 1) Meal Period Violation; 2) Rest Period Violation; 3) Failure to Pay Regular Rate for Rest Periods; 4) Waiting Time Penalties; 5) Wage Statement Violation; 6) Wrongful Termination in Violation of Public Policy; 7) Violation of Unfair Competition Law and 8) PAGA Penalties (hereinafter the “Complaint”).

WHEREAS, on March 31, 2021, Plaintiff, through his counsel, submitted a letter to the California Labor and Workforce Development Agency (“LWDA Letter”), asserting claims for penalties pursuant to PAGA in connection with Defendant’s alleged violations of the California Labor Code (hereinafter the “LWDA Letter”);

WHEREAS, on September 16, 2021, the Parties filed a Stipulation whereby Plaintiff agreed to dismiss his individual wage and hour claims without prejudice and arbitrate his remaining wrongful termination claim in exchange for Defendant’s agreement not to ask the Court to stay Plaintiff’s PAGA claims pending arbitration (hereinafter “Stipulation”);

WHEREAS, on October 22, 2021, Plaintiff filed a Request for Dismissal for Causes of Action 1-5 and 7 of the Complaint leaving causes of action for Wrongful Termination and PAGA Penalties remaining.

WHEREAS, Defendant denies and disputes any and all of Plaintiff’s alleged claims and allegations in the Complaint and LWDA Letter; and

WHEREAS, the Parties wish to avoid the expense of further proceedings and desire to resolve any and all claims alleged, or that could be alleged, arising out of or in connection with Plaintiff’s employment and the cessation thereof.

AGREEMENT

NOW THEREFORE, in consideration of and exchange for the promises, covenants, and releases contained in this Agreement and the other valuable consideration described herein, the sufficiency of which is hereby acknowledged by the Parties, the Parties mutually agree as follows:

1. No Admission of Liability. This Agreement and compliance with it shall not be construed as an admission by Defendant of any liability whatsoever or as an admission by Defendant of any wrongdoing including any violation of Plaintiff’s rights under any common law, statute, or contract. Defendant specifically disclaims any wrongdoing and disclaims any liability to Plaintiff for any violation of his rights, including any violation of common law, statute, or contract.

2. Settlement Payment. In exchange for Plaintiff’s execution of this Agreement and the

undertakings set forth herein, and contingent on the Court's dismissal of the Complaint as set forth in Paragraph 10 below, and for no other reason, fifteen days (15) days of the date that: (a) the Court dismisses the Complaint; (b) this Agreement becomes Effective as set forth in Paragraph 4 below, (c) Plaintiff returns a signed copy of this Agreement to counsel for Defendant; and (d) Defendant's receipt of executed W-9 forms from Plaintiff and Plaintiff's Counsel, whichever date is later (hereinafter the Due Date), Defendant shall pay to Plaintiff the total settlement sum of Twenty-Two Thousand Five Hundred Dollars and Zero Cents (\$22,500.00) (hereinafter the "Settlement Payment") as follows:

- (a) By check payable to "Jeremiah Duncan" in the amount of Eight Thousand Seven Hundred Fifteen Dollars and Seventeen Cents (\$8,715.17) less lawful payroll taxes and withholdings for which a W-2 will be issued, which sum represents claimed and disputed wages in relation to the Complaint, LWDA Letter and/or otherwise against Defendant;
- (b) By check payable to "Frontier Law Center Client Trust Account" in the amount of Thirteen Thousand Seven Hundred Eighty-Four Dollars and Eighty-Three Cents (\$13,784.83) which sum represents Plaintiff's claimed damages, attorney's fees and costs related to the Complaint, LWDA Letter and/or otherwise against Defendant.

The Settlement Payment as set forth in this paragraph is deemed timely delivered if deposited by U.S. Mail by the Due Date and/or with an overnight delivery service on or before the Due Date. Upon delivery of the Settlement Payment, Defendant will have fully met its obligations under this Agreement and will not be liable in any manner for the distribution, division or payment of any portion of the Settlement Payment to or between any counsel Plaintiff may have retained and/or consulted, including but not limited to Frontier Law Center. By execution of this Agreement, Plaintiff authorizes payment to be made as set forth in this Paragraph.

3. No Representations Regarding Taxability. Plaintiff and his counsel understand and agree that they are responsible for payment of any taxes which are required to be paid to the State of California, the United States Government, or any other entity as a result of this settlement and the Settlement Payment above. Plaintiff acknowledges that no representations regarding the tax consequences of the Settlement Payment have been made by Defendant or its counsel. Plaintiff agrees that in the event that some federal, state, or local agency takes the position that taxes should have been withheld from the Settlement Payment pursuant to this Agreement, that Plaintiff will be solely responsible for payment of any such alleged tax obligations and will indemnify and hold Defendant harmless from any resulting tax liability, interest, attorneys' fees, or penalty associated therewith.

4. Acknowledgment of Rights and Waiver of Claims under the Age Discrimination in Employment Act. Plaintiff acknowledges that he is knowingly and voluntarily waiving and releasing any rights he may have under the Age Discrimination in Employment Act ("ADEA"). Plaintiff also acknowledges that the consideration given for the waiver and release in this Agreement is in addition to anything of value to which he was already entitled. Plaintiff further acknowledges that he has been advised by this in writing, as required by the Older Workers' Benefit Protection Act, that: (a) his waiver and release does not apply to any rights or claims that may arise after the Effective Date of this Agreement; (b) he should consult with an attorney prior to executing this Agreement; (c) he has at least twenty-one (21) days to consider this Agreement (although Plaintiff may by his own choice execute this Agreement earlier); (d) he has seven (7) days following Plaintiff's execution of this Agreement to revoke the Agreement; and (e) this Agreement shall not be effective until the date upon which the revocation period has expired ("Effective Date"). Plaintiff may revoke this Agreement only by giving formal written notice of his revocation to Christine Baran of Fisher & Phillips LLP, located at 2050 Main Street, Suite 1000, Irvine, CA 92614 to be received by the close of business on the seventh day following Plaintiff's execution of this Agreement.

5. Plaintiff's Release of Claims. In consideration for the Settlement Payment referenced in

Paragraph 2 of this Agreement, Plaintiff hereby irrevocably and unconditionally releases, acquits and forever discharges Defendant, all its subsidiaries, investors, members, parents, predecessors, successors, affiliates (including but not limited to Lexus), current and former employees, managing agents, servants, members, consultants, agents, directors, officers, independent contractors, representatives, insurers and reinsurers and attorneys (and the current and former servants, agents, employees, directors, officers, independent contractors, representatives, consultants, insurers, reinsurers and attorneys of any such subsidiaries, parents, predecessors, successors, or affiliates), and all persons acting by, through, under or in concert with any of them, and each of their respective heirs, successors, and assigns (hereinafter collectively referred to as "Releasees" or "Released Parties"), or any of them, from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorney's fees and costs actually incurred) of any nature whatsoever, known or unknown, suspected or unsuspected, filed or unfilled, in connection with the Complaint, the LWDA Letter, and/or Plaintiff's employment with Defendant, and/or including but not limited to, employment claims, rights arising out of alleged violations of any contracts, express or implied, any covenant of good faith and fair dealing, express or implied, or any tort including defamation, or any legal restrictions on Defendant's right to hire, refusal to hire or terminate its employees, or any federal, state or other governmental statute, regulation or ordinance, including, without limitation: (1) the Civil Rights Act of 1964, as amended; (2) 42 U.S.C. § 1981; (3) the California Fair Employment and Housing Act (which Acts prohibit discrimination based upon race, religion, sex, sexual orientation, age, color, national origin, disability, medical condition and marital status); (4) Section 503 of the Rehabilitation Act of 1973; (5) The Fair Labor Standards Act (including Equal Pay Act); (6) the California and the United States Constitution; (7) The California Labor Code and the Private Attorney General Act pursuant to *Labor Code* Section 2699, et seq.; (including any and all provisions authorizing Plaintiff to seek civil penalties against Defendant for wage-hour violations and/or relief under California Labor Code section 132(a)); (8) the California Business and Professions Code Section 17200, *et. seq.*; (9) the Employee Retirement Income Security Act, as amended; (10) the Family and Medical Leave Act; (11) the California Family Rights Act; (12) the Americans with Disabilities Act; (13) The California Pregnancy Discrimination Act; (14) the Worker Adjustment and Retraining Notification Act; (15) The National Labor Relations Act; (16) the Immigration Reform and Control Act; (17) the California Government Code; (18) The California Wage Orders, and; (19) California's Occupational Safety and Health Act, or the Federal equivalent (20) Families First Coronavirus Relief Act (hereinafter collectively referred to as "Claim" or "Claims"), which Plaintiff now has, owns or holds, or claims to have, own or hold, or which Plaintiff at any time heretofore had, owned or held, or claimed to have, own or hold against any of the Releasees up to and including, as of the Effective Date of this Agreement.

6. Waiver of Section 1542. Plaintiff hereby states that it is his intention in executing this Agreement that the same shall be effective as a bar to each and every claim, demand, cause of action, obligation, damage, liability, charge, attorneys' fees and costs hereinabove released. Plaintiff hereby expressly waives and relinquishes all rights and benefits, if any, arising under the provisions of Section 1542 of the Civil Code of the State of California, which provides:

Section 1542. [Certain Claims Not Affected By General Release.] 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.

7. No Pending Claims. Plaintiff represents and warrants that other than the Complaint and the LWDA Letter, Plaintiff agrees and covenants not to file any other suit, charge or complaint against Released Parties in any court or administrative agency, with regard to any claim, demand, liability or obligation arising out of Plaintiff's employment with Defendant, wages stemming from that employment or separation of that employment. Plaintiff further represents that other than the Complaint and LWDA

Letter, no claims, complaints, charges, or other proceedings are pending in any court, administrative agency, commission or other forum relating directly or indirectly to Plaintiff's employment with Defendant. Since the intent of this Agreement is to bring an end to all claims, controversies, and causes of action Plaintiff may have or claim to have against Defendant, Plaintiff agrees to take all necessary steps to dismiss, with prejudice, and/or withdraw any claim or cause of action that may be contemplated, filed, or pending against the Defendant and/or Releasees.

Nothing in this Agreement shall be construed to prohibit Plaintiff from filing a charge with or participating in any investigation or proceeding conducted by the EEOC or a comparable state or local agency. Notwithstanding the foregoing, Plaintiff agrees to waive Plaintiff's right to recover monetary damages in any charge, complaint, or lawsuit filed by Plaintiff or by anyone else on Plaintiff's behalf.

8. Acknowledgment. Plaintiff agrees and acknowledges that the Settlement Payment is not required by Defendant's policies and procedures or otherwise and hereby agrees that as of the execution of this Agreement, he has timely received all wages and other compensation or remuneration of any kind due or owed from Defendant, including but not limited to all wages, penalties, commissions, bonuses, advances, vacation pay, and any other incentive-based compensation as well as all non-economic and non-compensatory damages to which Plaintiff is or may become entitled or eligible, and that Defendant shall owe Plaintiff nothing further once Plaintiff receives the Settlement Payment set forth in paragraph 2, above. Plaintiff further acknowledges that he would not otherwise be entitled to the consideration set forth in this section were it not for the covenants, promises, and releases set forth hereunder. Plaintiff further acknowledges and represents that he has no injury or basis to file a workers' compensation claim, has not filed a claim pursuant to California Labor Code section 132(a) and states, affirms, and acknowledges, that he has no factual basis to file any charge against the Defendant under Labor Code section 132(a) for retaliatory termination in the future.

9. Attorneys' Fees and Costs. Plaintiff and Defendant each agree that they will bear their own attorneys' fees and costs incurred in connection with the Complaint and/or the LWDA Letter.

10. Dismissal with Prejudice. Plaintiff agrees that he will file a request for dismissal of the 6th Cause of Action of the Complaint (Wrongful Termination in Violation of Public Policy) with prejudice, no later than five (5) days after receipt of the Settlement Payment.

Additionally, the Parties hereby specifically agree and understand that Defendant's obligation to pay the Settlement Payment is contingent on the Court's dismissal of the 8th Cause of Action of the Complaint (PAGA Penalties), without prejudice. Accordingly, the Parties hereby expressly agree and represent that they will cooperate to file a joint stipulation for dismissal of 8th Cause of Action of the Complaint (PAGA Penalties), without prejudice or provide whatever information is requested by the Court for purposes of the dismissal of 8th Cause of Action of the Complaint (PAGA Penalties), without prejudice. Plaintiff expressly agrees and understands that the Court's dismissal of the 8th Cause of Action of the Complaint (PAGA Penalties), without prejudice is a material term of this Agreement, and that Defendant's obligation to provide the Settlement Payment shall not arise until and unless the Court has dismissed the 8th Cause of Action of the Complaint (PAGA Penalties), without prejudice. If the Court does not dismiss the 8th Cause of Action of the Complaint (PAGA Penalties), without prejudice, Defendant's obligations under this Agreement shall be completely extinguished, and no Settlement Payment will be owed to Defendant.

11. Non-Disparagement and Non-Incitemment.

(a) Plaintiff agrees and promises that he will not disparage, harass, or make any private or public comments, statements or writings that are critical or disparaging of Defendant its parents, subsidiaries, affiliates, current or former members and employees. Plaintiff also represents and warrants that he has not made any defamatory statements regarding Defendant and agrees not to make any such statements in the future. Plaintiff further agrees and promises that he has not and will not induce or incite

current or former employees of Defendant to assert claims of discrimination, harassment, retaliation, wrongful and/constructive discharge or termination, claims for unpaid wages, including overtime, violations of California's Labor Code and the Industrial Welfare Commission wage orders, unlawful business practices, or any other claims, based in tort or contract, against Defendant, or any managers, supervisors, or employees of Defendant by any other person.

(b) Defendant agrees that Yvonne Atwood and Robert Knowles will not disparage, harass, or make any private or public comments, statements or writings that are critical or disparaging of Plaintiff. Defendant also represents and warrants that Yvonne Atwood and Robert Knowles has not made any defamatory statements regarding Plaintiff and agrees not to make any such statements in the future

12. Confidentiality. Plaintiff represents and agrees that he has and will keep the terms, amount and fact of this Agreement completely confidential, and that he will not hereafter disclose any information concerning this Agreement to anyone; provided, however, that Plaintiff may make such disclosure to his immediate family members and professional representatives (e.g., attorneys, accountants, auditors, tax preparers). If any disclosures are made as provided in this Paragraph, each individual shall first be informed of and agree to be bound by this confidentiality clause, or other such disclosures required by law to enforce this Agreement. Plaintiff further agrees that if anybody asks him about his claims and the cessation thereof, he will simply respond by stating, "the matter has been resolved and the resolution is confidential." Plaintiff and his counsel represent and agree that they have not and will not issue any public announcement, publication, or otherwise disclose the Agreement, the terms thereof, the claims, demand, or allegations alleged by Plaintiff or any facts alleged to exist as support thereof to anyone, including the press, media, websites, or any service which reports litigation, verdicts or settlements.

13. Liquidated Damages for Breach of this Agreement. Plaintiff acknowledges that a breach by Plaintiff of the terms set forth in paragraph 12 (Confidentiality) will cause substantial harm to Defendant and/or Releasees, including but not limited to, the cost of prosecuting any claims and lawsuits against Plaintiff. Plaintiff also acknowledges that it is impossible for such harm to be calculated with any degree of certainty. Therefore, Plaintiff agrees that any breach by Plaintiff of his obligations under paragraph 12 of this Agreement shall entitle Defendant and/or Releasees to liquidated damages in the sum of Two Thousand Two Hundred Fifty Dollars and Zero Cents (\$2,250.00) per breach, as well as recovery of court costs suffered by Defendant and/or Releasees. Plaintiff agrees that this provision is fair and reasonable in light of the fact that the actual damages that would be suffered as the result of any breach of paragraph 12 of this Agreement would be difficult to ascertain.

14. Voluntary Agreement. This release in all respects has been voluntarily and knowingly executed with the express intention of effecting the legal consequences provided in the California Civil Code § 1542, that is, the extinguishment of obligations herein designated.

15. Newly Discovered Facts. Plaintiff acknowledges that he may hereafter discover facts different from or in addition to those that he now knows of or believes to be true when he expressly agreed to assume the risk of the possible discovery of additional facts, and he agrees that this Agreement will be and remain effective regardless of such additional or different facts. Plaintiff expressly agrees that this Agreement shall be given full force and effect according to each and all of its express terms and provisions, including those relating to unknown or unsuspected claims, demands, causes of action, governmental, regulatory or enforcement actions, charges, obligations, damages, liabilities, and attorneys' fees and costs, if any, as well as those relating to any other claims, demands, causes of action, obligations, damages, liabilities, charges, and attorneys' fees and costs specified herein.

16. Medicare Reporting Requirements. The Parties have considered Medicare's interest in this matter, if any, and Plaintiff warrants that he has not received payments from Medicare and/or Medicaid that are duplicative of the consideration he has received as a part of this Agreement or for any alleged damages or injuries relating to this claim. Therefore, no Medicare Set Aside Allocation is being established. Plaintiff

understands that he is required by law to disclose this information to Defendant and their attorneys in connection with this Agreement. Plaintiff declares and warrants that he is aware of the requirements of the Medicare Secondary Payer Act ("MSP"). Plaintiff understands that Medicare has an interest in recovering any benefits paid when it is used as a source of secondary payment. Plaintiff agrees to release, hold harmless, and indemnify Defendant and its associated Releasees from any remedies, reprisals, or penalties that result from Plaintiff's failure to disclose or release Plaintiff's status as a Medicare beneficiary or receipt of Medicare conditional payments. In the event that any of the above information provided by Plaintiff is false or in any way incorrect, Plaintiff shall be solely liable for any and all actions, causes of actions, penalties, claims, costs, services, compensation or the like resulting from these inaccuracies. Plaintiff waives any claims for damages, including a private cause of action provided in the MSP, 42 U.S.C. Section 1395(b)(3)(A), should Medicare deny coverage for any reason, including the failure to establish a set aside allocation to protect Medicare's interest.

17. Satisfaction of Liens. Plaintiff hereby agrees, represents and warrants that he shall have sole responsibility for the satisfaction of any and all liens or assignments in law, equity, or otherwise, against any of the matters released herein, and that he will fully satisfy all liens, if any, immediately upon receipt of the Settlement Payment. Plaintiff further represents, agrees and warrants that he shall hold Defendant and/or Releasees harmless from, and indemnify Defendant and/or Releasees from, any liabilities or costs which they may incur as a result of any liens of any nature and/or Plaintiff's failure to satisfy any liens.

18. No Assignment of Claims. Plaintiff expressly warrants that he has not transferred to any other person or entity any of the rights or causes of action released in this Agreement.

19. Binding Nature. This Agreement and all the terms and provisions herein shall bind the heirs, personal representatives, successors and assigns of the Parties, and inure to the benefit of each party, its agents, directors, officers, employees, servants, successors and assigns.

20. Effect of Illegality. Should any part, term or provision of this Agreement be declared or determined by any Court of competent jurisdiction to be wholly or partially illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining parts, terms or provisions of this Agreement shall not be affected thereby. Said illegal, invalid or unenforceable part, term, or provision shall be deemed not to be a part of this Agreement.

21. Attorneys' Fees. If any Party to this Agreement brings any sort of action to enforce any provision of this Agreement or for any breach of this Agreement, then the prevailing party in that action shall be entitled to recover reasonable attorneys' fees and costs incurred in such action.

22. Interpretation of Agreement. Plaintiff agrees that any legal rule to the effect that ambiguities shall be resolved against the drafting party shall not apply in any interpretation of this Agreement.

23. Governing Law and Jurisdiction. This Agreement shall be interpreted under the law of the State of California, both as to interpretation and performance.

24. Counterparts. This Agreement may be executed by facsimile, in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

25. Entire Agreement. This Agreement embodies the entire agreement of all the parties hereto who have executed it and supersedes any and all other agreements, understandings, negotiations, or discussions, either oral or in writing, express or implied, between the parties to this Agreement except for any agreements Plaintiff may have signed during his employment regarding maintaining the confidentiality of proprietary or confidential information of Defendant or arbitration agreements. The parties to this

Agreement each acknowledge that no representations, inducements, promises, agreements or warranties, oral or otherwise, have been made by them, or anyone acting on their behalf, which are not embodied in this Agreement; that they have not executed this Agreement in reliance on any representation, inducement, promise, agreements, warranty, fact or circumstances, not expressly set forth in this Agreement; and that no representation, inducement, promise, agreement or warranty not contained in this Agreement including, but not limited to, any purported settlements, modifications, waivers, or terminations of this Agreement, shall be valid or binding, unless executed in writing by all of the parties to this Agreement. This Agreement may be amended, and any provision herein waived, but only in writing, signed by the party against whom such an amendment or waiver is sought to be enforced.

26. Compliance with Terms. The failure to insist upon compliance with any term, covenant or condition contained in this Agreement shall not be deemed a waiver of that term, covenant or condition nor shall any waiver or relinquishment of any right or power contained in this Agreement at any one time or more times be deemed a waiver or Agreement at any one time or more times be deemed a waiver or relinquishment of any right or power at any other time or times.

27. Acknowledgment of Authority. The undersigned hereby acknowledge and warrant that they, and each of them, have the authority to bind the entity or individual on behalf of whom they are signing to the terms of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as follows:

Dated: November 30, 2021

DocuSigned by:

Jeremiah Duncan

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Jeremiah Duncan, Plaintiff

Shottenkirk-California, LLC dba Shottenkirk
Desert Lexus

Dated: November __, 2021

By:

Kim Glasgow, CFO for Defendant

Approved as to Form:

Frontier Law Center

DocuSigned by:

Dan Ginzburg

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Dan Ginzburg, Esq.

Counsel for Plaintiff, Jeremiah Duncan

Fisher & Phillips, LLP

Dated: November __, 2021

Christine Baran, Esq.

Counsel for Defendant, Shottenkirk-California,

LLC dba Shottenkirk Desert Lexus