

PAGA SETTLEMENT AND RELEASE AGREEMENT

This PAGA Settlement and Release Agreement (“Settlement and Release Agreement” or “Settlement”) is subject to the Court’s review and approval and is made and entered into by and between Plaintiff Robert Hernandez, on behalf of himself, similarly-situated employees and the State of California, and Defendants Collicutt Energy Services, Inc. and Steven Collicutt (“Collicutt” or “Defendants”).

A. Definitions.

1. “Action” means and refers to Hernandez, *et al. v. Collicutt Energy Services, Inc., et al.*, California Superior Court for the County of Los Angeles, Case No. 21STCV21135.

2. “Covered Employees” means and includes all persons employed by Collicutt California as a non-exempt employee at any time during the period from April 3, 2020 through the date the Court approves the Settlement. Covered Employees will not include any person who previously settled or released any claims covered by this Settlement and Release Agreement. Covered Employees are not eligible to opt out of the Settlement and Release Agreement.

3. “Covered Employees’ Settlement Proceeds” means the twenty-five percent (25%) of the Net Settlement Amount that shall be paid to the Covered Employees as payment of civil penalties under the California Labor Code Private Attorneys General Act (“PAGA”).

4. “Covered Period” means and refers to the period from April 3, 2020 through the date the Court approves the Settlement.

5. “Court” means and refers to the California Superior Court, County of Los Angeles.

6. “Defendants” means and refers to Collicutt Energy Services, Inc. and Steven Collicutt.

7. “Defendants’ Counsel” means and refers to Cary Palmer of Jackson Lewis P.C.

8. “Effective Date” means and refers to the date the Court enters its Final Order approving the Settlement and Release Agreement.

9. “Eligible Pay Periods” means and refers to the total number of pay periods during the Covered Period in which a Covered Employee worked for Defendants in California.

10. “Final Order” means and refers to the order of the Court approving the Settlement and Release Agreement.

11. “LWDA Settlement Proceeds” means and refers to the seventy-five percent (75%) of the Net Settlement Amount that shall be paid to the Labor Workforce and Development Agency (“LWDA”).

12. "Net Settlement Amount" means and refers to the Settlement Amount less the Plaintiff's Counsel's attorneys' fees and costs, the Plaintiff's Individual Award, and the Settlement Administrator's costs, as approved by the Court.

13. "Notice" means and refers to the notice that will be sent to the Covered Employees after the Court's entry of its Final Order approving the Settlement and Release Agreement, and shall be similar in form and content to the notice attached hereto as Exhibit A.

14. "Parties" means and refers to the Plaintiff and Defendants, collectively.

15. "Plaintiff" means and refers to Robert Hernandez.

16. "Plaintiff's Counsel" means and refers to Harout Messrellian of Messrellian Law, Inc.

17. "Settlement Administrator" means and refers to CPT Group, Inc., the entity that will administer the terms of the Settlement and Release Agreement.

18. "Settlement Administrator Costs" means and refers to the fees and costs incurred or charged by the Settlement Administrator in connection with its duties under this Settlement and Release Agreement, including but not limited to fees and costs associated with: (1) performing a National Change of Address search for the Covered Employees, (2) establishing and maintaining the Qualified Settlement Fund for the disbursement of the Settlement Amount, (3) computing the amount of the settlement and other payments to be made from the Settlement Amount, (4) processing and mailing the settlement and other payments, including the notice to the Covered Employees, under this Settlement and Release Agreement, (5) printing and providing Plaintiff, Plaintiff's Counsel, and the Covered Employees with IRS 1099 forms as required by this Settlement and Release Agreement and applicable law, (6) preparing, issuing, and filing any tax returns and information returns and any other filings required by any governmental taxing authority or other governmental agency, and (7) such other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform.

19. "Settlement Amount" means and refers to the maximum settlement amount of Ninety Thousand Dollars (\$90,000.00) that Defendants will pay under the Settlement and Release Agreement.

20. "Released Parties" as referenced herein and as released in the Settlement and Release Agreement shall collectively mean: (i) Collicutt Energy Services, Inc. and Steven Collicutt ("Defendants"); (ii) Defendants' past and present (and regardless of tier) parents, predecessors, successors, subsidiaries, related entities and affiliates, (iii) the past and present board members, directors, officers, agents, employees, attorneys, insurers, members, managers, agents, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors, and assigns of any of the foregoing; and (iv) any individual or entity which could be jointly liable with any of the foregoing.

B. General.

1. On June 7, 2021, Plaintiff, on behalf of the State of California and allegedly aggrieved employees, asserted claims under PAGA in *Robert Hernandez v. Collicutt Energy Services, Inc., et al.*, California Superior Court for the County of Los Angeles, Case No. 21STCV21135. On March 22, 2022, Plaintiff filed a First Amended Complaint. The operative First Amended Complaint alleges thirteen causes of action, including the following: (1) failure to compensate for all hours worked; (2) failure to pay minimum wages; (3) failure to pay overtime; (4) failure to provide accurate itemized wage statements; (5) failure to pay wages when employment ends; (6) failure to pay wages owed every pay period; (7) violation of Labor Code Section 558; (8) Failure to maintain accurate records; (9) failure to provide meal breaks; (10) failure to provide rest breaks; (11) private attorneys general act ("PAGA"), (12) failure to reimburse business expenses; and (13) violation of Business and Professions Code Section 17200, et seq. (collectively, the "Operative Claims").

2. Defendants deny Plaintiff's claims and allegations, deny any liability or wrongdoing of any kind associated with the claims alleged in the Action, and deny that Plaintiff can proceed with his claims on a representative basis.

3. The Parties have conducted a thorough investigation of the Action and litigated the issues vigorously. Litigation efforts included, without limitation, exchanging data and documents related to the Operative Claims; and participating in a full-day mediation session. Settlement was reached only as a result of a mediator's proposal. Based on the foregoing and on its own independent investigation and evaluation, Plaintiff's Counsel is of the opinion that the settlement set forth in this Settlement and Release Agreement is fair, reasonable, and adequate and is in the best interest of the Plaintiff, the LWDA, and the Covered Employees in light of all known facts and circumstances, including the risk of significant delay, the uncertainty associated with litigation, the various defenses asserted by Defendants, and the numerous potential appellate issues. Defendants and Defendants' Counsel also are of the opinion that the settlement set forth in this Settlement and Release Agreement is fair, reasonable, and adequate and in the best interest of the Plaintiff, the LWDA, and the Covered Employees.

4. Neither the Parties' Settlement, nor this Settlement and Release Agreement, nor the acts to be performed or the orders to be entered pursuant to the terms of this Settlement and Release Agreement, shall be construed as an admission by Defendants of any wrongdoing, any violation of any statute or law, or any liability arising from the claims or allegations in the Action. Defendants have entered into this Settlement and Release Agreement solely for the purpose of compromising highly-disputed claims.

C. Terms of Settlement.

1. Subject to the Court's review and approval, the financial terms of the settlement are as follows:

(a) **Settlement Amount:** Defendants will pay a maximum of Ninety Thousand Dollars (\$90,000.00) ("Settlement Amount"). This Settlement Amount is inclusive of all settlement payments to the State of California and the Covered Employees, the Individual Award to Plaintiff, the Fee and Cost Award to Plaintiff's Counsel, and the Settlement

Administrator Costs. Defendants will have no other monetary obligations under this Settlement and Release Agreement and no portion of the Settlement Amount will revert to Defendants.

(b) **Potential Escalator:** At the time of mediation, Defendants estimated the allegedly aggrieved employees worked an estimated 2,167 pay periods from April 3, 2020 through July 16, 2023. If the event that the total pay periods from April 3, 2020 through July 16, 2023 is determined to be more than 15% higher than the estimated 2,167 pay periods, the Settlement Amount will increase pro rata based on the percentage of pay periods over that 15% threshold. For example, if the number of pay periods from April 3, 2020 through July 16, 2023 is 16% higher than an estimated 2,167 pay periods, the Settlement Amount will increase by 1%, and so on. In the event that the escalator is triggered because the number of pay periods is more than 15% greater than an estimated 2,167 pay periods from April 3, 2020 through July 16, 2023, Defendants have the right to elect between increasing the Settlement Amount by the agreed-upon escalator, or alternatively, capping the number of pay periods by adjusting the Covered Period to a point in time so that the escalator clause is not triggered and thereby not increasing the Settlement Amount.

(c) **Settlement Administrator Costs:** The Settlement Administrator Costs shall be paid from the Settlement Amount.

(d) **Fee and Cost Award:** Plaintiff's Counsel will be paid a maximum of Thirty Thousand Dollars and Zero Cents (\$30,000.00) for their attorneys' fees, and up to Ten Thousand Dollars and Zero Cents (\$10,000.00) for attorneys' costs. Defendants agree not to oppose Plaintiff's Counsel's request for these attorneys' fees and costs. The Fee and Cost Award will be paid out of the Settlement Amount. Plaintiff's Counsel will be issued an IRS Form 1099 in connection with the payment of the Fee and Cost Award. Plaintiff's Counsel shall be solely responsible for paying any and all applicable taxes on this payment.

(e) **Allocation of Net Settlement Amount:** After deducting the amounts specified in Sub-Paragraphs 24(b) [Individual Award to Plaintiff], 24(c) [Settlement Administrator Cost], and 24(d) [Fee and Cost Award] from the Settlement Amount, the balance remaining will form the Net Settlement Amount and will be paid to the Covered Employees and the LWDA as follows:

(1) **Covered Employees' Settlement Proceeds.** Twenty-five percent (25%) of the Net Settlement Amount will be paid to the Covered Employees for pay periods worked during the Covered Period ("Covered Employees' Settlement Proceeds"). Defendants or the Settlement Administrator will calculate the total number of Eligible Pay Periods worked by all Covered Employees during the Covered Period. The Settlement Administrator will divide the Covered Employees' Settlement Proceeds by the total number of Eligible Pay Periods to determine the share amount payable per member so that each Covered Employee receives a *pro rata* share of the Covered Employees' Settlement Proceeds based on the number of Eligible Pay Periods worked by the individual member;

(2) Seventy-five percent (75%) of the Net Settlement Amount will fund the LWDA Settlement Proceeds and will be paid by the Settlement Administrator to the LWDA in accordance with Paragraph 36, below.

D. Covered Claims Released by Covered Employees.

1. The claims and causes of action released by the Covered Employees include, to the maximum extent permitted by law, all claims and causes of action against Defendants and the Released Parties for civil penalties, arising out of or reasonably related to the factual allegations in the Action operative complaint and/or Plaintiff's letter to the California Labor and Workforce Development Agency for the entirety of the Covered Period. Such released claims and causes of action include, but are not limited to the Covered Claims and Labor Code sections 200, 201, 202, 203, 204, 204b, 210, 218.5, 218.6, 226, 226.3, 226.7, 232, 246, 510, 512, 558, 1171, 1173, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, 2698, et seq., 2699, 2699.3, 3700.5, California Industrial Welfare Commission Wage Order 4-2001, Wage Order 1-2001 and all other Wage Orders, and California Code of Regulations, Title 8, Section 11040 and 11010, and all claims and causes of action for interest, costs, expenses and attorney's fees alleged in the Action ("Covered Claims") during the Covered Period. Each Covered Employee will be deemed to have made the foregoing release as if by manually signing it.

E. Released Parties.

1. "Released Parties" as referenced herein and as released in the Settlement and Release Agreement shall collectively mean: (i) Collicutt Energy Services, Inc. and Steven Collicutt ("Collicutt"); (ii) Collicutt's past and present (and regardless of tier) parents, predecessors, successors, subsidiaries, related entities and affiliates, (iii) the past and present board members, directors, officers, agents, employees, attorneys, insurers, members, managers, agents, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors, and assigns of any of the foregoing; and (iv) any individual or entity which could be jointly liable with any of the foregoing.

F. Settlement Approval and Implemental Procedures.

1. Plaintiff's Counsel will prepare a motion and proposed order for filing with the Court within Twenty-One (21) calendar days of execution this Settlement and Release Agreement, requesting the Court to approve this Settlement and Release Agreement. At least three (3) calendar days before filing the motion and proposed order with the Court, Plaintiff's Counsel will provide Defendants' Counsel with a draft of the motion and proposed order for Defendants' Counsel's review and comment.

2. Plaintiff's Counsel shall thereafter file the motion and proposed order with the Court. In accordance with Labor Code § 2699(1)(2), Plaintiff's Counsel shall also submit the motion (including notice of the hearing date) and this Settlement and Release Agreement to the LWDA on the same day it files the motion and proposed order. Defendants will not oppose Plaintiff's motion and proposed order.

3. On the Effective Date, all Covered Employees will: (i) be bound by the terms and conditions of the Settlement and Release Agreement; (ii) be deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy of this Settlement and Release Agreement and the Court's Final Order; and (iii) be entitled to receive a share of the Net Settlement Amount, as set forth herein.

4. Within fifteen (15) days after the Effective Date, Defendants will provide the Settlement Administrator a confidential list setting forth the name, last known addresses, Social Security number, and number of Eligible Pay Periods for each Covered Employee. The Settlement Administrator will perform a National Change of Address search on all the Covered Employees to update the addresses of the Covered Employees.

5. Within thirty (30) days after the Effective Date, Defendants shall wire transfer the Settlement Amount to the Settlement Administrator, who will deposit the funds into the bank account of the Qualified Settlement Fund established by the Settlement Administrator for purposes of this settlement. All amounts to be paid to the Plaintiff, Covered Employees, Plaintiff's Counsel, Settlement Administrator, and LWDA shall be paid from this Qualified Settlement Fund.

6. After the Settlement Administrator deducts the amount of Plaintiff's Counsel's approved Fee and Cost Award, Plaintiff's approved Individual Award, and the Settlement Administrator Costs from the Settlement Amount, the remaining balance will constitute the Net Settlement Amount, which will be distributed as set forth herein.

7. Within forty-five (45) days after the Effective Date, the Settlement Administrator shall: (i) mail the settlement checks to the Covered Employees; (ii) mail a check for the LWDA Settlement Proceeds to the LWDA; (iii) mail the check for the approved Individual Award to Plaintiff; and (iv) pay Plaintiff's Counsel's approved Fee and Cost Award in accordance with any wire transfer instructions from Plaintiff's Counsel. The Individual Awards mailed to each Covered Employee will be accompanied by a Notice (similar in form and content to the sample form set forth in Exhibit A) explaining the Covered Employee's payment and the deadline to cash his/her settlement check.

8. The Covered Employees shall have 180 calendar days after mailing to cash their settlement checks. If any Covered Employee's check is not cashed within that period, the check will be void and a stop-payment will be issued. In such event, the Covered Employee will be deemed to have irrevocably waived any right in or claim to his/her share, except that the Covered Employee may seek to claim the funds from the California Department of Industrial Relations ("DIR") Unclaimed Property Fund. The release nevertheless will be binding upon all Covered Employees, including those who do not cash their checks within the 180-day period. Any funds remaining in the Settlement Administrator's Qualified Settlement Fund established for the purpose of the Settlement and Release Agreement as a result of a failure to timely cash a settlement check shall be paid to the DIR Unclaimed Property Fund in the name of the Covered Employee who did not cash his/her check. The Settlement Administrator, Defendants, Defendants' Counsel, Plaintiff, and Plaintiff's Counsel will not have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks, and will not have any duty to seek any funds from the DIR Unclaimed Property Fund.

9. The Covered Employees' share of the Net Settlement Amount will be treated as payments in settlement of non-wage (civil penalty) claims and, to the extent necessary, will be reported on IRS 1099 forms.

G. Miscellaneous Provisions.

1. **Voiding the Agreement:** If for any reason the Court does not approve this Settlement and Release Agreement, the parties shall have a period of sixty (60) days (the "Grace Period") in which to provide any additional briefing or information requested by the Court, and/or to file a new, supplemental, or renewed request for settlement approval with the Court, and/or, in each Party's sole discretion, to revise this Settlement and Release Agreement. If the parties do not file anything with the Court during such a Grace Period, this Settlement and Release Agreement shall be considered void *ab initio* and shall be of no force and effect whatsoever and shall not be referred to or used for any purpose whatsoever. If the Settlement and Release Agreement is approved by Court, and challenges to the Court's approval are not withdrawn on the record at the hearing, the Settlement and Release Agreement will remain in effect and binding on the Parties, and the Action and all related actions will remain stayed, pending final resolution of any challenges or appeals.

2. **Waiver:** The waiver by one Party of any breach of this Settlement and Release Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement and Release Agreement.

3. **Parties' Authority:** The signatories hereto represent that they are fully authorized to enter into this Settlement and Release Agreement and to bind the Parties hereto to the terms and conditions hereof.

4. **Mutual Full Cooperation:** The Parties will fully cooperate with each other to accomplish the terms of this Settlement and Release Agreement, including but not limited to executing such documents and taking such other action as may reasonably be necessary to implement the terms of this Settlement and Release Agreement. The Parties to this Settlement and Release Agreement shall use their best efforts, including all efforts contemplated by this Settlement and Release Agreement and any other efforts that may become necessary by order of the Court or otherwise, to effectuate this Settlement and Release Agreement and the terms set forth herein.

5. **No Prior Assignments:** The Parties hereto represent, covenant, and warrant that they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber, to any person or entity any portion of any liability, claim, demand, action, cause of action, or rights released and discharged by this Settlement and Release Agreement.

6. **Confidentiality:** Plaintiff agrees to maintain the confidentiality of this Settlement and Release Agreement until such time as Plaintiff's Counsel files with the Court its motion and proposed order requesting the Court to approve this Settlement and Release Agreement. Following the filing of such motion and proposed order, Plaintiff further agrees not to publicize or comment on, either directly or indirectly, either in specific or as to general content, this Settlement and Release Agreement, the Final Order, or any other aspect of this settlement, with the public generally or with present or former employees of Defendants, except and only to acknowledge, if asked, that "this matter has been resolved." Additionally, following the filing of such motion and proposed order, Plaintiff's Counsel further agrees not to contact any member of the print, electronic, or other media to discuss the Action or this Settlement and Release

Agreement, and not to respond substantively to any request for comment from any member of the print, electronic, or other media with regard to this Action or this Settlement and Release Agreement. Plaintiff and Plaintiff's Counsel shall not publish or publicize the Action or this Settlement and Release Agreement on any website or social media platform.

7. **Judgment:** Plaintiff's request to the Court to approve this Settlement and Release Agreement will include a proposed order that judgment be entered according to the terms of the Settlement and Release Agreement.

8. **Binding Settlement:** This Settlement and Release Agreement is a settlement document and shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the settlement and/or interpret or enforce the Settlement and Release Agreement.

9. **Enforcement Actions:** Except as otherwise provided in this Settlement and Release Agreement, in the event that a Party to the Settlement and Release Agreement institutes any legal action or other proceeding against the other Party to enforce the provisions of this Settlement and Release Agreement or to declare rights and/or obligations under this Settlement and Release Agreement, the prevailing Party shall be entitled to recover from the other Party its/her reasonable attorneys' fees and costs incurred in connection with any action or proceeding.

10. **Notices:** Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed:

To Plaintiff:

Harout Messrellian
Messrellian Law, Inc.
500 N. Central Avenue, Suite 840
Glendale, CA 91203
Email: hm@messrellianlaw.com

To Defendants:

Cary G. Palmer
Jackson Lewis, P.C.
400 Capitol Mall, Suite 1600
Sacramento, CA 95814
Email: Cary.Palmer@jacksonlewis.com

11. **Construction:** The terms and conditions of this Settlement and Release Agreement are the result of lengthy, intensive arms-length negotiations between the Parties, and this Settlement and Release Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or her/its counsel participated in the drafting of this Settlement and Release Agreement.

12. **Captions and Interpretations:** Paragraph/section titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement and Release Agreement or any provision thereof. Each term of this Settlement and Release Agreement is contractual and not merely a recital.

13. **Modification:** The Settlement and Release Agreement may not be changed, altered, or modified, except in writing signed by the Parties hereto and approved by the Court. This Settlement and Release Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto. Notwithstanding the foregoing, administrative changes reasonably necessary to facilitate implementation of the Settlement and Release Agreement may be confirmed in a writing approved by counsel for both Parties (including a writing approved through the exchange of email messages) without the signatures of the Parties themselves or the approval of the Court.

14. **Choice of Law and Venue:** This Settlement and Release Agreement shall be governed by and construed, enforced, and administered in accordance with the laws of the State of California, without regard to its conflicts-of-law rules. Any legal action or other proceeding to enforce or interpret the provisions of this Settlement and Release Agreement or to declare rights and/or obligations under this Settlement and Release Agreement shall be filed in California Superior Court, County of Los Angeles, which shall have the exclusive jurisdiction to hear any such legal action or other proceeding.

15. **Integration Clause:** This Settlement and Release Agreement contains the entire agreement between the Parties relating to the settlement and the transactions contemplated herein, and all earlier or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's counsel, are merged herein. No rights hereunder may be waived except in writing.

16. **Binding On Assigns:** This Settlement and Release Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

17. **Counterparts:** The Settlement and Release Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully-signed Settlement and Release Agreement, which shall be binding upon and effective as to all Parties. Signed copies of this Settlement and Release Agreement can be delivered manually, through a third-party delivered company, or electronically.

Dated: Apr 8, 2024

By: 
Robert Hernandez (Apr 8, 2024 11:05 PDT)

Dated: 04-11-24

By: David Taylor
David Taylor

Vice President of Operations,
Collicutt Energy Services, Inc.

Dated: 4-11-24

By: 
Steven Collicutt

Approved as to Form:

Dated: 4-8-24

By: 
Harout Messrellian
Messrellian Law, Inc.
Attorneys for Robert Hernandez

Dated: April 29, 2024

By: 
Cary G. Palmer
Jackson Lewis, P.C.
Attorneys for Collicutt Energy
Services, Inc. and Steven Collicutt