

SETTLEMENT AGREEMENT

This Settlement Agreement ("Settlement") of claims brought under the Private Attorneys General Act, Labor Code § 2698 *et seq.* ("PAGA"), is made and entered into between Plaintiff Kyle Cassidy, acting in his capacity as a representative of the State of California, on behalf of other aggrieved employees, and Defendant Keyence Corporation of America.

I. DEFINITIONS

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

1. "Action" refers to the following lawsuit: *Kyle Cassidy v. Keyence Corporation of America*, Santa Clara County Superior Court, Case No. 21CV382350.
2. "Plaintiff" means Kyle Cassidy.
3. "Defendant" means Keyence Corporation of America.
4. "PAGA Members" are comprised of: (1) "Aggrieved Employees": all persons who were/are employed by Defendant in California as sales representatives or in a similar capacity at any time during the PAGA Period; and (2) "Expense Reimbursement Aggrieved Employees": all persons who were/are employed by Defendant in California at any time during the PAGA Period, excluding Aggrieved Employees.
5. "Court" means the Superior Court of California for the County of Santa Clara.
6. "Effective Date" means the date upon which the Court signs an Order approving the Settlement.
7. "Individual Settlement Payment" means the amount to be paid to each Aggrieved Employee based on the formula described herein.
8. "LWDA" means the California Labor and Workforce Development Agency.
9. "Gross Settlement Amount" is the non-reversionary sum of \$300,000.00, which represents the total maximum amount payable under this Settlement by Defendant, including, without limitation, payments to all Aggrieved Employees and all Reimbursement Aggrieved Employees, payment to the LWDA, payment of Plaintiff's attorneys' fees and costs, payment of Plaintiff's service award, and payment to the Settlement Administrator for administration costs. Defendant will pay the Gross Settlement Amount to the Settlement Administrator within 30 calendar days of the Effective Date.
10. "Net Settlement Amount" is the amount remaining to distribute to the LWDA, Aggrieved Employees, and Reimbursement Aggrieved Employees after the following amounts (subject to Court approval) are subtracted from the Gross Settlement Amount: (a) Plaintiff's attorneys' fees of up to one-third (33.33%) of the Gross Settlement Amount, up to \$100,000 (b) Plaintiff's litigation costs up to \$20,000.00; (c) Plaintiff's representative service award of \$7,500.00; and (d) reasonable third-party administration costs up to \$5,500.00.

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

12. “PAGA Period” means the time period commencing on May 25, 2020 and ending on the date the court approves the PAGA Settlement or September 4, 2022, which is earlier.

13. “PAGA Released Claims” are those claims set out in paragraph III.6, below.

14. “Released Parties” means (a) Defendant and any direct or indirect parents, subsidiaries, divisions, affiliates, and related entities of Defendant; (b) any predecessors, successors, or assigns of any of the foregoing (a); and (c) any past, present or future employees, officers, directors, affiliates, partners, joint venturers, co-venturers, licensors, licensees, principals, members, managers, managing agents, agents, attorneys, accountants, insurers, reinsurers, shareholders, investment bankers, trusts, trustees, representatives, administrators, fiduciaries, heirs, subrogees, and executors of any of the foregoing (a)-(b) in his, her, their, or its capacity as such.

15. “Parties” means Plaintiff and Defendant.

16. “Plaintiff’s Counsel” means Julian Hammond, Polina Brandler, and Ari Cherniak of HammondLaw, P.C.

17. “Settlement Administrator” means Simpluris, Inc.

II. RECITALS

1. Plaintiff alleges that Defendant is liable for civil penalties under the PAGA as a result of its failure to: (i) pay overtime wages; (ii) issue accurate, itemized wage statements; (v) pay all final wages due upon discharge; and (vi) reimburse business expenses. Defendant denies these allegations and, in entering into this Settlement, Defendant does not admit the sufficiency of any claims, allegations, assertions, or contentions made against it in the Action.

2. On June 20, 2022, the Parties participated in a full-day mediation with Mark Rudy, following which they reached a tentative global settlement to fully resolve all PAGA claims asserted in the Action as to Plaintiff, the Aggrieved Employees, and Reimbursement Aggrieved Employees.

3. On September 22, 2022, Plaintiff filed his Second Amended Complaint deleting his class claims.

III. OPERATIVE TERMS OF SETTLEMENT

The Parties agree as follows:

1. **Non-Admission of Liability.** Defendant denies liability as to Plaintiff, Aggrieved Employees, and Reimbursement Aggrieved Employees upon any claim or cause of action. This Settlement does not constitute, and is not intended to constitute, an admission by Defendant as to the merits, validity, or accuracy of any of the allegations or claims made against it in the Action.

Nothing in this Settlement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the negotiations leading to this Settlement, is intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. The Parties themselves agree not to introduce, use, or admit this Settlement, directly or indirectly, in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding, as purported evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity, or for any other purpose. Notwithstanding the foregoing, this Settlement may be used in any proceeding before the Court that has as its purpose the interpretation, implementation, or enforcement of this Settlement or any orders or judgments of the Court entered in connection with the Settlement.

2. **Gross Settlement Amount.** Defendant will pay \$300,000.00 as the non-reversionary Gross Settlement Amount. The Gross Settlement Amount shall be funded within 30 calendar days after the Effective Date.

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, Aggrieved Employees and Reimbursement Aggrieved Employees:

- a. **Plaintiff's Attorneys' Fees and Costs.** Defendant will not oppose Plaintiff's request for attorneys' fees in the amount of up to one-third (33.33%) of the Gross Settlement Amount (\$100,000.00) and actual costs incurred in prosecuting this Action, up to \$20,000.00. In the event the Court approves a payment of less than these amounts, the difference will be added to the Net Settlement Amount. The Settlement Administrator will report these payments on IRS Form 1099 issued to Plaintiff's Counsel.
- b. **Plaintiff's Service Award.** Defendant will not oppose Plaintiff's request for a service award of \$7,500.00 for his service to the State of California and the Aggrieved Employees and Reimbursement Aggrieved Employees and the risk Plaintiff undertook by attaching his names to this Action. In the event the Court approves a payment of less than the requested amount, the difference will be added to the Net Settlement Amount. The Settlement Administrator will report this payment on IRS Form 1099 issued to Plaintiff.
- c. **Administration Costs.** Defendant will not oppose the Settlement Administrator's costs in the amount up to \$5,500.00 for administering the Settlement. In the event the Court approves a payment of less than this amount, the difference will be added to the Net Settlement Amount. The Settlement Administrator will report this payment on IRS Form 1099 issued to the Settlement Administrator.

4. **Allocation of Net Settlement Amount.** The Net Settlement Amount will be distributed 75% to the LWDA and 25% to the PAGA Members, pursuant to Labor Code § 2699(i).

The 25% portion to be paid to the PAGA Members ("Employee PAGA Fund") will be allocated as follows: 57% to Aggrieved Employees ("Sales PAGA Fund"), and 43% to Aggrieved Employees and Expense Reimbursement Aggrieved Employees ("Expense PAGA Fund") to be paid equally per capita.

5. **Distribution of Sales PAGA Fund and Expense PAGA Fund.** The amount that each Aggrieved Employee will be eligible to receive from the Sales PAGA Fund will be calculated by dividing the number of pay periods worked by each Aggrieved Employee by the total pay periods of all Aggrieved Employees and multiplying the resulting fraction by the Sales PAGA Fund. The amount that each Aggrieved Employee and Expense Reimbursement Aggrieved Employee will be eligible to receive from the Expense PAGA Fund will be calculated by dividing the number of pay periods worked by each Aggrieved Employee and Expense Reimbursement Aggrieved Employee by the total pay periods of all Aggrieved Employees and Expense Reimbursement Aggrieved Employees and multiplying the resulting fraction by the Expense PAGA Fund.

6. **PAGA Released Claims.** In consideration for the payments awarded pursuant to the terms of this Settlement, upon court approval of the PAGA Settlement, Plaintiff, PAGA Members, and the LWDA will fully and finally release and discharge Released Parties from claims for penalties and attorneys' fees and costs recoverable under PAGA which Plaintiff, PAGA Members, and/or the LWDA had, or may claim to have, against Released Parties, arising out of the violations alleged or that could have been alleged based on the facts alleged in the Action or the PAGA Notices by Plaintiff, including, but not limited to, PAGA penalties for or arising out of the following: misclassification as exempt, unpaid overtime wages, failure to pay overtime wages owed including by failing to pay all overtime and double time at the correct regular rate of pay, failure to pay all wages owed at discharge or resignation; failure to provide complete and accurate wage statements; failure to keep complete and accurate payroll records; failure to reimburse necessary business-related expenses; and violations of Labor Code sections 201, 202, 203, 210, 226, 510, 551, 552, 558, 1174(d), 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698, et seq., 2800, and 2802. This release shall apply to claims arising during the PAGA Period and will be binding and effective upon Plaintiff, PAGA Members, and the LWDA regardless of whether the PAGA Member cashes his or her settlement check. Released PAGA Claims do not include any individual claims Aggrieved Employees and Expense Reimbursement Aggrieved Employees may have.

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

8. **Judgment.** As part of the Motion to approve the Settlement, Plaintiff will submit a proposed order and judgment which enters judgment in the Action in accordance with the terms of the Settlement and which retains jurisdiction of the Court 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 an approval order as set forth herein. The order will not release or bar any claims other than the PAGA Released Claims as to Plaintiff, the Aggrieved

Employees, and Reimbursement Aggrieved Employees. The Parties agree to reasonably cooperate in preparing any other filings required by the Court for the approval of this Settlement.

9. **Publicity.** Plaintiff and his counsel agree that they have not and will not publish the Action or the Settlement until Plaintiff has filed his motion for approval of the Settlement. Until Plaintiff has filed his motion for approval of the Settlement, Plaintiff's counsel shall not report the Action or the Settlement in any medium or in any publication, shall not post or report anything regarding the claims of Plaintiff, the Aggrieved Employees, or Reimbursement Aggrieved Employees or the Settlement on their websites, and shall not contact any reporters or media regarding the Settlement. Nothing herein will restrict Plaintiff's Counsel from including publicly available information regarding this settlement in future judicial submissions regarding Plaintiff's Counsel's qualifications and experience.

10. **Neutral Reference:** Defendant agrees that all inquiries about Plaintiff shall be referred to Human Resources, who will confirm the Plaintiff's dates of employment and position held. No other information concerning Plaintiff's work history will be provided by Human Resources without authorization from Plaintiff.

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 and Reimbursement Aggrieved Employees.** Within twenty-one (21) calendar days after the Effective Date, Defendant will provide the Settlement Administrator with the following information for the Aggrieved Employees, and Reimbursement Aggrieved Employees: (1) full name; (2) last known home address; (3) social security number; (4) start and end dates of employment as an employee of Defendant in the State of California during the PAGA Period; and (5) any other information reasonably required by the Settlement Administrator in order to effectuate the terms of the PAGA Settlement ("PAGA Members List"). The PAGA Members List shall be deemed confidential and may not be disclosed or used by the Settlement Administrator for any purpose except to facilitate the PAGA Settlement. Upon receipt of PAGA Member List, the Settlement Administrator shall access the National Change of Address ("NCOA") Database, and update the addressed contained therein.

Within five (5) business days of receiving the Aggrieved Employees' and Reimbursement Aggrieved Employees' information from Defendant, the Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the Individual Settlement Payments to each Aggrieved Employee and Reimbursement Aggrieved Employee and the data used to calculate said payments. The Settlement Administrator will obtain approval from all counsel for the Parties of the calculations before mailing Individual Settlement Payments.

3. **Explanatory Letters and Individual Settlement Payments.** Within five (5) business days of receiving approval from all counsel for the Parties, the Settlement Administrator will mail copies of the explanatory letters, which have been mutually approved by the Parties and are attached hereto as **Exhibits A and B**, along with the Individual Settlement Payments to all Aggrieved Employees and Reimbursement Aggrieved Employees via First-Class U.S. Mail.

Each Individual Settlement Payment will be deemed penalties and reported using IRS Form 1099. Checks will remain negotiable for ninety (90) days from the date they are mailed by the Settlement Administrator. Any check that is not negotiated within one hundred twenty (120) days of mailing to an Aggrieved Employee or Reimbursement Aggrieved Employee will be transferred to the California State Controller's Unclaimed Property Fund.

4. **Undeliverable Letters.** The Settlement Administrator will exercise its best judgment to determine the current mailing address for each Aggrieved Employees and Reimbursement Aggrieved Employees. The address identified by the Settlement Administrator as the current mailing address will be presumed to be the best mailing address for each Aggrieved Employee and Reimbursement Aggrieved Employee. Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a Skip-Trace or other search using the name, address or Social Security number of the Aggrieved Employees and Reimbursement Aggrieved Employees involved, and will perform a single re-mailing.

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

Plaintiff and his counsel, as well as Defendant and its counsel shall not bear any responsibility for errors or omissions in the calculation or distribution of the settlement payments or the development of the list of recipients of settlement payments.

5. **Payment of Remainder.** Within ten (10) business days of receiving the Gross Settlement Amount, the Settlement Administrator will distribute the following payments: (1) the 75% share of the Net Settlement Fund to the LWDA; (2) Court-approved attorneys' fees and costs to Plaintiff's Counsel; (3) Court-approved service award to Plaintiff; and (4) Court-approved administration costs to the Settlement Administrator.

6. **Accounting.** The Settlement Administrator will provide an accounting declaration under oath to the Parties of the amounts paid from the Settlement as soon as practicable after the check cashing deadline described in Paragraph IV.3.

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

V. **CIRCULAR 230 DISCLAIMER.**

EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN

COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISOR'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

VI. MISCELLANEOUS PROVISIONS

1. **Successors.** This Settlement will be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators and successors.
2. **Governing Law.** This Settlement will be construed under and governed by the laws of the State of California, without regard to choice of law principles. All questions of validity, interpretation or performance of any of its terms or of any rights or obligations of the Parties to this Settlement will be governed by California law. If any legal or equitable action is necessary to enforce the terms of this Settlement, it will be brought in the State of California, County of Santa Clara.
3. **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 Action. This Settlement cannot be amended or modified except by a writing signed by the Parties hereto.
4. **Nullification of Settlement.** In the event that: (i) the Court does not approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then this Settlement and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions.
5. **Judgment and Continued Jurisdiction.** After approval of this Settlement, the Court will have continuing jurisdiction per California Code of Civil Procedure § 664.6 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.

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

7. **Authorization to Enter into Settlement.** Counsel for the Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Settlement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If they 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.

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

9. **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties believe this Settlement is a fair, adequate and reasonable settlement of the Action, and have arrived at this Settlement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

10. **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.

11. **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 Settlement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

12. **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.

13. **Enforcement Action.** In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or

Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

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

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. **Cooperation and Execution of Necessary Documents**. The Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement. The Parties agree to work cooperatively, diligently and in good faith to ensure that all documents necessary to seek the Court's approval of this Settlement are timely filed.

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

IN WITNESS THEREOF, the Parties to this Settlement 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.

KYLE CASSIDY

Dated: 11/9/2022

Kyle Cassidy
Kyle Cassidy, Plaintiff

KEYENCE CORPORATION OF AMERICA

Dated: 11/21/2022

Robert J. Hosler
By: Robert J. Hosler
Title: Chief operating officer

APPROVED AS TO FORM AND CONTENT:

Dated: 11/9/2022

HAMMONDLAW, APC

By: Julian Hammond

Julian Hammond

Attorneys for Plaintiff, Kyle Cassidy

Dated: 11/22/2022

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: 

Jeffrey Ranen

Attorneys for Defendant, Keyence Corporation
of America