

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

Patrick Richardson v. Indian Head Industries, Inc. et al.
Sonoma County Superior Court Case No. SCV-269965

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, *Patrick Richardson v. Indian Head Industries, Inc. et al.*, Sonoma County Superior Court Case No. SCV-269965 (the “Litigation”), 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 Private Attorneys General Act (Labor Code § 2698 *et seq.*) Settlement Agreement (“Agreement”).

This Agreement is made by and between Defendant Indian Head Industries, Inc. (“Defendant”), Plaintiff Patrick Richardson (“Plaintiff”) for himself, all Aggrieved Employees, and on behalf of the State of California (Defendant, Plaintiff, and Aggrieved Employees, as defined herein, are sometimes collectively referred to as the “Parties.”)

The Parties agree that the Litigation shall be, and hereby is, ended, settled, resolved, and concluded by agreement of Defendant to pay the sum of One Hundred Eighty-Five Thousand Dollars and Zero Cents (\$185,000.00) (hereinafter referred to as the “Settlement Sum”) for settlement of Private Attorneys General Act (“PAGA”) penalties arising from Defendant’s alleged violations of Labor Code § 226, which shall be inclusive of a service award, attorneys’ fees, costs, and settlement administrator’s fees.

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 any and all individuals who are or were employed by Defendant in California at any time between October 29, 2020 and the Approval Date. Defendant represents that the total number of Aggrieved Employees was approximately 104 individuals as of December 1, 2022.
- (b) “Approval Date” means the date on which the Court approves this Agreement and enters judgment.
- (c) “Complaint” means the First Amended Complaint filed by Plaintiff in the United States District Court for the Northern District of California prior to the remand of the Action to the Sonoma County Superior Court. This case is referred to as the “Litigation.”

(d) "Court" means the Superior Court for the State of California, County of Sonoma.

(e) "Defense Counsel" or "Counsel for Defendant" is:

Jennifer W. Maguire, Esq.
Theodora Lee, Esq.
Littler Mendelson, P.C.
1255 Treat Boulevard, Suite 600
Walnut Creek, CA 94597

(f) The "Effective Date" of this Settlement will be (i) sixty-one (61) days after the Approval Date without any appeal, writ, or other appellate proceeding having been filed therefrom; or (ii) if any appeal, writ, or other appellate proceeding opposing Approval and Judgment has been filed within sixty-one (61) days after entry of the Judgment, the Effective Date shall be five (5) business days after any appeal, writ, or other appellate proceedings opposing the Settlement have been finally and conclusively dismissed and the settlement has been upheld with no right to pursue further remedies or relief. There will be no funding required by Defendant until the Effective Date has passed.

(g) "Plaintiff's Counsel" is:

Daniel F. Gaines, Esq.
Evan S. Gaines, Esq.
Gaines & Gaines, APLC
4550 E. Thousand Oaks Blvd, Suite 100
Westlake Village, CA 91362

(h) "PAGA Penalties" means civil penalties pursuant to PAGA based on underlying violations of the Labor Code as alleged in the Complaint.

(i) "Release Period" means the time period between October 29, 2020 and the Approval Date of this Agreement.

(j) "Released Claims" means any and all claims for PAGA penalties based on underlying violations of the Labor Code as alleged in the Complaint, which includes but is not limited to claims for deficient or inaccurate wage statements, including claims under Labor Code sections 226 and 226.3.

(k) "Released Parties" means Defendant and all of Defendant's past, present, and future parents, affiliates, subsidiaries, divisions, predecessors, successors, partners, joint venturers, affiliated organizations, shareholders, insurers, reinsurers and assigns, and all of their past, present and future officers, directors, managers, trustees, employees, agents, attorneys, contractors, representatives, insurers and any other person or entities acting on behalf of or in concert with any of the foregoing.

Article II.

Background.

Section 2.01 Background.

- (a) On October 29, 2021, Plaintiff sent notice to the LWDA of his PAGA claim.
- (b) On January 6, 2022, Plaintiff filed a complaint in the Superior Court of the State of California for the County of Sonoma. The complaint was filed on behalf of the State of California and other aggrieved employees as a PAGA action alleging violations of Labor Code §§ 201, 202, 226(a), 510, 1194, 226.3 and 558, by Defendant. On February 9, 2022, Defendant removed the action to the United States District Court for the Northern District of California.
- (c) Through the Litigation, the Parties, by and through their respective counsel, have engaged in informal discovery, investigation, and analysis of Plaintiff's claims and Defendant's defenses. The Parties reached this Settlement only after such discovery, investigation and analysis were performed and fully considered.
- (d) On December 1, 2022, Plaintiff and Defendant mediated the PAGA claim with mediator David Phillips, Esq., reaching an agreement as to settlement of Plaintiff's and Aggrieved Parties' PAGA claim related to deficient and inaccurate wage statements only.
- (e) On April 26, 2023, the Parties stipulated to remand the action to Sonoma County Superior Court, and Plaintiff concurrently sought leave to file a First Amended Complaint which dismissed without prejudice all claims except those related to deficient and inaccurate wage statements. Defendant identified approximately 3,300 allegedly non-compliant wage statements of approximately 6,000 total wage statements within the period from January 6, 2021 to December 31, 2022. As of March 4, 2022, the format of all paystubs was modified to comply with Labor Code § 226.
- (f) This Settlement contemplates the entry of an Order by the Court approving the payment allocated for settlement of PAGA penalties to Plaintiff and Aggrieved Employees, and entry of judgment in the Action dismissing with prejudice the Complaint.

Article III.

Approval and Implementation of the Settlement.

Section 3.01 Cooperation.

The Parties will cooperate in obtaining, through written stipulation or unopposed motion if a motion is required, at the earliest possible date, an Order from the Court approving the payment of PAGA Penalties as described in this Agreement. 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 PAGA Penalties as described in this Agreement.

Section 3.02 Notice to the LWDA.

At the same time as it submits this Agreement to the Court for approval, Plaintiff's Counsel shall submit a copy of this Agreement to the LWDA, as required by California Labor Code § 2699(1)(2). Within ten (10) days following the Effective Date, Plaintiff's Counsel shall submit a copy of the Order entered by the Court to the LWDA, as required by California Labor Code § 2699(1)(3).

Section 3.03 Court Approval.

The Parties will seek to obtain the Court's approval of the payment of PAGA Penalties as described in this Agreement by way of a stipulation or unopposed motion to be filed by Plaintiff's counsel promptly upon remand to the Court or as otherwise directed by the Court. Plaintiff's Counsel and Defense Counsel will jointly lodge this Agreement with the Court for its approval. The Court's approval of the payment of PAGA Penalties as described in this Agreement shall be embodied in a written order. The Parties agree that a good faith effort shall be made to seek approval, including before the federal court should remand be denied or by way of motion if the Court refuses to approve solely based upon a joint stipulation. If after exhaustion of these good faith efforts, the Court does not grant approval of the payment of PAGA Penalties as described in this Agreement, then the entirety of this Agreement shall be null and void.

Section 3.04 Payment and Notice to Aggrieved Employees.

- (a) No later than fifteen (15) business days after the Effective Date, Defendant shall provide the settlement administrator with a list of all Aggrieved Employees ("Aggrieved Employees List"). The Aggrieved Employees List shall state the name, last known home address, and social security number for each Aggrieved Employee, and the number of wage statements provided to each Aggrieved Employee during the Release Period.
- (b) No later than fifteen (15) business days after the Effective Date, or the Court's approval of Plaintiff's attorneys fees to the extent required, whichever is later, Defendant shall deposit all required funds with the settlement administrator and within ten (10) business days the settlement administrator shall mail the Notice of Settlement of PAGA Claim (attached hereto as Exhibit "A"), together with the settlement checks in the amount set forth below to each Aggrieved Employee, by first-class United States mail, postage prepaid, to the last known address of each recipient with directions to the Postmaster to forward the checks and return all undeliverable Notices to the settlement administrator. For each check and Notice of Settlement of PAGA Claim that is returned as undeliverable, the settlement administrator shall promptly attempt to locate the Aggrieved Employee by using an address refresher database.

- (c) The settlement checks issued to Aggrieved Employees shall remain valid for one hundred twenty (120) days. Thereafter, all uncashed checks shall be paid to the State of California Controller's Office – Unclaimed Property Fund, to be held in the name of the respective Aggrieved Employee.

Section 3.05 Settlement Sum Allocation.

Defendant shall pay \$185,000 as the Settlement Sum. The Parties agree to the following allocations to be paid from the Settlement Sum:

a. Up to \$3,000 shall be paid to the settlement administrator as administration costs;

b. One-third of the Settlement Sum (i.e. \$61,666.67) shall be paid to Plaintiff's Counsel for payment of attorneys' fees and up to \$12,000 shall be paid to Plaintiff's Counsel for payment of its litigation costs, upon approval by the Court. Plaintiff's Counsel agrees not to seek more than these amounts, and Defendant will not oppose the application of Plaintiff's Counsel for Court approval of amounts not exceeding the above.

c. \$12,000 shall be paid to Plaintiff, as a service award and in recognition of his general release.

d. After deduction of the amounts listed in sections (a) through (c) above, the remaining amount (the "Net Settlement Sum") shall be distributed 75% to the LWDA, and 25% to the Aggrieved Employees, apportioned among them in proportion to the number of wage statements the Aggrieved Employees received during the Release Period.

Section 3.06 Entry of Judgment and Dismissal of Action.

The Order granting approval of the settlement shall include a judgment providing for a dismissal, with prejudice, of the entire Litigation. The Court shall retain jurisdiction to enforce the terms of this Agreement.

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 admission by Defendant of any violations of Plaintiff's 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.

Section 4.02 Non-Evidentiary Use.

Neither this Agreement nor any of its terms 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; 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.

Section 4.03 Nullification.

- (a) If the Court should for any reason fail to approve the payment of PAGA penalties as described in this Agreement, then (a) this Agreement shall be considered null and void, (b) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect, and (c) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court.
- (b) Invalidation of any material portion 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.

It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge disputes and claims arising from or related to the Litigation. Upon entry of the Order approving this Agreement, including the PAGA penalties as described herein, and subject to Defendant's full payment of the Settlement Sum, Plaintiff, the Aggrieved Employees and the State of California shall be bound by this Agreement and shall have recourse exclusively to the benefits, rights, and remedies provided hereunder. Plaintiff, the Aggrieved Employees and the State of California shall be deemed to have, and by operation of the Order granting approval of the payment of PAGA Penalties as described in this Agreement, fully, finally, and forever released, relinquished, and discharged each and all of the Released Parties from the Released Claims that arose during the Release Period.

Section 5.02 Section 1542 Release.

Plaintiff understands and expressly agrees that this Agreement extends to claims that he has against Defendant, of whatever nature and kind, known or unknown, suspected or unsuspected, vested or contingent, past, present, or future, arising from or attributable to an incident or event, occurring in whole or in part, on or before the date of his signature on this Agreement. Plaintiff agrees that any and all rights granted under any state or federal law or regulation limiting the effect of this Agreement, including the provisions of section 1542 of the California Civil Code, ARE HEREBY EXPRESSLY WAIVED. Section 1542 of the California Civil Code reads as follows:

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.

Thus, Plaintiff expressly acknowledges that this release includes, without limitation, any claims and causes of action which Plaintiff does not know of or suspect in his favor at the time of execution of this Agreement, and that this Agreement contemplates full and final extinguishment of all such claims and causes of action.

Section 5.03 General Release.

Notwithstanding the provisions of Section 1542 of the California Civil Code, in consideration of the payments described above, and subject to Defendant's full payment of the Settlement Sum, Plaintiff hereby irrevocably and unconditionally releases and forever discharges Defendant and the Released Parties of and from any and all charges, complaints, claims, demands, actions, causes of action, suits, damages, losses, and expenses, of any and every nature whatsoever, known and unknown, suspected or unsuspected, which Plaintiff at any time had or claimed to have or which he at any time may have or may claim to have, from the beginning of time through the date that Plaintiff signs this Agreement, including, without limitation, any and all claims that were raised in his October 29, 2021 letter to the LWDA ("LWDA Letter") or could have been raised in the LWDA Letter, any and all claims asserted in the operative Complaint, and any and all claims relating to Plaintiff's employment or termination of employment with Defendant. It is expressly understood by Plaintiff that among the various rights and claims being waived in this Agreement are those arising under the United States and California Constitutions, California common law, Title VII of the Civil Rights Act of 1964, the Employee Retirement Income Security Act ("ERISA"), the National Labor Relations Act ("NLRA"), the Civil Rights Act of 1991, the Americans with Disabilities Act, state and federal family leave acts, the Family Medical Leave Act, the California Fair Employment and Housing Act, the California Family Rights Act, the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), the California Business and Professions, Civil, Government and Labor Codes, and any other federal, state and local statute, rule, ordinance, or regulation, as well as any claims and causes of action of whatever kind or character, in tort or contract, statutory or otherwise, for legal or equitable relief. All such claims (including related attorneys' fees and costs) are forever barred by this Agreement without regard to whether those claims are based on any alleged breach of a duty arising in contract, tort, statute or ordinance, any alleged unlawful act, including, without limitation, wrongful discharge, retaliation, discrimination and harassment, any other claim or cause of action, and regardless of the forum in which it might be brought. Nothing in this Agreement is intended to waive claims for workers' compensation benefits or claims which cannot be released as a matter of law in this private agreement. By signing this agreement, Plaintiff specifically acknowledges that he is waiving and releasing his right to assert the claims in the operative Complaint and LWDA Letter against the Released Parties.

As further consideration for Defendant's payment to Plaintiff of the Settlement Sum, and without limiting any of the foregoing, Plaintiff specifically agrees that he is not an "aggrieved employee" under the Labor Code Private Attorneys General Act (PAGA) and will take no further action regarding the LWDA letter.

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.

Except as expressly provided herein, Defendant and Plaintiff shall each bear their own attorneys' fees and costs.

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, the Parties agree to submit any such dispute(s) 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 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 Continuing Jurisdiction.

The Parties agree that upon the occurrence of the dismissal of the Litigation pursuant to the terms of this Agreement, this Agreement shall be enforceable by the Court pursuant to Code of Civil Procedure Section 664.6 and the Court shall retain exclusive and continuing jurisdiction over this Action over all Parties and Aggrieved Employees to interpret and enforce the terms,

conditions and obligations of this Agreement.

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

APPROVED AND ACCEPTED.

Dated: 05 / 11 / 2023, 2023

By Patrick C Richardson Jr.
Patrick Richardson

Dated: May 19, 2023

By Susie Koral
Susie Koral, Senior Vice President
Indian Head Industries, Inc., dba MGM Brakes

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

Dated: 5/12, 2023

Gaines & Gaines, APLC

By [Signature]
Evan S. Gaines, Esq.

Dated: May 22, 2023

Littler Mendelson, P.C.

By [Signature]
Jennifer W. Maguire Esq.

EXHIBIT A

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SONOMA**

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

Plaintiff,

v.

INDIAN HEAD INDUSTRIES, INC., a
Delaware corporation, d/b/a MGM
BRAKES, and DOES 1 through 10,
inclusive,

Defendants.

Case No. SCV-269965

**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 Indian Head Industries, Inc. ("Defendant") as a non-exempt employee in California between October 29, 2020 and 11/11/2021. ("Aggrieved Employee").

On January 6, 2022, Plaintiff Patrick Richardson ("Plaintiff") filed a lawsuit in the Sonoma County Superior Court, case number SCV-269965 to recover civil penalties. Plaintiff alleges in the lawsuit that Defendant failed to issue complete and accurate wage statements. For this alleged violation, 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, the Parties reached a settlement which takes into account the uncertainties and risks of proceeding with litigation.

The Court approved the settlement on 1/11/2022 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 entry of the Order approving this Agreement, including the PAGA penalties as described herein, and subject to Defendant's full payment of the Settlement Sum, Plaintiff, the Aggrieved Employees and the State of California shall be bound by this Agreement and

shall have recourse exclusively to the benefits, rights, and remedies provided hereunder. Plaintiff, the Aggrieved Employees and the State of California shall be deemed to have, and by operation of the Order granting approval of the payment of PAGA Penalties as described in this Agreement, fully, finally, and forever released, relinquished, and discharged Defendant and all of Defendant's past, present, and future parents, affiliates, subsidiaries, divisions, predecessors, successors, partners, joint venturers, affiliated organizations, shareholders, insurers, reinsurers and assigns, and all of their past, present and future officers, directors, managers, trustees, employees, agents, attorneys, contractors, representatives, insurers and any other person or entities acting on behalf of or in concert with any of the foregoing (the "Released Parties") from any and all claims for PAGA penalties based on underlying violations of the Labor Code as alleged in the Complaint, which includes but is not limited to claims for deficient or inaccurate wage statements, including claims under Labor Code sections 226 and 226.3 (the "Released Claims") that arose between October 29, 2020 and 10/29/2021 (the "Release Period").

PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE

If you have any questions regarding this award or this case, please contact the settlement administrator at: XXX-XXX-XXX.

Title	Richardson v Indian HeadPAGA Settlement Agreement Final
File name	Richardson v. Ind...reement FINAL.pdf
Document ID	b0722889e7199c5053a6e2a75b08f1a18b38212f
Audit trail date format	MM / DD / YYYY
Status	 Signed

Document History

 SENT	05 / 11 / 2023 22:55:31 UTC	Sent for signature to Patrick Richardson (chuckyrichardson75@gmail.com) from office@gaineslawfirm.com IP: 47.181.216.90
 VIEWED	05 / 11 / 2023 22:56:27 UTC	Viewed by Patrick Richardson (chuckyrichardson75@gmail.com) IP: 172.58.89.196
 SIGNED	05 / 11 / 2023 23:05:42 UTC	Signed by Patrick Richardson (chuckyrichardson75@gmail.com) IP: 172.58.89.82
 COMPLETED	05 / 11 / 2023 23:05:42 UTC	The document has been completed.